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CA Amit Popli

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Special Message from Author

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CHAPTER 1

Basic Concepts & Incorporation of Company

PRACTICAL QUESTION	
Quest-1	*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?*
Solution	***Section 2(20) of the Companies Act, 2013 defines the term 'company':*** "Company means a company incorporated under this Act or under any previous company law". Section 9 contains the various characteristics of company, wherein it is stated that company shall have the separate legal entity **[*Salomon* v *Salomon & Co*].** Company is a separate legal person in the eyes of law. Thus, it can hold the property in its own name. Company itself is the owner of its assets and capital. The members cannot claim to be the owner of the company's property. **One of the most important features of company is that it has Perpetual succession** 'Perpetual succession' means the continuous Existence which means company never dies. The membership of a Company may change from time to time, but it does not affect the company's existence. In the given case, ABC Pvt. Ltd., is a Private Company having five members only and all of them died in an accident **Conclusion: -** Based upon the above provisions, we may conclude that existence of company shall not be affected due to death of its members and company can continue to be in existence
Quest-2	*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?*
Solution	According to Companies Act 2013, even though company shall have the separate legal entity in eyes of law, sometimes the necessity of the situation may compel the authorities to disregard the corporate legal entity and look into individual members who are in fact the real beneficial owners of all corporate property, and this in fact is known as, **'Lifting or Piercing the Corporate Veil.'**

	One of the scenarios where this veil may be lifted is **For the benefit of revenue** **<u>It was stated in the case of [*Re Sir Dinshaw Maneekjee Petit*] that</u>** The court may also lift the corporate veil in the interests of revenue. The court will not hesitate to lift the veil where it is found that the company has been formed for evasion of taxes In given case, F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and dividend and interest income received by the company was handed back to F as a pretended loan. **<u>Conclusion: -</u>** We may conclude that since very object of formation of company was evasion of taxes, thus court is justified in piercing the veil to disregard the corporate personality
Quest-3	*X was employed as a peon in a company. X's wages were unpaid and he filed a suit against the managing director of the company for the recovery of his wages. But the company was not sued. Discuss the validity of claim.*
Solution	Section 2(20) of the Companies Act, 2013 defines the term 'company': "Company means a company incorporated under this Act or under any previous company law". • Section 9 contains the various characteristics of company, wherein it is stated that company shall have the separate legal entity [Saloman V Saloman& Co]. • Company is a separate legal person in the eyes of law. Thus It can hold the property in its own name. • Company itself is the owner of its assets and capital. The members cannot claim to be the owner of the company's property. • It further states that as and when a company is registered with its name, it can file suits against others in its own name. Similarly, the suits against the company can also be filed in company's name. In given case, X was employed as a peon in a company. X's wages were unpaid, and he filed a suit against the managing director of the company for the recovery of his wages. But the company was not sued. **<u>Conclusion: -</u>** Based upon the above provisions, we may conclude that claim as filed by peon was invalid as it should have been filed in name of company
Quest-4	*A was the shareholder of a timber company. He held all the shares except one. He was also a substantial creditor of the company. A insured company's timber against fire, and took, the insurance policy in 'his own name". The timber was destroyed in fire, and A claimed the compensation from insurance company. Discuss the validity of claim*
Solution	Section 2(20) of the Companies Act, 2013 defines the term 'company': "Company means a company incorporated under this Act or under any previous company law". Section 9 contains the various characteristics of company, wherein it is stated that company shall have the separate legal entity [*Saloman* v *Saloman & Co*].

Company is a separate legal person in the eyes of law. Thus It can hold the property in its own name.

Company itself is the owner of its assets and capital. The members cannot claim to be the owner of the company's property.

This view was also upheld in the case of **[*Macaura* v *Northern Assurance Co. Ltd*]**

In the given case, A was the shareholder of a timber company who held all the shares except one. He insured company's timber against fire, and took, the insurance policy in 'his own name" and later on claimed the compensation from insurance company.

Conclusion:- Based upon the above provision, we may conclude that A is not justified in demanding a claim from Insurance company, as insurance was not taken in the name of company, thus no claim can be awarded in name of company

Quest-5

Fortune Traders Ltd. Was registered as a private limited company. There are 264 members in the company as noted below:

(i) Directors and their relatives	*134*
(ii) Employees	*100*
(iii) Ex-employees (shares were allotted when they were employees)	*15*
(iv) 5 couples holding shares jointly in the names of husband and wife (5 x 2)	*10*
(v) Others	*5*
Total number of members	*264*

The Board of Directors of the company proposes to convert it into a Public company. Only because of the fact that its member has exceeds minimum prescribed criteria. Advise the Board of directors?

Solution

A private company is one u/s 2(68), which by its **Articles of Association**, puts the restrictions on maximum number of its members, who shall not exceed 200

- Provided, while computing said limit of 200 members
- Joint member shall be considered as a single member
- Employees and ex-employees shall be excluded
- In given case, Fortune Traders was registered as private company, where its board want to convert it into a public company as in their opinion maximum no of members have crossed limit of 200 members

Whereas in actual, members of company are

(i) Directors and their relatives	134
(ii) Employees	Nil
(iii) Ex-employees (shares were allotted when they were employees)	Nil

	(iv) 5 couples holding shares jointly in the names of husband and wife: 5 (v) Others: 5 Total number of members: 144 **Conclusion-** We may conclude that contention on part of management in incorrect, as company has not yet exceeded its maximum limit of 200 members
Quest-6	*(a) Explain in the light of the provisions of the Companies Act, 2013, the circumstances under which a subsidiary company can become a member of its holding company.* *(b) With reference to the Companies Act, 2013, examine the position of the following with regard to membership in a company: (i) Partnership Firm (ii) An Insolvent*
Solution	***(a) As per the provisions of Section 19 of the Companies Act, 2013,*** a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where: (i) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company, or (ii) the subsidiary company holds such shares as a trustee, or (iii) the subsidiary company was a shareholder in the holding company even before it became its subsidiary. **(b) Provision regarding membership in a company:** **(i) Partnership Firm**: A partnership firm may hold shares in a company provided its name appears in the register of members of the company. However, as a firm is not a legal entity it will be able to hold shares in the individual names of partners as joint shareholders. However, this will not apply to a "Limited Liability Partnership". ***(Ganesh Das Ram Gopal* v *R.G. Cotton Mills Ltd.)*** Even though as per section 8 (3) of the Companies Act 2013, a firm may be a member of a company incorporated under section 8 i.e. a company formed as a charitable or social venture. **An Insolvent**: An insolvent may be a member of a company. So long as his name appears in the register of members, he is a member and is entitled to vote even though his shares vest in the Official Assignee or Receiver.
Quest-7	*Republic Limited was incorporated by furnishing false information. As per the Companied Act, 2013, state the power of the Tribunal in this regard.*
Solution	According to section 7 of the Companies Act, 2013, Where a company has got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so requires pass such orders, as it may think fit, such as

	• Regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or • Direct that liability of the members shall be unlimited; or • Direct removal of the name of the company from the register of companies; or • Pass an order for the winding up of the company; or • pass such other orders as it may deem fit
Quest-8	*Define the following terms* *(a) Small Company* *(b) Government company* *(c) Foreign Company* *(d) company limited by guarantee*
Solution	**(a) Small company** given under the section 2(85) of the Companies Act, 2013 which means a company, other than a public company, — (i) **paid-up share capital** of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than 10 crores rupees; & (ii) **turnover** of which as per profit and loss account for the immediately preceding financial year] does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than 100 crore rupees **Exceptions:** This section shall not apply to: (A) a holding company or a subsidiary company; (B) a company registered under section 8; or (C) a company or body corporate governed by any special Act; **(b) Government company as per Sec 2(45)** " Means any company in which not less than fifty-one per cent of the paid-up share capital is held by— (i) the Central Government, or (ii) by any State Government or Governments, or (iii) partly by the Central Government and partly by one or more State Governments, And the section includes a company which is a subsidiary company of such a Government company **(c) Foreign Company Sec 2 (42)** Means any company or body corporate incorporated outside India which— (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (ii) conducts any business activity in India in any other manner

	(d) Companies limited by guarantee: Sec 2(21) • A company limited by guarantee is one in which the liability of the members is limited to such amount as he undertakes to contribute to the assets of company in the event of its being wound up. • The amount of guarantee is prescribed under MOA. • Guaranteed amount may differ from member to member. • Thus, liability of members can only arise in case of winding up and not before or in other words, the members cannot be asked to pay the guaranteed amount during the continuation of the company. • A company, limited by guarantee, may or may not have share capital. • If the company has the share capital, then the members are also liable to pay the amount on their shares. However, the amount of guarantee can be called only at the time of Winding up
Quest-9	*The paid-up Share Capital of AVS Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹ 10 each, fully paid-up. XYZ Private Limited and BCL Private Limited are holding 3 lacs Equity Shares and 1,50,000 Equity Shares respectively in AVS Private Limited. XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited.* *With reference to the provisions of the Companies Act, 2013, examines whether AVS Private Limited is a subsidiary of TSR Private Limited? Would your answer be different if TSR Private Limited has 8 out of total 10 directors on the Board of Directors of AVS Private Limited?*
Solution	A holding company is one which has the control over the other company, whereas **Subsidiary Company means a** company on which said control is exercised. As per the law there exist an holding and subsidiary relations between 2 companies in following circumstances: — 1. Where one company controls the composition of the Board of Directors of another company. In such case former becomes the holding and the latter become a subsidiary company **When a company shall be considered to have control over the composition of the Board of Directors of another company:-**If said company has the powers to appoint or remove all or majority of the directors of the other company. 2. Where one company **exercises or controls more than one-half of the voting power of other company either directly or indirectly through its subsidiary** *In given case, XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited and holding voting power Rs 4,50,000 in aggregate in AVS out of total voting power of Rs 8,00,000.* **Conclusion: -** We may conclude that TSR Private limited is holding majority out of voting power of AVS indirectly through its subsidiary and thus it become holding company of AVS **Situation if TSR Private Limited has 8 out of total 10 directors on the Board of Directors of AVS Private Limited** Since in such scenario, TSR would be having control over composition of board of directors of AVS, thus again it shall become Holding company of AVS

Quest-10	*Define the procedure for conversion from Private Limited company to Public limited company*
Solution	**<u>As per Sec 14 of Companies Act 2013, Procedure shall be as follow:-</u>** 1. S*pecial resolution need to be passed for eliminating* from its AOA, the statutory restrictions which are essential for a private company. 2. AII other requirements of the Companies Act should be complied with *e.g.,* ▪ Number of members shall be raised to seven. ▪ Number of directors shall be raised three ▪ Minimum Paid up capital shall be raised to ₹5.0 Lacs (Atleast) 3. Any such company shall cease to be a private company from the date of such alteration. 4. Every alteration of the articles approving the alteration shall be filed with the Registrar, together with a printed copy of the altered articles, **within a period of fifteen days** in such manner as may be prescribed, who shall register the same. 5. Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally in the articles. 6. Any such change will involve a change in name also , thus s/res for change of name u/s 13 shall be passed, even though approval of central government for such conversion as required u/s 13 shall not be required
Quest-11	*Define the procedure for conversion from Public Limited company to Private limited company*
Solution	**<u>As per proviso to Sec 14 of Companies Act 2013, Procedure shall be as follow: -</u>** 1. A company shall pass special resolution, so as to include in its AOA the statutory restrictions which are for a private company *i.e.*, restrictions on transfer of shares, on the maximum numbers, and on the issue of prospectus. 2.Under Section 14(1), any alteration made in the articles to convert a public company into a private company shall take effect only with the approval of the Tribunal which shall make such order as it deems fit. 3. Every alteration of the articles and a copy of the order of the Tribunal approving the alteration shall be filed with the Registrar in form no INC-27, together with a printed copy of the altered articles, **within a period of fifteen days** in such manner as may be prescribed, who shall register the same. 4. Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally in the articles. 5. Any such change will involve a change in name also, thus s/res for change of name u/s 13 shall be passed, even though approval of central government for such conversion as required u/s 13 shall not be required
Quest-12	*ABC & Co is a HUF which consist of 20 members and which is getting into partnership with another HUF having 35 members. Suddenly 10 of its partners died in an accident and partnership left with only 45 partners. Decide validity of said partnership*
Solution	**According to Section 464,** *" any association or partnership consisting of not more than 50 persons, shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force"*

	In other words, no Association or Partnership which consist of more than 50 persons shall be formed for acquisition of gain unless it is registered as a company under this Act **Consequences** • Any such association which is formed by violation of abovesaid provisions will be an illegal association. • Such a body will have no legal existence and it cannot be wound up under the Act • Neither a member of it would be able to sue it, nor would it be able to sue the member. Above stated provision shall not apply to— (a) a Hindu undivided family carrying on any business; or (b) an association or partnership, if it is formed by professionals who are governed by special Acts. In the given case, ABC & Co is a HUF which consist of 20 members and which is getting into partnership with another HUF having 35 members. Suddenly 10 of its partners died in an accident and partnership left with only 45 partners. **Conclusion: -** Based upon the above provisions, we may conclude that once number of partners exceed 50, it shall become an illegal association and subsequent reduction in number of members due to any reason shall not convert such entity into legal one
Quest-13	*K Ltd was in process of incorporation. Promoters of company signed an agreement for purchase of certain furniture for company and payment was to be made to supplier of furniture after incorporation of company. The company was incorporated and furniture was received and used by it. Shortly after incorporation, company went into liquidation and debt could not be paid. As a result supplier sued the promoters. Examine whether the promoters can be held liable under following situations:-* ***1.*** *Where company has adopted the contract after incorporation* ***2.*** *Where company entered into a fresh contract after incorporation*
Solution	According to Company Act 2013, any contract which are entered into by the promoters for and on behalf of the proposed company before its incorporation shall be regarded as Pre-incorporation contract. **Provisions regarding these contract can be discussed as follow:—** **1. The Company is not bound by the Preliminary Contract:**In case of [Re *English and Colonial Produce Ltd*], it was held that Company cannot be held liable for the preliminary contracts. A company is not bound by the preliminary contracts even if the company has taken the benefit of the work on its behalf under the contract. **2. The Company cannot Enforce Preliminary Contracts:** In the case of [*Natal Land Co.* v *Pauline Colliery Syndicate*], it was held that other party is also not liable to company through pre-incorporation contract, here in this case • The owner of a piece of land agreed to lease it to a company to be formed by promoters. • The promoters later on formed a company. • Subsequently 'owner' refused to grant the lease to the company. • **It was held that** the company cannot sue 'owner' and cannot claim specific performance as it was not even in existence when the lease was signed. Thus, preliminary contracts cannot be enforced by or against the company.

	3. Personal Liability of Promoters: In the case of (*Kelner* v *Baxter*), it was held that promoters shall be personally liable with any such contract. This is because one cannot enter into any contract on behalf of any person who is not in existence. Therefore for any such contract; promoters shall be personally liable for the performance. However, liability of promoter shall come to an end where after incorporation company adopt the contract according to Sec 15 and Sec 19 of Specific Relief Act 1963. **Based upon above provision, we can conclude as follow:-** 1. Since in the given case company has adopted the contract after incorporation, thus company shall be liable for the contract so entered. **2. Situation where company enter into a fresh contract-** Where a company enter into a fresh contract after incorporation, then liability of promoters shall come to an end and company shall become liable with this contract This view was also taken in case of **[*Howard* v *Patent Ivory Manufacturing Co.*]**
Quest-14	*Define Simplified process for incorporation of company online i.e. SPICE*
Solution	Recently MCA has simplified the process of filing of forms for incorporation of a company through Simplified Proforma for incorporating company electronically. **Following are the steps for SPICE:** (1)The application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in Integrated Form No. INC-32, for One Person Company, Private company, Public Company and Producer Company, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, along with the prescribed fee (2)For the purposes of filing Integrated Incorporation form, the particulars of maximum of three directors shall be allowed to be filed in INC-32 and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in Form INC-32 in case of proposed directors not having approved Director Identification Number. (3) The promoter or applicant of the proposed company shall propose only one name in e-form No. INC-32. (4) The promoter or applicant of the proposed company may prepare Memorandum of Association as per Form INC-33 and may opt for Articles of Association in Form INC-34 (5) The facility to file Integrated application for incorporation in Form INC-32 is available as an option to the process for separate applications for allotment of Director Identification Number, reservation of name and Incorporation of a company as provided in these rules. (6) The Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-32 including application for allotment of Director Identification Number.

	(7) (a) Where the Registrar, on examining e-form INC-32, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the application to remove the defects and re-submit the e-form within 15 days from the date of such intimation given by the Registrar. (b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of 15 days to remove such defects or deficiencies. (ba) After the re-submission of the documents and on completion of second opportunity, if the registrar still finds that the documents are defective or incomplete, he shall give third opportunity to remove such defects and deficiencies; Provided that the total period for re-submission of documents shall not exceed a total period of 30 days. (c) In case, the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such three opportunities, application of company shall be rejected (8) The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11.
Quest-15	*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 ₹1.50crore?*
Solution	**(a) Small company** given under the section 2(85) of the Companies Act, 2013 which means a company, other than a public company, — (i) **paid-up share capital** of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than 10 crores rupees; & (ii) **turnover** of which as per profit and loss account for the immediately preceding financial year] does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than 100 crore rupees **Exceptions:** This section shall not apply to: (A) a holding company or a subsidiary company; (B) a company registered under section 8; or (C) a company or body corporate governed by any special Act; In the given case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 45 lakh and having turnover of ₹ 3crore. As only one criteria of share capital of ₹ 50Lakhs is met, but these cond criteria of turnover of ₹ 2crores is not yet satisfied, whereas section requires both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company. If the turnover of the company is ₹ 1.50crore, then both the requirements will be fulfilled and MNP Ltd. Can avail the status of small company.

Quest-16	*Alpha Ltd., A Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2018. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.*
Solution	According to section 8 (1) of the Companies Act 2013, the Central Government may allow person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science, sports, education, research, social welfare religion, charity protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. As per Section 8(1) of the Companies Act, 2013, the companies having licence under Section 8 of the Act are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting their objects Thus the proposed act of Alpha Ltd., a company registered under the provisions of Section 8 of the Companies Act, 2013, to declare dividend, is not according to the provisions of the Companies Act, 2013.

CHAPTER 2 Memorandum

PRACTICAL QUESTION	
Quest--1	*The Directors of a company registered and incorporated in the name "Mars Textile India Ltd." desire to change the name of the company entitled "National Textiles and Industries Ltd." Advise as to what procedure is required to be followed under the Companies Act, 2013?*
Solution	Procedure to be followed by Directors of "Mars Textile India Ltd." For changing the name of the company to "National Textiles and Industries Ltd." Shall be as follow:- **1. For Change of Name Clause [Section 13]** A company can change its name at any time by adopting the following procedures:— ▪ By passing a special resolution; and ▪ By obtaining the approval of Central Government in writing. **2. Conditions for such alteration** The change of name shall not be allowed to a company which has defaulted in filing its ▪ Annual returns or ▪ Financial statements or ▪ Any document due for filing with the Registrar or ▪ which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures. **3. Steps by ROC** On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate. 4. Other formalities:- ▪ Within 15 days of passing of resolution, a copy thereof shall be filled with ROC along with copy of order by CG ▪ A copy of order of Central Government shall also be filled within 3 month of order. On such communication, ROC will issue a fresh certificate of incorporation with necessary alterations. The change of name becomes effective on the issue of said certificate only.

PRACTICAL QUESTION	
Quest 2	*The object clause of the Memorandum of Association of LSR Private Ltd, Lucknow authorized it 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.*
Solution	**<u>Given problem is based on Doctrine of Ultra Vires</u>** The term 'ultra' means beyond and the term 'vires' means powers. Thus term "*Ultra vires*" means doing an act beyond the powers. **<u>An act ultra vires of Object Clause:-</u>** • It is an act which is beyond the powers given by the memorandum of association. • Any such acts are wholly void and inoperative as they are outside the legal powers of the company. The company is not bound by such acts. • Any such acts cannot be ratified even by the whole body of shareholders. Memorandum and Articles of Association are public documents and every person dealing the company is presumed to have the knowledge of the contents of these Documents and also to have understood them according to their proper meaning. **This view was also upheld in case of *Kotla Venkata Swami* v *Ram Murthy*** In given case, *M/s LSR Pvt. Ltd* is authorised to trade directly on fruits and vegetables. It has no power to enter into a partnership for Iron and steel with Mr. J. Such. Thus, given act is ultra vires of object clause of company. Conclusion:- As per J who entered into partnership is deemed to be aware of the lack of powers of M/s LSR (Pvt) Ltd. In the light of the above, Mr., J cannot enforce the agreement or liability against M/s LSR Pvt. Ltd.
Quest 3	*Under the Articles of Association of Sunshine Ltd. Company, directors had power to borrow up to ₹10,000 without the consent of the general meeting. The Directors themselves lent ₹35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, 2013, whether the company is liable? If so, what is the extent of liability of the company in this case?*
Solution	**<u>Given problem is based on doctrine of indoor management</u>** ▪ Every person dealing with the company is presumed to have understood the contents of company's memorandum and articles of association. ▪ If he enters into a contract with the company which is contrary to the provisions of memorandum articles of association, then he will not get any right under such contract. ▪ **Such rule has one exception which is known as 'doctrine of indoor management'.** ▪ According to this doctrine, a person dealing with the company is not presumed to the knowledge of internal proceedings of the company ▪ This doctrine was first evolved in the case of ***<u>Royal British Bank</u>* v *<u>Turquand</u>***

PRACTICAL QUESTION	
	However, benefit under this doctrine cannot be claimed where person so dealing, has prior knowledge of irregularity, as it was held in the case of **[*Howard* v *Patent Ivory Manufacturing Co*]** In given case, directors had power to borrow up to ₹10,000 without the consent of the general meeting. The Directors themselves lent ₹35,000 to the company without such consent and took debentures of the Company. Conclusion:-Benefit of Internal Management will not be available since. The directors themselves lent ₹35,000/- to the company without consent of members and took debentures. The directors had the notice of the internal irregularity and hence the company was liable to them only for ₹10,000/-
Quest -4	*Article of Public company clearly stated that Mr. L will be the life time solicitor of company. Company in its General Meeting of shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the solicitor of company by altering its AOA. State with reasons, whether the company can do so? If L files a case against the company for removal as solicitor, will he succeed?* ***Or*** *A limited company is formed with its Articles stating that one Mr. X shall be the solicitor for the company, and that he shall not be removed except on the ground of misconduct. Can the company remove Mr. X from the position of solicitor even though he is not guilty of misconduct?* ***Or*** *The Articles of Association of a Limited Company provided that 'X' shall be the Law Officer of the company and he shall not be removed except on the ground of proved misconduct. The company removed him even though l1e was not guilty of misconduct. Decide, whether company's action is valid?*
Solution	According to Section 10 of Company Act 2013, Upon registration, the memorandum and articles of association bind the company and its members to the same extent as if they had been signed by the company and each member respectively. Consequences of this shall be as follow:— **1.Members bound to the Company**-This view was also held in the case of **[*Boreland's Trustee* v *Steel Brothers and Co. Ltd*]** **2.Company bound to the members-** Company is also bound to its members in same manner as members are bound to it **3.Company not liable to outsider-**Section 36, only create a contract between a company and members, thus company may alter its AOA for any term as concerned with a contract along with an outsider In given case Article of Public company clearly stated that Mr. L will be the life time solicitor of company. Company in its General Meeting of shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the solicitor of company by altering its AOA. **Conclusion:-** Based upon the provisions of Sec 36, we can conclude that Company is entitled to Remove Mr. L and he cannot succeed in bringing a suit against the company This view was also taken in leading case of **[*Eley* v *Positive Government Life Assurance Co. Ltd*]**

PRACTICAL QUESTION	
Quest -5	*Article of company provided a clause that incase of any surplus, company shall distribute dividend to its members. In a particular year, company was having good profit, however rather than ensuring dividend, company decide to issue debenture certificate to its members. Decide in light of relevant case law.*
Solution	**As per the provisions of Section 10 of companies Act 2013** Upon registration, the memorandum and articles of association bind the company and its members to the same extent as if they had been signed by the company and each member respectively. Consequences of Binding Forces:- 1. **Members bound to the Company-**Memorandum and Articles constitute a contract between the members and the companies, thus members are bound to the company by whatever is contained in these documents. **[*Boreland's Trustee* v *Steel Brothers and Co. Ltd*]** 2. **Company bound to the members-** As held in the case of **Wood Vs Odyssa Waterworks Limited**, Company is also liable to its members through content of its Memorandum and Article. In given case, Article of company provided a clause that incase of any surplus, company shall distribute dividend to its members. In a particular year, company rather than ensuring dividend, decide to issue debenture certificate to its members. **Conclusion: -** Based upon above provisions, we may conclude that contention on part of company is incorrect and company is liable to ensure payment of dividend to its members as also held in the case of ***Wood* v *Odyssa Waterworks Limited***
Quest -6	*The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. Borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name.*
Hint	**Given problem is based on doctrine of indoor management** ▪ Every person dealing with the company is presumed to have understood the contents of company's memorandum and articles of association. ▪ If he enters into a contract with the company which is contrary to the provisions of memorandum articles of association, then he will not get any right under such contract. ▪ **Such rule has one exception which is known as 'doctrine of indoor management'.** ▪ According to this doctrine, a person dealing with the company is not presumed to the knowledge of internal proceedings of the company ▪ This doctrine was first evolved in the case of ***Royal British Bank* v *Turquand*** ▪ However, benefit under this doctrine cannot be claimed in case of forgery as it was held in the case of **[*Rubben* v *Great Fingal Consolidated*]** **Conclusion:-** Share certificate is not binding on company as it contained forged signatures. Thus, no title could be transferred to A even if he is a bonafide purchaser since as per the general rule forgery is nullity

PRACTICAL QUESTION	
Quest -7	*Define the term Article of Association and also explain the law in relation to alteration of Article*
Solution	▪ The articles of association of a company are its rules and regulations, which are framed to manage its internal affairs. ▪ Just as the memorandum contains the fundamental conditions upon which along the company is allowed to be incorporated, so also the articles are the internal regulations of the company ▪ The articles play a part subsidiary to memorandum of association. They accept the memorandum as the charter of incorporation, and so accepting it the articles proceed to define the duties, the rights and powers of the governing body as between themselves and the company and the mode and form in which the business of the company is to be carried on, **The law with respect to alteration of articles is as follows:** (1) Alteration by special resolution: Company shall pass a special resolution to alter its articles. (2) Alteration to include conversion of companies: Alteration of articles include alterations having the effect of conversion of— (a) a private company into a public company; or (b) a public company into a private company: (3) Filing of alteration with the registrar : Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, within a period of fifteen days (4) Any alteration made shall be valid: Any alteration of the articles registered as above shall be valid as if it were originally contained in the articles. (5) Alteration noted in every copy: Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be.
Quest -8	*Define the term Ultra Vires and also explain the remedies available to aggrieved party incase of ultra vires contract*
Solution	The term 'ultra' means beyond and the term 'vires' means powers. Thus term "*Ultra vires*" means doing an act beyond the powers. An act which is *Ultra Vires* may fall under any of the following category:— **1. An act ultra-vires the directors-**It is an act which is beyond the powers of the directors. If company does any act which is ultra-vires the directors, the act is not altogether void. It can be ratified by the general body of shareholders. When the act is so ratified, company becomes bound by the same **2. An act ultra-vires the articles of association-**It is an act which is beyond the powers given by the articles of association. An Act which is ultra-vires the articles is also not altogether void and inoperative. It can also be ratified by the company by passing a special resolution. Thuscompany becomes bound by such act

PRACTICAL QUESTION	
	3. An act ultra-vires the memorandum of association- It is an act which is beyond the powers given by the memorandum of association. Any such acts are wholly void and inoperative as they are outside the legal powers of the company. The company is not bound by such acts. Any such acts cannot be ratified even by the whole body of shareholders. **<u>Remedies available to aggrieved party incase of ultra vires contract</u>** **1. Injunction-** Any member can bring injunction against the company to restrain it from doing ultra Vires acts. **2. Personal Liability of Directors-** The directors of the company can be held personally liable for any loss caused by an ultra vires transaction due to breach of warranty of authority. **3. Charge on Assets Purchased-** If the acquire some property under an ultra vires transaction, company has a right to hold such property and protect it against damages by other party. **4. Subrogation-**If the company pays any debt using this money, the lender shall have a right to recover such money from the company. However he shall not have any right to any security to which creditors was entitled to
Quest -9	*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 com ply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain*
Solution	Procedure for Change from the jurisdiction of one ROC to the jurisdiction of another ROC within the same State. [Section 12] 1. **Special resolution** is required to be passed at a general meeting of the shareholders. 2. **Confirmation of Regional Director** to be obtained by submitting an application in Form INC-23. The Regional Director must convey his confirmation within 30 Days from the date of receipt of application for such change. 4. Certified copy of the confirmation by Regional director to be filled with ROC within 30 days from the date of confirmation. 5. A resolution of the **Board of Directors** is required to be passed. 6. ROC is required to registered the same within 30 days from filing of such confirmation 7. A declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the payment thereof ; 8. A declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending; 9. Acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employees' interest is not adversely affected consequent to proposed shifting".

PRACTICAL QUESTION	
Quest -10	*M/'s ABC Ltd. a company registered in the State of West Bengal desires to shift its registered office to the State of Maharashtra. Explain briefly the stops to be taken to achieve the purpose.* *Would it make a difference, if the Registered Office is transferred from the Jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State?*
Solution	1. A **special resolution** is required to be passed by the company at its general meeting. **2.** The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.**(Form no INC-23)** 3. A company shall, in relation to any alteration of its memorandum, file with the Registrar— ♦ the special resolution passed by the company under sub-section (1); ♦ the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company. 4. There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:- (a) the names and address of every creditor and debenture holder of the company; (b) the nature and respective amounts due to them in respect of debts, claims or liabilities: Provided that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that (i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and (ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory. 5. The company shall, not more than thirty days before the date of filing the application in Form No. INC.23— *(a) advertise in the Form No.INC.26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the widest circulation in the State in which the registered office of the company is situated:* *Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.*

PRACTICAL QUESTION

(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).

(7) Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.

(8) Where an objection has been received,

(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.

(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

(9) The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed".

PRACTICAL QUESTION	
Quest-11	*Doctrine of constructive notice operate in favour of company. Comment on this statement*
Solution	This statement is true Memorandum and Articles of Association on their registration become public documents. Every person dealing the company is presumed to have the knowledge of the contents of these Documents and also to have understood them according to their proper meaning. In the case of **[*Kotla Venkata Swami* v *Ram Murthi*]-It was held that where a person entered into any contract with company without accessing its memorandum and article, no benefit under such contract can be claimed**

CHAPTER 3 Membership

PRACTICAL QUESTION	
Quest-1	*Honest Cycles Ltd, has received an application for transfer of 1,000 equity shares of ₹10 each fully paid up in favour of Mr. Salak. On scrutiny of the application form it was found that the applicant is minor. Advise the company regarding the contractual liability of a minor and whether shares can be allotted to the Salak by way of transfer.*
Solution	The Companies Act, 2013 does not prescribe any qualification for membership. Membership entails an agreement enforceable in a court of law. Therefore, the contractual capacity as envisaged by the Indian Contract Act, 1872 should be taken into consideration. It was held in the case of *Mohori Bibi* v *Dharmadas Ghose* that since minor has no contractual capacity, the agreement with a minor is void. Therefore, a minor or a lunatic cannot enter into an agreement to become a member of the company. However, it is an established matter of law as evidenced in a number of cases, that in case a minor is bound in a contractual relationship he shall enjoy the benefits under the contract without being liable for anything. Hence, if the company registers the minor as a member, he will incur no liability for the company as long as he is a minor. Going by practical legal application, companies do not register minor as members at all. In view of the above, M/s Honest Cycles Ltd may still give membership to Balak through th transfer of 1000 shares, as the shares are fully paid up and no further liability is attached t them in any case.
Quest-2	*A company issued 20 partly paid equity shares and registered them in the name of the minor describing him as minor. The father o the 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? Advise.*
Solution	Every person who is competent to contract may become a member. The Companies Act, 2013 prescribes no qualification for membership. Therefore, in India, the minor may be allotted shares. His name may remain on a company's register of members, but during minority he incurs no liability. In the given problem the company issued 20 partly pad shares and registered it in the minor's name. The transaction was void and the father who signed the application on the minor's behalf could not be treated as having contracted for the shares; as such he could not be placed on the list of contributions when the company goes in liquidation.

PRACTICAL QUESTION	
Quest-3	*RSP Limited, allotted 500 fully paid-up shares of ₹100 each to Z, a minor, in response to his application without knowing that he was a minor and entered his name in the Register of Members. Later on, the company came to know of this fact. The company cancelled the allotment and struck-off his name from the Register of Members and also forfeited his entire share money. He filed a suit against the action of the company. Decide whether Z would be given any relief by the court under the provisions of the Companies Act, 2013*
Solution	The issue of membership of a minor is not covered in the Companies Act, 2013 and the legal implications of a minor's membership will have to be examined from the Indian Contract Act, 1872. Under section 11 of the Indian Contract Act, 1872 a minor, being incompetent to contract, cannot become member of a company. Any contract entered into by a minor is void ab initio as was held in ***Mohri Bibi* v *Dhramadas Ghosh*** In the case ***Palaniappa* v *Official Liquidator***, it was observed that if the directors allot shares to a minor in response to his application, without knowing that he was a minor and enter his name in the Register of Members, as soon as the company comes to know of this fact, it can cancel the allotment and strike the name of the minor off the Register of Members. However, as a contract with a minor is void, the company cannot be allowed to take undue advantage under the contract. Hence the company must refund the entire money to the minor. On the basis of above the contention of Z is not valid. The company is empowered to cancel the allotment and strike the name of Z off the Register of Member. But the decision of the company to forfeit the entire share money of Z is wrong. The company must refund the money to the Z.
Quest-4	*X had applied for the allotment of 1,000 shares in a company. No allotment of shares was made to him by the company. Later on, without any further application from X, the company transferred 1,000 partly-paid shares to him and placed his name in the Register of Members. X, knowing that his name was placed in the Register of Members, took no steps to get his name removed from the Register of Members. The company later on made final call. X refuses to pay for this call. Referring to the provisions of the Companies Act, 2013, examine whether his (X's) refusal to pay for the call is tenable and whether he can escape himself from the liability as a member of the company.*
Solution	There are certain way through which a person can become a member of company such as:— **1. By subscribing to memorandum of association-**Persons, who subscribe (*i.e.*, sign) to the memorandum of association, are automatically becomes a member upon registration of company. **2. By agreeing in writing to become a member-**A person who agrees in writing to become a member of the company and whose name is entered in the register of members become the member of the company **3. By transfer of shares-**A person may become a member by acquiring shares in the open market and by having the transfer registered and getting his name placed on the register of members

PRACTICAL QUESTION	
	4. By transmission of shares-A person may become a member by operation of law on the happening of such events as the death, insolvency or lunacy of a member. In addition, there is one more way of obtaining membership i.e. by **Acquiescence or Estoppels** A person is deemed to be a member if he holds himself out or allows him to be held out as a member. In such a case, he is estopped from denying that he is registered with his consent. He can, however, escape liability by taking prompt action to have his name removed from the register on some permissible ground. If a person's name, to his knowledge, is there in the register of member, he shall be deemed to be a member. In the given case X knows that his name is included in the register of shareholders and stands by and allows his name to remain, he is holding out to the public that he is shareholder and thereby he will be liable as shareholder.
Quest-5	*The Articles of Association of Mars Company Ltd. provides that documents may be served upon the company only through Fax. Ramesh despatches a document to the company by post, under certificate of posting. The company does not accept it on the ground that it is in violation of the Articles of Association. As a result Ramesh suffers loss. Explain with reference to the provisions of the Companies Act, 2013:* *(i) What refusal of document by the company is valid?* *(ii) Whether Ramesh can claim damages on this basis?*
Solution	The given case is covered by section 20 of the Companies Act, 2013 under which a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. Hence, the Company cannot refuse to accept the document merely because it was not sent by Fax as required by its Articles and its act of refusal is invalid. In the second part of the problem, Ramesh/ Arvind can claim damages on this basis from the Company as his loss is the direct result of such refusal by the company.
Quest-6	*Minor can also become a member of company. Comment*
Solution	***This statement is partially correct.*** ▪ Since a minor is not competent to enter into a valid contract, he cannot become a member of the company. ▪ Minor shall not be liable to pay any unpaid calls on shares ▪ *Company may transfer fully paid up shares to Minor since no further liability is attached to them.* **Right to Repudiate the Allotment during Minority** **1** Both the company and minor can repudiate the allotment.

PRACTICAL QUESTION	
	2 In either case, the company has to refund all moneys received from minor in respect of the shares allotted to him. **3** If neither party repudiates allotment, the name of the minor shall continue to appear on the register of members, but even then a minor incurs no personal liability **4** On attaining the age of majority *(i.e.,* 18 years),the minor may repudiate the allotment of shares within a reasonable time. But if he does not do so, or does something which shows that he has accepted the shares, he will be liable as a member. *In the case of* ***Diwan Singh*** **v** ***Minerva Films Ltd, it was held that*** There is no legal bar to minor becoming a member of a company by acquiring shares (by way of transfer) provided the shares are fully paid and no further obligation or liability is attached to them. Minor can become member by transfer or transmission, but a company may not allow a minor to be a member by allotment.
Quest-7	*State the circumstances when membership can be terminated*
Solution	1 When he transfers his shares. 2 When his shares are validly forfeited by the company. 3 When he validly surrenders his shares to the company. 4 When the company sells his shares in exercise of its right of lien over the shares. 5 When he dies and the shares are registered in the name of his legal representative. 6 When he is declared insolvent and his shares are transferred by the Receiver (or Official Assignee), and the transferee is registered as a member. 7 Upon redemption of Preference shares
Quest-8	*Shareholder and member are same terms. Comment*
Solution	Member means persons whose name is entered in register of member of company. They may also be called as shareholder. Thus, the terms Members and Shareholders may be used interchangeable in following circumstances **1. On sale**-Upon sale of shares, transferor ceases to be shareholder of company, even though he continues to be on the Register of members till the transfer of shares is registered by the company in favour of transferee. During Such Period, even though transferor shall be a member, but not shareholder **2. On death-** In case of death, property of deceased, including shares, is inherited by his legal representative. Thus, deceased is no longer the shareholder, but continues to be the member as his name still appears on the Register of members. **3. On becoming insolvent-** As and when a person become insolvent, his property, including shares, vests in the Official Receiver or Official Assignee. ▪ The Official Receiver or Assignee is holding the shares in his own right. ▪ Therefore, insolvent is no longer the shareholder, though he continues to be the member of the company.

PRACTICAL QUESTION	
	4. Subscriber of MOA- A person who subscribes to the memorandum of association immediately becomes the member, even though no shares are allotted to him. Till shares are allotted to the subscriber, he is a member but not the shareholder of the company. **5. In case of Company limited by guarantee-** In the case of a company limited by guarantee having no share capital or an unlimited company having no share capital, there will be only 'members' but no 'shareholders'.

CHAPTER 4 Allotment of Shares

PRACTICAL QUESTION	
Quest--1	*After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favor of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalization of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 2013. Comment.*
Solution	According to section 39 of companies act 2013, Minimum subscription means receipt of an application for at least 90% of the shares issued. Section further states that no allotment shall be made unless the amount of minimum subscription has been subscribed and received by company Company shall keep the entire amount received on application with Scheduled bank and in case company failed in obtaining Minimum Subscription within 30 days, or such period as may be prescribed by SEBI, the amount received shall be returned within a period of fifteen days from the closure of the issue. In given case, the company has received 80% of the minimum subscription as stated in the prospectus. The company deposited the said amount in the bank but withdrew 50% of the amount **Conclusion:-**Based upon the above provision, we may conclude that allotment is in contravention of section 39 of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription. Therefore, in the present case X is within his rights refuses to accept the allotment of shares which has been illegally made by the company.
Quest--2	*A public limited company which went in for Public issue of shares had applied for listing of shares in three recognised Stock Exchanges and out of it only two had given permission for listing. Can the company proceed for allotment of shares?*
Solution	Under section 40 (1) of the Companies Act, 2013 every company making a public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

PRACTICAL QUESTION	
	Section 40 (2) further states that where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with. From the above it is clear that not only has the company to apply for listing of the securities at a recognized stock exchange but also obtain permission thereof before making the public offer. Hence, under the Companies Act, 2013 by making the offer of shares before getting the approval from the stock exchanges, it has violated the provisions of section 40 and under section 40 (5) will be punishable with a fine which shall not be less than ₹ 5 Lakhs but may extend to ₹ 50 Lakhs and every officer in default shall be punishable with imprisonment for a term which may extend upto one year or with a fine of not less than ₹ 50,000/- but which may extend upto ₹ 3 Lakhs, or with both.
Quest--3	*The Board of Directors of M/s Reckless Investments Ltd. has allotted shares to the investors of the company without issuing a prospectus with the Registrar of Companies, Mumbai. Explain the remedies available to the investors in this regard.*
Solution	According to Section 23 of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the registration of the prospectus with the Registrar before its issue. In the given case, the company has violated with the above provisions of the Act and hence the allotment made is void. The company will have to refund the entire moneys received and will also be punishable under section 26 (9) of the Act.
Quest--4	*When is an Allotment of Shares treated as an irregular allotment? State the effects of an irregular allotment.*
Solution	The Companies Act, 2013 does not separately provide for the term "Irregular Allotment" of securities. Hence, one will have to examine the requirements of a proper issue of securities and consider the consequences of non fulfilment of those requirements. In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 and 40. Irregular allotment therefore arises in the following instances: ***1.*** *Where a company does not issue a prospectus in a public issue as required by section 23; or* ***2.*** *Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or* ***3.*** *Where the prospectus has not been filed with the Registrar for registration under section 26 (4);*

PRACTICAL QUESTION

4. *The minimum subscription as specified in the prospectus has not been received in terms of section 39; or*

5. *The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or*

6. *In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013*

Effects of irregular allotment: The consequences of an irregular allotment depend on the nature of irregularity. However, the Companies Act, 2013 does not mention that in case of an irregular allotment the contract is voidable at the option of the allottee.

Under section 26 (9) of the Companies Act, 2013 if a prospectus is issued in contravention of the provisions of section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Similarly in case the company has not received the minimum subscription amount within 30 days of the date of issue of the prospectus, it must refund the application money received by it within the stipulated time. Any allotment made in violation of this will be void and the defaulting company and officers will be liable to further punishment as provided in section 39 (5).

Under section 40 (5) any default made in respect of getting the approval to listing of securities in one or more recognized stock exchange in case of a public issue, will render the company punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Hence, under various provisions of the Companies Act, 2013 stringent punishment has been provided for against irregular allotment of securities but the option of going ahead with such allotment even if desired by the allottee is not specifically permitted.

PRACTICAL QUESTION	
Quest--5	*Explain the provisions and main contents of "Return of Allotment" under the Companies Act, 2013.*
Solution	As per Section 39 of the Companies Act, 2013 read with Rule 12 of the Companies (Prospectus and Allotment of Securities) Rules 2014 Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form PAS – 3, along with the fee as specified **Attachments and inclusions in Form PAS 3** (a) A list of allottees states their names, address, occupation, if any, and number of securities allotted to each duly certified by the signatory of the Form PAS – 3 as being complete and correct as per the records of the company. (b) In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form PAS – 3 a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with copy of any contract of sale if relating to a property or an asset, or a contract for services or other consideration. (c) In the case of issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS –3.
Quest--6	*GDR holder is entitled to exercise voting right as well. Discuss*
Solution	**This statement is incorrect** GDR is one of the methods whereby an Indian company can issue money from foreign market, Section 41 contains the provisions which govern issue of GDR by an Indian companies A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations. As and when GDR are issued in foreign market, The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank appointed by company **As per the provisions of Sec 41 of companies Act 2013** (1) A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act. (2) Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

PRACTICAL QUESTION	
Quest--7	*State whether the provisions as applicable to prospectus shall apply in relation to issue of GDR as well*
Solution	GDR is one of the methods whereby an Indian company can issue money from foreign market, Section 41 contains the provisions which govern issue of GDR by an Indian companies A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations. In addition, company shall also ensure passing of Special resolution and board resolution before issue of GDR **Whether provisions in relation to prospectus are applicable to GDR as well** (1) The provisions of the Act and any rules related to public issue of shares or debentures shall not apply to issue of depository receipts abroad. (2) The offer document for the issue of depository receipts, shall not be treated as a prospectus or an offer document within the meaning of this Act and all the provisions as applicable to a prospectus or an offer document shall not apply to a depository receipts offer document.
Quest--8	*Describe the role of Chartered Accountant in relation to issue of GDR by company*
Solution	GDR is one of the methods whereby an Indian company can issue money from foreign market, Section 41 contains the provisions which govern issue of GDR by an Indian companies A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations. In addition, company shall also ensure passing of Special resolution and board resolution before issue of GDR The company shall appoint a merchant banker or a practicing-chartered accountant or a practicing cost accountant or a practicing company secretary to oversee all the compliances relating to issue of depository receipts Compliance report taken from such merchant banker or practicing chartered accountant or practicing cost accountant or practicing company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts

PRACTICAL QUESTION	
Quest--9	*Describe the different rules in relation to allotment of securities*
Solution	Rules in relation to allotment of Securities can be discussed as follow: - **1. Minimum subscriptions and application money [Section 39]** **Minimum Subscription-**It means receipt of an application for at least 90% of the shares issued No allotment shall be made unless the amount of minimum subscription has been subscribed and received by company **Application money-**It the amount which is payable on each share along with the application for purchase or shares. This amount must not be less than 5% ofthe nominal value ofshares. **2. Consequences in case of failure to received Minimum Subscription-**Company shall keep the entire amount received on application with Scheduled bank and in case company failed in obtaining Minimum Subscription within 30 days, or such period as may be prescribed by SEBI, the amount received shall be returned within such time and manner as may be prescribed. As per **Provisions as per According to the Companies (Prospectus and Allotment of Securities) Rules, 2014,** Where the minimum subscription amount has not been subscribed, then the application money shall be repaid within a period of fifteen days from the closure of the issue. **3. Listing of public issue with recognized stock exchange [Section 40]**-Every public company, who intends to offer its shares or debentures to the public for subscription by the issue of a prospectus, must make an application to at least one recognized stock exchange for permission for its shares or debentures to be dealt with the stock exchange.Such an application shall be made prior to issue of shares. Fact of Such Application must be stated in Prospectus

CHAPTER 5 Prospectus

PRACTICAL QUESTION	
Quest-1	*A Ltd a company want to issue shares to public, however directors of company have opted for an alternate to avoid issuance of prospectus as they want persons of particular locality only to become member of their company and they decided to launch an advertisement in their district through local TV channels and local newspapers so as to attract people residing within district to come and invest. One of the investor objected to this action by company and contended that such step on part of company shall amount to prospectus. Decide*
Solution	**Section 2(70) defines the Prospectus as** "Any document described or issued as a prospectus and includes a red herring prospectus (section 32), or shelf prospectus (section 31), or any notice, circular, advertisement or other document inviting offers from the public for the subscription, or purchase of any securities of a body corporate" In given case, a company want to issue shares to persons of particular locality and they launched an advertisement through TV channels and local newspapers so as to attract Investors **Conclusion: -** Based upon the above provisions, we may conclude that action taken by company is in contravention to this act and company can not proceed to issue such shares without issuing prospectus
Quest-2	*Which are the different sources through which a public limited company can issue its share capital*
Solution	Public company can issue its share capital through following modes: - 1. to public through prospectus; or 2. through private placement; or 3. through a rights issue or a bonus issue, and 4. in case of a listed company or a company which intends to get its securities listed, with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under.

PRACTICAL QUESTION	
Quest-3	*Decide whether the offer will amount to private placement or not.* *A Limited which want to raise its share capital issued a letter to certain group of persons consisting of* *1. 10 Directors who are also an employees of company along with 100 employees, where shares are offered as stock option* *2. group of 200 foreign institutional investors* *3. group of 50 ex-employees* *4. group of 100 persons*
Solution	The term "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter The offer of securities or invitation to subscribe securities, only to a select group of persons who have been identified by the Board subject to maximum to 200 persons in a financial year **It does not include-** qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of section 62(1)(b) ***In given case, considering the provisions of Section 42 in mind, we may conclude that company has made an order to following number of persons*** 1. Directors who are also an employees of company along with employees, where shares are offered as stock option = Nil, as they were allotted shares under stock option plan, thus they have been excluded 2. Group of 200 foreign institutional investors = Nil, as they forms part of Qualified Institutional Investors, thus have been excluded 3. group of 50 ex-employees = To be considered 4. group of 100 persons = To be considered **Conclusion: -** Thus based upon the above provision, we may conclude that company has issued an offer to 150 persons, and it can be considered as a private placement by company
Quest-4	*In Question no 3 above, what would be your reply if company has used services of different agents for attracting foreign investors and other persons*
Solution	According to Sec 42, no company issuing securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue. Thus, in that scenario, an invitation by company will amount to public offer and thus all requirements as are applicable to prospectus shall become applicable to it

PRACTICAL QUESTION	
Quest-5	*A Limited i.e. company into manufacturing of organic chemical, recently have issued a prospectus to public, wherein they want this public money for acquiring various machinery to be used in their chemical manufacturing unit. However recently company has received a lucrative order from USA, wherein customer was willing to enter into an agreement for 10 years, if company can provide them regular supply of dye chemical i.e. an object, which was outside their main object, since Directors were having enough experience in Dye chemical as well ,thus they want to grab this opportunity with both hands.* *Now regarding the requirement of funds, they decide to utilize the amount acquired through public, wherein they are still left with 50% of fund as unspent.* *As an expert they approached you for appropriate suggestion and procedure to be adopted to accept said order* *Or* *Lotus valley Ltd. issued a prospectus with the object of setting up of a chain of hotels. However, later it decided to set-up a Pharmaceutical Manufacturing unit. Keeping in view of the provisions of the Companies Act, 2013, state whether Lotus valley Ltd. can do so and if it can be done, also state the procedure to be followed for variation in the objects in the prospectus.*
Solution	Since company after raising money from public want to change their object from Organics Chemical to Dye Chemical, thus company can follow the procedure as specified in Section 27 of Companies Act 2013 **<u>According to the provisions of Section 27 of companies Act 2013:-</u>** Where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued except by passing a special resolution through postal ballot. The advertisement of the notice of resolution passed for varying the terms of any contract or altering the objects of the prospectus shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders. In addition, the company shall also place the notice on the website of the company, if any.
Quest-6	*…… is a document, which enable the company to issue money from public for 1 year, even though for any subsequent offer within the validity of this document, company need to issue……., containing all such changes which have taken place since the issue of such document*
Solution	1. Shelf Prospectus 2. Information Memorandum

PRACTICAL QUESTION	
Quest-7	*Popli Industries Limited wants to raise money through public, however promoters are quite disconcerting after going through the requirements which are applicable to issue of prospectus.* *Meanwhile, they want to exercise an option to sell these shares to a firm, which will acquire them for partial consideration and also agrees to pay balance once the firm will succeed in selling it to public through various options* *Promoters seeks your reply to option they received. Plz guide them*
Solution	**<u>As per the provisions of Section 25 of Companies Act 2013</u>** ▪ Where the company allots or agrees to allot any securities to issuing house ▪ With a view that such securities would be offered to public for sale ▪ Any such document by which this offer for sale to public is made ▪ shall be deemed to be a prospectus issued by a company and ▪ all provisions applicable to prospectus shall be applicable to it with specified modification. In given case, since company want to issue money through public, without issuing prospectus and for this they opted to sell their shares to firm, which in turn will offer these shares to public **<u>Conclusion: -</u>** Based upon the provisions of Section 25, we may conclude that selling of shares to firm will amount to allotment to issuing house and thus any document issued by issuing house to offer these shares to public shall be Deemed as prospectus and all applicable provisions shall apply accordingly.
Quest-8	*Raman being a Chartered Accountant was engaged in providing services to clients to arrange loans and other money to satisfy their working capital requirements through various banks.* *Y Limited, which was in need of money could not succeed in getting it because of poor financials. They approached for assistance from Raman, who offered to charge commission of 5% and provided them surety to arrange funds through some nationalized Banks, through falsification of balance sheet and Profit and loss of company.* *Y Limited decide to go ahead with the proposal of Raman and thus they succeed in obtaining loan from Banks worth of ₹10 Cr.* *Later on Credit Manager of Bank, while going though website of Ministry of Corporate affairs shocked, when he happen to see the balance sheet submitted by Y limited to Registrar of companies as it was completely different from one being offered to bank for obtaining credit facilities.* *After getting into investigation, the whole fraud came out and banker want to punish all those involved in said transactions, Guide the course of action available to banker*
Solution	**<u>According to the provisions of Section 36 of Companies Act 2013</u>** where any person who, induces or attempts to induce another person to enter into some agreement by making any false, deceptive or misleading statement, promise or forecast or by any dishonest concealment of material facts, then he shall be liable for action u/s 447

PRACTICAL QUESTION	
	Attempt to induce must be to enters into any of following agreement 1. Any agreement for, the acquisition, disposal, subscribing for, or underwriting Shares or debentures 2. Any agreement for the purpose of securing any profit to any of the parties from the yield of shares or debentures, or from fluctuations in the value of shares or debentures 3. Any agreement for obtaining credit facilities from any bank or financial institution. **Conclusion:-** Based upon the facts of given case, we may conclude that Raman and company i.e. Y Limited both have deceived Banks for getting funds and thus Bank shall be advised to take action against them u/s 447 i.e. Fraud
Quest-9	*XYZ Ltd issued a prospectus inviting the public for subscription of its equity share stating in it that company possesses good financial health and paying dividend to its members regularly @ 20% on equity share capital over past 5 years. The fact was, company was running in loss since past 3 years and it was paying dividend to its shareholders out of accumulated profits. Mr. Amit read the prospectus and bought 500 shares from company. Discover the mis-statement in prospectus, he wants to rescind the contract and claim the damages from the company. Referring to the provisions of Company Act 2013, decide whether Mr. Amit will succeed.*
Solution	**It was held by Lord KINGDERSEL Y: in *New Brunswick Co.* v. *Muggeridge*, that** Prospectus issued by the company must present the whole picture of company since the public invest their money in the company based upon the information provided therein. All the material facts relating to the nature of the company must be truly and accurately disclosed in the prospectus. Prospectus should not contain any mis-statement *or* misleading statement **Prospectus may be described as 'misleading prospectus if it contains any untrue statement.** Any statement form part of prospectus shall be regarded as Untrue if: (a) It is misleading in the form and context in which it is included, and (b) It omits any matter which is calculated to mislead. Based upon the facts of given case, we can conclude that prospectus so issued by the company is misleading to the extent that it failed to provide the material information that, company is paying dividend out of its accumulated profits. **Conclusion-**Thus we can conclude that Mr. Amit will succeed in a suit against company and contract shall be voidable at his option. He is entitled to rescind the contract within a reasonable time.

PRACTICAL QUESTION	
Quest-10	*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 for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether X's claim for damages is justified.*
Solution	**2(70) defines the Prospectus as** "Any document described or issued as a prospectus and includes a red herring prospectus (section 32), or shelf prospectus (section 31), or any notice, circular, advertisement or other document inviting offers from the public for the subscription, or purchase of any securities of a body corporate" Golden rule pertaining to prospectus was laid down by **KINGDERSEL Y: in *New Brunswick Co.* v *Muggeridge*, where it was held that** ▪ Prospectus issued by the company must present the whole picture of company since the public invest their money in the company based upon the information provided therein. ▪ All the material facts relating to the nature of the company must be truly and accurately disclosed in the prospectus. In given case, 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 **Conclusion:-** Based upon the above provision, we may conclude that X cannot bring any action again the company as shares were not purchased from company, rather they were acquired from open market. **In the case of *Peek* v *Gurney***, it was held that remedy of damages shall not be available, where person has not acquired shares on basis of prospectus.
Quest-11	*Peek Ltd. Co. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained 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?*
Solution	**2(70) defines the Prospectus as** "Any document described or issued as a prospectus and includes a red herring prospectus (section 32), or shelf prospectus (section 31), or any notice, circular, advertisement or other document inviting offers from the public for the subscription, or purchase of any securities of a body corporate" Golden rule pertaining to prospectus was laid down by **KINGDERSEL Y: in *New Brunswick Co.* v *Muggeridge*, where it was held that** ▪ Prospectus issued by the company must present the whole picture of company since the public invest their money in the company based upon the information provided therein.

PRACTICAL QUESTION	
	▪ All the material facts relating to the nature of the company must be truly and accurately disclosed in the prospectus. Based upon the above provision, we may conclude as follow:- (1) Mr. X is liable to pay for balance amount on winding up of company as contributory (2) X cannot bring any action again the company as shares were not purchased from company, rather they were acquired from open market. **In the case of *Peek* v *Gurney***, it was held that remedy of damages shall not be available, where person has not acquired shares on basis of prospectus.
Quest-12	*A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide*
Solution	Golden rule pertaining to prospectus was laid down by **KINGDERSEL Y: in *New Brunswick Co.* v. *Muggeridge*, where it was held that** ▪ Prospectus issued by the company must present the whole picture of company since the public invest their money in the company based upon the information provided therein. ▪ All the material facts relating to the nature of the company must be truly and accurately disclosed in the prospectus. ▪ Prospectus should not be a misleading one **Meaning of mis-leading prospectus: -** prospectus may be described as 'misleading prospectus if (a) It contain any statement which is untrue, and (b) It omits any matter which is calculated to mislead. In given case, non disclosure of fact that the dividends were not paid out of trading profits, but out of capital profits is a concealment of material fact, since company is required to distribute dividend out of its revenue profit only. Section 19 of the Indian contract Act states that, where consent to a party to a contract is obtained by coercion, misrepresentation or fraud, aggrieved party become entitled to avoid the contract since the same become voidable at option of aggrieved party. **Thus in given case, an allottee of shares may avoid the contract on the ground that the prospectus was false in material particulars.**

PRACTICAL QUESTION	
Quest-13	*An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013.*
Solution	Golden rule pertaining to prospectus was laid down by **KINGDERSEL Y: in *New Brunswick Co.* v. *Muggeridge*, where it was held that** Prospectus issued by the company must present the whole picture of company since the public invest their money in the company based upon the information provided therein. However if prospectus is found to be misleading, person is found to be guilty, shall be liable for civil liability u/s 34 and criminal liability u/s 35 **However Director may escape from his liability if he can prove that** 1. He had withdrawn his consent to become director before the issue of prospectus and that it was issued without his authority; or 2. He had reasonable ground to believe that the statement was true. 3. The prospectus was issued without his knowledge or consent and that on becoming aware of its issue, he immediately gave reasonable public notice to that effect
Quest-14	*Registrar of companies shall refuse to register a prospectus:* *(a) If it is not dated* *(b) Contains statement of an expert who has not signed it* *(c) Contains information which is six-month-old* *(d) In all the above cases*
Solution	(d) All the above cases
Quest-15	*A prospectus issued in the form of advertisement must state:* *(a) The objects for which the company has been formed* *(b) The liability of members* *(c) The amount of share capital of company* *(d) All of the above*
Solution	(d) i.e. all the above
Quest-16	*Private limited company can not issue their shares to public. State whether this statement is correct and also state how these companies can raise their money through private placement*
Solution	This statement is true that a private limited company can not issue capital through public offering ***As per the definition of private limited company u/s 2(68),*** these companies are prohibited by their article from inviting subscription for their securities from public, only option available to private limited company is to raise it through private placement **Provisions in relation to private placement** **Meaning: -** The term "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter

PRACTICAL QUESTION	
	Conditions for private placement **1.** The offer of securities or invitation to subscribe securities, only to a select group of persons who have been identified by the Board subject to maximum to 200persons in a financial year **It does not include-** qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of section 62(1)(b) 2. No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company: *Provided that, subject to the maximum number of identified persons, a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.* 3. No company issuing securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue. 4. Where a company, listed/unlisted, makes an offer to allot or invites subscription to more than the prescribed number of persons, the same shall be deemed to be an offer to the public. 5. All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash. *Provided that a company shall not utilize monies raised through private placement unless allotment is made, and the return of allotment is filed with the Registrar* 6. A company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities 7. Where the company is not able to allot the securities within stated period, it shall repay the application money to the subscribers within 15 days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest @ of 12 % per annum from the expiry of the sixtieth day: *Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—* *(a) for adjustment against allotment of securities; or* *(b) for the repayment of monies where the company is unable to allot securities.* 8. The proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed. 9. The value of such offer or invitation per person shall be with an investment size of not less than twenty thousand rupees of face value of the securities;

PRACTICAL QUESTION	
Quest-17	*Define abridged prospectus and also state the circumstances where company shall not be required to issue such prospectus*
Solution	**Meaning: -**Abridged prospectus means a memorandum containing such salient features of a prospectus as may be prescribed. [Section 2(1)] *No application form for shares in or debentures of a company can be issued unless it is accompanied by an abridged prospectus containing all the prescribed features* **Circumstances where company shall not be required to issue such prospectus** 1. Where the form of application is issued to person who is bona fide invited to enter into an underwriting agreement. 2. Where form of application is issued in relation to shares or debentures which were not offered to the public. 3. Where the application is issued to existing members or debenture holders of the company whether with or without the right of renunciation. 4. Where the application is issued in relation to shares or debentures which are (i) Uniform in all respects with shares or debentures previously issued, and (ii) Dealt in or quoted at a recognized stock exchange.
Quest-18	*Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. Should follow to avoid repeated issuance of prospectus?*
Solution	**Given problem is based on the provisions of Sec 31 of Companies Act 2013 i.e. Shelf Prospectus** **1. Meaning:-**Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus **2. By Whom Shelf Prospectus is required to be filled:-**Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar. 3. **Validity:-*For*** a period not exceeding one year which shall commence from the date of opening of the first offer of securities under that prospectus 4. **Document required along with Shelf Prospectus:-**For any subsequent offering within the validity period only an **'information memorandum'** for updating the information under the specified heads is required to be filed. 5. **Benefit of Filing Shelf Prospectus** A company filing a shelf prospectus with the Registrar shall not be required to issue prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus. **Thus at the time of making any subsequent offer, company shall-** ▪ File an updated Information memorandum ▪ Issue to the public, updated information memorandum along with shelf prospectus

PRACTICAL QUESTION	
	6. **Information Memorandum shall contain material facts which pertains to** ▪ Creation of New Charge; and ▪ Changes in Financial position of company which has occurred between the first offer of security, previous offer of security and the succeeding offer of security. 7. **Shelf prospectus with information memorandum deemed to be prospectus:** Where an information memorandum is filed, every time an offer of securities is made with all the material facts with the registrar, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

CHAPTER 6 Shares

<table>
<tr><th colspan="2">PRACTICAL QUESTION</th></tr>
<tr><td>Quest-1</td><td>Company is in default of redemption of Preference share capital can issue further preference share capital?</td></tr>
<tr><td>Solution</td><td><u>As per Rule 9 of Companies (Share Capital and Debentures) Rules, 2014</u>
A Shares which have some preferential rights over the other types of shares i.e., which enjoy some priority over the equity shares.
A company having a share capital may, if so authorised by its articles, issue preference shares subject to the following conditions, namely: -
(a) the issue of such shares has been authorized by passing a special resolution in the general meeting of the company
(b) the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares
<u>Conclusion: -</u> Thus we may conclude that company can not issue further preference share if it is in default of redemption of its existing preference share capital</td></tr>
<tr><td>Quest-2</td><td>Decide whether A Ltd with following details can issue equity shares with Differential Voting rights?
<table><tr><th>Particulars</th><th>14-15</th><th>15-16</th><th>16-17</th></tr><tr><td>Annual Return</td><td>Submitted</td><td>Not Submitted</td><td>Not Submitted</td></tr><tr><td>Financial Statement</td><td>Not Submitted</td><td>Submitted</td><td>Submitted</td></tr></table></td></tr>
<tr><td>Solution</td><td><u>As per Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 i.e. Equity Shares with Differential Rights</u>
Company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, if it has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good.
In given case, company has committed default in submission of Financial statement in 14-15 and submission of annual return in 15-16.
This rule provides that in eligibility will occur only if default is committed in submission of both Financial Statement and annual Return. Thus, default of both statement for 3 years, shall be in existence before company become disqualified.
<u>Conclusion: -</u> Based upon the above provisions, we may conclude that, company is justified in its decision to issue equity shares with differential voting rights</td></tr>
</table>

PRACTICAL QUESTION	
Quest-3	*The subscribed capital of a company is :* *(a) never more than the issued capital* *(b) never less than the issued capital* *(c) always equal to the issued capital* *(d) prescribed percentage of the issued capital*
Solution	Never more than the issued capital
Quest-4	*A company may convert all or any of its fully paid up shares into stock:* *(a) by passing a special resolution* *(b) by passing a ordinary resolution* *(c) with the approval of the Tribunal* *(d) All of the above*
Solution	By passing an ordinary resolution
Quest-5	*Part of the capital for which application have been received from the public and shares allotted to them:* *(a) Nominal capital (b) Issued capital* *(c) Subscribed capital (d) Called up capital*
Solution	Subscribed capital
Quest-6	*Shares which are issued by a company to its directors or employees at a discount or for a consideration other than cash:* *(a) Equity Shares* *(b) Preference Shares* *(c) Sweat Equity Shares* *(d) Redeemable preference shares*
Solution	Sweat Equity Shares
Quest-7	*Define the purpose for which amount of security premium can be used*
Solution	**Meaning of Premium: -** Issue of shares at a price higher than the nominal value is termed as issue of Security at Premium. **Purpose for which amount of security premium can be used: -** 1. Issuing of fully paid bonus shares to the members of the company. 2. Writing off the expenses, commission paid, or discount allowed on the issue of shares or debentures of the company. 3. Providing for the premium payable on the redemption of preference shares or debentures of the company. 4. Writing off the preliminary expenses of the company. 5. For the purchase of its own shares or other securities under section 68

PRACTICAL QUESTION	
Quest-8	*Mr. Ram was working in research division of GPL Pharma, where he has invented a new drug, company is expecting a huge profit out of its sales in upcoming year. Company in turn want to provide adequate reward to Mr. ram in lieu of his hard work. Through issue of its shares at even less than its nominal value. Advice the company about the course of action to be taken.*
Solution	In given case, company may opt to issue sweat equity shares to Ram, which are defined u/s 54 of companies act 2013 Meaning of Sweat Equity:- It means the equity shares issued by the company to its employees or directors at a discount or for consideration other than cash. These shares are issued to the employees or directors for providing know-how to the company or for making available to the company the rights in the nature of intellectual property rights or value additions, by whatever name called. Meaning of term Employee:- Employee shall means (a) a permanent employee of the company who has been working in India or outside India, for at least last one year; or (b) a director of the company, whether a whole-time director or not; or (c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company **<u>Procedure for issue of sweat equity shares: -</u>** 1. Sweat equity shares to be issued by the company should pertain to the class of shares which the company has already issued. 2. Authorized by a special resolution in GM is required 3. The resolution should specify the following particulars: (a) Number of shares. (b) Current market price of shares. (c) Consideration. if any, for which such shares are to be issued. (d)Class of directors or employees to whom such shares are to be issued. 4. Regulation framed by SEBI shall be duly complied with in case shares of a company are listed on a recognized stock exchange Thus, we may conclude that Company can issue Sweat Equity to Ram by Complying the provisions of Sec 54 as specified above
Quest-9	*As on 31st December 2017, following information and figures are noticed from the Annual Accounts for the year ended 31st March 2016 of P Ltd:* *(i) Authorised Share Capital ₹ 20.00 Crores comprising of 2 Crore Equity Shares of ₹ 10 each.* *(ii) Paid up Share Capital ₹ 18.00 Crores comprising of 1.80 Cr Equity Shares of ₹ 10 each fully paid up* *(iii) Outstanding Liabilities in respect of Debentures raised from Central Government = ₹ 10 Cr i.e. 10 Lakh Debenture ₹ 100 per debentures* *(iv) Now due to default in repayment of Debentures by company Central government issued an order whereby it has been directed to company to issue 10 shares of ₹ 10 each in lieu of each Debentures* *Now, as an expert, management of company has approached you for your assistance to guide them the procedure for said conversion*

PRACTICAL QUESTION	
Solution	***As per Section 62(4) of Companies Act 2013*** ▪ Where any debentures have been issued to, or loans have been obtained from, ▪ the Government by a company, ▪ the Central Government may, ▪ if in its opinion it is necessary in the public interest so to do,by order, ▪ direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, ▪ Such direction may be issued even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion. ***Section further states that Central Government while issuing any such order shall consider:*** • Financial position of the company • Rate of interest payable on the debentures or the loans • Current market price of the shares in the company ***Consequences of such order by Central Government*** • Where the Government has, by an order directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal or where such appeal has been dismissed, • the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and • the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.
Quest-10	*Ramesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter?*
Solution	According to Section 56 of the Companies Act, 2013 every company shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer. Where any default is made in complying with the requirement of section 56, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees, but which may extend to one lakh rupees The jurisdiction binding on the company is that of the state in which the registered office of the company is situated. Hence, in the given case the Delhi court is not competent to take action in the matter.

PRACTICAL QUESTION	
Quest-11	*Mr. 'Y', the transferee, 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 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.*
Solution	**<u>According to Section 46(1) of the Companies Act, 2013,</u>** A share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary", specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is the legal owner of the shares therein and the company cannot deny his title to the shares. **<u>However, a forged transfer is a nullity</u>** It does not give the transferee (Y) any title to the shares. Similarly, any transfer made by Y (to Z) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller. Therefore, if the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the company is bound to restore the name of X as the holder of the shares and to pay him any dividends which he ought to have received. In the above case, 'therefore, X has the right against the company to get the shares recorded in his name. However, since both Y and Z can recover damages from company as they acted on faith of share certificate issued by company
Quest-12	*A Ltd i.e. a Public 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*
Solution	**<u>As per the provisions of Sec 58 of Companies Act, 2013</u>** Where a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal. The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order— (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

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	(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved. **Conclusion: -**Thus, in the present case Mr. X can make an appeal before the tribunal and sue for damages.
Quest-13	*KFA Ltd is into default of loan to several bankers, consequent to such default its share price has seen sharp reduction and has been reduced at ₹ 2 per share as against its nominal value of ₹ 5. Around 1 year back same shares were trading at ₹60.* *Now in event of default a scheme of corporate debt restructuring was drafted by all bankers of company, wherein it has been decided to take over a management of company by converting their loan into shares.Upon conversion of loan and consequent to issue of shares, % shares of Bank increased to 52% of total share capital.* *Meanwhile a group of shareholders objected to this action by contending that any such action on part of banker will be in violation of companies Act, which restrict any issue of shares at discount. Discuss*
Solution	**As per the provisions of Sec 53 of companies act 2013: -** The issue of shares at a discount means the issue of shares at a price less than the nominal value. **Circumstances, where shares at discount may be issued** 1. A company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949. 2. In addition, according to section 53, a company may issue shares at a discount where shares are given under section 54 of the Companies Act, 2013. **Conclusion: -** Thus in given case we may conclude that objection raised by shareholder is not valid, since it was justified on part of bankers to convert such loan into shares even at discount as per the guidelines framed by RBI
Quest-14	*"Moonstar Ltd." is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. 'A', a shareholder of the Moonstar Ltd., deposits in advance the remaining amount due on his shares without any calls made by "Moonstar Ltd;"* *Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of Mr. A, which will arise on the payment of calls made in advance*
Solution	Section 50 (1) of the Companies Act, 2013 states that a company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up. Hence, the Companies Act recognizes the right of a company to receive calls in advance provided it is authorized by its Articles to do so. In the given case Mr. A, a shareholder of the 'Moonstar Ltd'., has deposited in advance the remaining amount due on his shares without any calls made by 'Moonstar Ltd'. 'Moonstar Ltd' was authorized to accept the unpaid calls by its articles. Hence, there is no irregularity in the transaction.

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	However, section 50 (2) further provides that a member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up. Hence, Mr. A will not derive any additional voting rights by virtue of such advance calls paid by him. When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows: (i) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up. (ii) The shareholder's liability to the company in respect of the call for which the amount is paid is distinguished. (iii) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount. (iv) The amount received in advance of calls is not refundable. (v) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off. The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.
Quest-15	*DJA Company Limited is holding 40% of total equity shares in MR Company Limited. The Board of Directors of MR Company Limited (incorporated on 1.1.1998) decided to raise the paid-up Equity Share Capital by issuing further shares and also decided not to offer any shares to DJA 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 provides that the new shares. be offered to the existing shareholders of the company. On 1.3.2001 new shares were offered to all the shareholders excepting DJA Company Limited. Referring to the provisions of the Companies Act, 2013 examine the validity of decision of Board of Directors of MR Company Limited of not offering any further shares to DJA Company Limited.*
Solution	**<u>Given problem is based on sec 62 of companies act 2013, which define Pre-Emptive right</u>** Right of Pre-Emptive means that any further issue of shares by the company must be offered to its existing shareholders. Section provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. The company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion to their holdings.

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	Further in case of ***Gas Meter Ltd.* v *Diaphragm, & General; Leather Co. Ltd*** where the facts of the case were similar to those given in the present case, the articles of Diaphragm Co. provided that the new shares should first be offered to the existing share holders. However, the company offered new shares to all shareholders excepting Gas Co., which held its controlling shares. It was held that Diaphragm company had no legal authority under the Companies Act to do so. *In the given case, DJA Company Limited is holding 40% of total equity shares in MR Company Limited. The Board of Directors of MR Company Limited decided to raise the paid-up Equity Share Capital by issuing further shares and also decided not to offer any shares to DJA Company Limited on the ground that it was already holding a high percentage of shares in MR Company Limited.* Conclusion: - Thus, we may conclude that decision on part of MR Company Limited for not to issue any further shares to DJA company limited is invalid
Quest-16	*VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2004) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd, on the ground that it was already holding a high percentage of the total number of shares already issued, in SV Company Ltd. The Articles of Association of SV Company Ltd. provide that the new shares be offered to the existing shareholders of the company. On March 1, 2007 new shares were offered to all the shareholders except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Limited of not offering any further shares to VRS Company Limited.*
Solution	**<u>Given problem is based on sec 62 of companies act 2013, which define Pre-Emptive right</u>** Right of Pre-Emptive means that any further issue of shares by the company must be offered to its existing shareholders. Section provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. The company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion to their holdings. Further in case of ***Gas Meter Ltd.* v *Diaphragm, & General; leather Co. Ltd*** where the facts of the case were similar to those given in the present case, the articles of Diaphragm Co. provided that the new shares should first be offered to the existing share holders. However, the company offered new shares to all shareholders excepting Gas Co., which held its controlling shares. It was held that Diaphragm company had no legal authority under the Companies Act to do so. Therefore, in the given case, SV Ltd.'s decision not to offer any further shares to VRS Co. Ltd on the ground that VRS Co. Ltd already held a high percentage of shareholding in SV Co. Ltd. is not valid for the reason that it is violative of the provisions of Section 62 (1) (a) as also substantiated by the ruling in the above referred case.

PRACTICAL QUESTION	
Quest-17	*Write a note on the powers of the Central Government in regard to conversion of debentures and loans into shares of the company under the following heads:* *(i) When terms of issue of such debenture or terms of loan do not include term providing for an option of conversion;* *(ii) Matters considered in determining the terms and conditions of such conversion.* *(iii) Remedy available to the company if conversion or terms of conversion is not acceptable to it.*
Solution	**1.** Section 62 empower the Central Government to direct by an order that any part of loan or Debentures shall be converted into shares on such terms and conditions as appear to that Government to be reasonable even if the terms of issue of such debentures or the terms of such loans do not include term providing for an option for such conversion. **2.** Central Government shall provide due regard to the following circumstances: (i) The financial position of the company; (ii) The terms of issue of the debentures or the terms of the loans, as the case may be; (iii) The rate of interest payable on the debentures or the loans; (iv) The capital of the company, its loan liability, its reserves, its profits during the preceding five years; and (v) The current market price of the shares in the company. **3**. If the terms and conditions of such conversion are not acceptable to the company, the company may, within 60 days from the date of communication of such order, prefer an appeal to the tribunal.
Quest-18	*The Articles of Association of MSW Ltd. contained a provision that upto 4% of issue price of the shares as underwriting commission may be paid to the underwriters. The Board of directors decided to pay 5% underwriting commission. Can the Board of directors do so? State the provisions of law in this regard as stated under the Indian Companies Act, 2013.*
Solution	**<u>Meaning of Underwriting Agreement</u>** ▪ It represents an agreement which takes place between the company and some other party known as underwriter whereby underwriter agrees with company to acquire the that portion of shares from company which may not be subscribed by the public. ▪ He is usually being paid some compensation for his services which is regarded as underwriting commission. **Acc to the provisions of Section 40 of the Companies Act, 2013:** (i) The payment of commission should be authorized by the articles. (ii) The amount of commission should not exceed, in the case of shares, 5% of the price at which the shares have been issued or the amount or rate authorised by the articles whichever is less, and in the case of debentures, it should not exceed 2-1/2%. **Based upon the provision of above section, we can conclude** that the Board of Director's decision to pay 5% is not valid, since the payment cannot exceed 4% as provided in the Articles of the company.

PRACTICAL QUESTION	
Quest-19	*The Board of Directors of a company decide to pay 5% of issue price as underwriting commission to the underwriters. On the other hand the Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013?*
Solution	**Meaning of Underwriting Agreement** ▪ It represents an agreement which takes place between the company and some other party known as underwriter whereby underwriter agrees with company to acquire the that portion of shares from company which may not be subscribed by the public. ▪ He is usually being paid some compensation for his services which is regarded as underwriting commission. **Acc to the provisions of Section 40 of the Companies Act, 2013:** (i) The payment of commission should be authorized by the articles. (ii) The amount of commission should not exceed, in the case of shares, 5% of the price at which the shares have been issued or the amount or rate authorised by the articles whichever is less, and in the case of debentures, it should not exceed 2-1/2%. Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid Secondly, decision of the Board to pay the commission out of capital is valid since underwriting commission can be paid both out of capital as well as out of profits ***(Madan Lal Fakir Chand* v *Shree Changdeo Sugar Mills Ltd.)***
Quest-20	*Unique Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2:% percent underwriting commission on debentures. The, company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013*
Solution	**Meaning of underwriting Agreement: -**It represent an agreement which takes place between the company and some other party known as underwriter whereby underwriter agrees with company to acquire the that portion of shares from company which may not be subscribed by the public. He is usually being paid some compensation for his services which is regarded as underwriting commission. **Company may pay underwriting commission subject to following conditions: -** (a) The payment of such commission shall be authorized in the company's articles of association; (b) The commission may be paid out of proceeds of the issue or the profit of the company or both; (c) It may be paid either in cash or in consideration other than cash (d) The rate of commission paid or agreed to be paid shall not exceed, in case of debentures • ***2.5 % of the price at which the debentures are issued, or*** • ***Rate as specified in the company's articles,*** whichever is less;

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	As per Companies (Meeting of Board and its powers) Rules, 2014 Company having a Paid-Up share capital of ₹ 10.0 Cr or more shall not pay underwriting commission of more than 1% except with prior approval by members through Special Resolution **Conclusion:** -In view of the above the decision of Unique Builders Ltd to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.
Quest-21	*The Board of Directors of XYZ Private Limited, a subsidiary of SRN Limited, decides to grant a loan of ₹2.00 lacs to P, the Finance Manager of the company getting salary of ₹30,000 per month, to buy 400 partly paid-up equity share of ₹1,000 each of XYZ Limited. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013.*
Solution	Under section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employee's subject to the following limitations: (a) The employee must not be some key managerial personnel; (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee. (c) The shares to be subscribed must be fully paid shares Section 2 (51) defines the "Key Managerial Personnel" (KMP) whereby a KMP includes the chief executive, company secretary, whole time director, Chief Financial Officer or any other officer who may be prescribed. We can assume the Mr. P being a fiancé manager is not a KMP of the company. **Keeping the above provisions of law in mind, the Board's decision is invalid due to two reasons:** • The amount being more than 6 months' salary of Mr. P, which should have restricted the loan to ₹ 1.8 Lakhs. • The shares subscribed are partly paid shares where as the benefit is available only for subscribing in fully paid shares.
Quest-22	*Apex Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?*
Solution	Under section 67 (2) of the Companies Act, 2013 no public company is allowed to give, directly or indirectly or by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company. However, section 67 (3) makes an exception by allowing companies to the give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

PRACTICAL QUESTION	
	Hence, Apex Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them. However, the key managerial personnel & Directors will not be eligible for such assistance.
Quest-23	*ABC Company Limited at a general meeting of members of the company pass an ordinary resolution to buy-back 30% of its Equity Share Capital. The articles of the Company empower the company for buy-back of shares. The company further decide that the payment for buy-back be made out of the proceed 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% decides to buy-back only 20% of its Equity Share Capital?*
Solution	Under section 68 of the Companies Act, 2013 a company can purchase its own shares or other specified securities subject to fulfilment of prescribed conditions and subject to defined limits and procedures. Under the various sub sections of section 68 of the Companies Act, 2013 (please see previous answer) in the present case the following facts are note worthy: (a) The Articles permit buy back – This is in order; (b) The approval of the members is by way of an ordinary resolution – This is invalid as the resolution required is a special resolution; (c) The buyback approved is 30% of the Equity Share Capital – The maximum limit allowed for buy back is 25% of the aggregate of the paid up capital and free reserves. Since the value of free reserves is not mentioned this cannot be commented upon. (d) The company plans to pay for the buy back from the proceeds of an earlier equity issue - This is in violation of section 68 (1) of the Act **<u>Taking into account the above factors, the questions as asked in the problem can be answered as under</u>** (i) The company's proposal for buy-back is not in order as it has passed only an ordinary resolution and the out of the proceeds of an earlier equity issue in violation of section 68 (ii) The answer to the second question shall also be the same as the irregularity and contravention will not be affected by the buyback being 20%.
Quest-24	*Explain 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 buyback of its shares during the current year but the company has defaulted in the payment of term loan & interest thereon to its bankers. The company seeks your advice as to how and when the company can buy back its shares under these circumstances as per the provisions of the Companies Act, 2013.*

PRACTICAL QUESTION	
Solution	Circumstances in which a company cannot buy back its own shares – As per section 70 of the Companies Act, 2013, a company cannot buy back shares or other specified securities directly or indirectly: (a) Through any subsidiary company including its own subsidiaries; or (b) Through investment or group of investment companies; or (c) When the company has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank. The prohibition does not apply if the default has been remedied and a period of three years has elapsed after such default ceased to subsist. (d) Company has defaulted in filing of Annual Return (section 92), declaration of dividend (section 123) or punishment for failure to distribute dividend (section 127) and financial statement (section 129). Under the Companies Act, 2013, now the company can buy- back even if it has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank, provided the default has been remedied and period of 3 years has elapsed after such default ceased to subsist. Therefore, M/s. Growmore Pharma Limited needs to follow the procedure as highlighted above for buy-back of shares.
Quest-25	*Z Ltd has recently opted for Reduction of its share capital and have received an approval from tribunal as well. On 7th Jan, they submitted an approval of tribunal to ROC. On 20th Feb, company even proceeded for fresh issue and issued fresh shares to 500 new shareholders (Partly paid up shares @ 6 each as against nominal value of 10 each).* *Suddenly on 31st March, 1 creditor submitted his claim, who by his own mistake could not be entered in list of creditors when consent was invited from all of them for sanction of scheme of reduction. Now all members objected this claim and company even declined to pay his claim. Creditor claimed that company has defaulted in payment and thus he is entitled to proceed in capacity as operational creditor against the company. Decide upon the stand taken by creditor. Also state the liability of members in this regard by stating, if company is liable to such claim, whether liability shall arise on part of new members as well.*
Solution	**Given problem is based on Sec 66 of Companies Act 2013** As per this section, Where the name of any creditor entitled to object to the reduction of share capital under this section isnot entered on the list of creditors, and after such reduction, the company ***commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim, then*** every person, ***who was a member of the company on the date of the registration of the order for reduction by the Registrar***, shall be liable to contribute to the payment of that debt or claim***, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date***

PRACTICAL QUESTION	
	Conclusion: - Thus, we may conclude that even though company shall be liable to pay to its Creditor Z, however liability to pay shall arise on part of those members who were there as a ***member of the company on the date of the registration of the order for reduction by the Registrar***, but not on new members
Quest-26	*As on 31st December 2014, following information and figures are noticed from the Annual Accounts for the year ended 31st March 2014 of SKP Ltd., a Company listed with The Stock Exchange, Mumbai:* *(i) Authorised Share Capital ₹ 20.00 Crores comprising of 2 Crore Equity Shares of ₹ 10 each.* *(ii) Paid up Share Capital ₹ 10.00 Crores comprising of 90 lac Equity Shares of ₹ 10 each fully paid up and 20 lac Equity Shares of ₹ 10 each called and paid up to ₹ 5 each. The total paid up capital is paid up in cash.* *(iii) Securities Premium Account ₹ 20.00 Crores.* *(iv) General Reserve ₹ 30.00 Crores.* *(v) Fixed Assets Revaluation Reserve ₹ 10.00 Crores.* *(vi) Outstanding Liabilities in respect of Bonus to Employees and Workers ₹ 25.00 lacs.* *(vii) Outstanding Liabilities in respect of Interest payable on Public Deposits comprising of Fixed Deposits from general public ₹ 15.00 lacs.* *Following other information is gathered from the books of account and other records of the said Company for the period upto 31st December 2014:* *I. The partly paid shares were made fully paid prior to 30th September 2014.* *II. Bonus to employees and workers was paid on 15th September 2014.* *III. Interest on Public Deposits was outstanding on 31st December 2014.* *The Directors of SKP Ltd. wants to issue Bonus Shares on or after 1st April 2015 in the ratio of 1:1. Advise the Directors on the matter with reference to the companies Act 2013, What formalities company need to follow before issue of bonus shares.*
Solution	**As per the provisions of Sec 63 of Companies Act 2013** Company may issue bonus shares subject to following conditions: - 1. The 'articles of association' of the company must authorize the issue of bonus shares. 2. Sources of Bonus issue ▪ Undistributed profits available for dividend ▪ Security Premium Account ▪ Capital Redemption Reserve 3. The issue of bonus share must be sanctioned *(i.e.,* approved) by the shareholders in the general meeting through passing of **ordinary Resolution** **4.** The bonus shares are issued to the existing shareholder holding fully paid-up shares. If their shares are partly paid-up, these should be made fully paid-up 5. **Other provisions: -** • it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; • it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus

PRACTICAL QUESTION

Now in given case: -

Fully Paid up share capital	₹9 crores
Partly paid-up capital (₹ each) converted into fully paid-up of ₹ 10 each	₹2 crores
Total paid up capital after conversion partly paid up are converted into fully paid-up	₹ 11 crores

Capital before bonus issue	₹11 crores
Bonus issue 1:1	₹11 crores
Capital after bonus issue	₹ 22 crores
Current authorized capital	₹ 20 crores

Conclusion: -To issue bonus shares now, company shall ensure

1. Passing of O/Res for increase in authorized capital
2. Bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalized for the purpose of issuing bonus shares.

In given case company is having sufficient reserves with them for issue of bonus shares

3. Company shall make good the interest on public deposits before proceeding for its bonus issue.

Quest-27 *Reduction of capital and cancellation of share capital are one and same thing. Discuss*

Solution: - DIFFERENCE BETWEEN REDUCTION OF CAPITAL AND CANCELLATION OF CAPITAL

Serial No	Reduction of Capital	Cancellation of Capital
1	Company need to pass Special Resolution under Section 66	Company need to pass Ordinary Resolution under Section 61
2	Interest of creditors are affected here, thus their consent need to be obtained or their debt need to be satisfied	No such interest of Creditors is affected
3	Reduction may or may not result in alteration under Capital clause of MOA	Cancellation will alter the Capital clause of MOA
4	Prior approval of tribunal is mandatory	No such approval is required
5	It will reduce the paid-up share capital of company	It will not have any impact on Paid up share capital

PRACTICAL QUESTION	
Quest-28	*What should be the change in nominal value where an unlimited company want to convert itself into a limited company*
Solution	An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely— (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up; (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.
Quest-29	*Which are the different circumstances in which reduction of capital shall be allowed*
Solution	Section 66 provides details about different scenario where reduction of capital shall be allowed, and they may be discussed as follow: - ***A company may by a special resolution, reduce the share capital in any of the following manner:—*** (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or (b) **either with or without extinguishing or reducing liability on any of its shares,** (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or (ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly
Quest-30	*ABC Pvt Ltd want to give loan of ₹ 50 Lakh to its director. Company is having Paid up share capital of ₹ 50 Lakh. Borrowing of company from banks or other financial institution is 80 Lakh with clean track record. Meanwhile company has 150 individual shareholders. Discuss validity of such loan*
Solution	**<u>As per the provisions of Sec 67 of Companies Act 2013</u>** A company cannot give loan or any financial assistance to any person to acquire its own share or shares of its holding company However, the provisions of Section 67 shall not apply to private companies – (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

PRACTICAL QUESTION	
	Now in given case, since 1. No other body corporate has invested in capital of private limited company 2. Borrowing from banks or financial institution is even less than twice of paid up share capital or ₹ 50 cr, whichever is less 3. No default in existence **Conclusion: -** We may conclude that company is justified in providing loan to its director as provisions of Section 67 are not applicable to company
Quest-31	*Company may issue convertible Debentures, wherein at the time of conversion Special Resolution shall be required. Discuss about the validity of this statement*
Solution	This Statement is Incorrect **As per the provisions of Sec 62(3) of Companies Act 2013** • Company can issue debentures or loan which is convertible into shares or it can also issue debentures or loans with where shareholder has an option to subscribe for new shares. • Any such issue of debentures or loan must carry the terms regarding conversion thereof into shares. • Such debentures or loans can be issued only after issuing S/R, thus requirement of S/Res exist at the time of issue of these debentures and not while conversion thereof
Quest-32	*Mars India Ltd. owed to Sunil ₹1,000. On becoming this debt payable, the company offered Sunil 10 shares of ₹100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. Examine the validity of theses allotment in the light of the provisions of the Companies Act, 2013.*
Solution	Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares may be offered to any persons provided following conditions are satisfied: - 1. Any such issue shall be authorised by S/Res passed in general meeting of company 2. Price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed In the present case, Mars India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer.
Quest-33	*Any further shares shall be issued by company only to its existing shareholders. Discuss along with exceptions if any*
Solution	***This statement is Correct.*** As per Sec 62 of Companies Act 2013, any further issue of shares by the company must be offered to its existing shareholders. Exception: - Even though there are certain circumstances where these shares may be offered even to an outsider, which are as follows: - **1. Where new shares are issued to employees under a scheme of employees' stock option**, subject to special resolution passed by company and subject to the conditions as may be prescribed; or ***Provided for private limited company , it shall be an ordinary resolution***

PRACTICAL QUESTION	
	2. Where such shares are issued to any persons, if it is authorised by a special resolution, if the price of such shares is *determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.* 3. If the existing shareholders to whom the shares are offered decline to accept the shares. 4. Conversion of Debentures or loans into shares 5. Conversion of Debentures or loan into shares based upon the directions issued by Central Government 6. Any Re-issue of forfeited shares also can be issued without being offered to the existing shareholder. Since they are does not treated as further allotment of shares.
Quest-34	*Grow Chemical Limited is planning to buyback of its shares during the current year but the company has defaulted in the payment of interest on debentures issued by company and such default is still in existence. The company seeks your advice as to how and when the company can buy back its shares under these circumstances as per the provisions of the Companies Act, 2013.*
Solution	As per section 70 of the Companies Act, 2013, a company cannot buy back shares or other specified securities directly or indirectly: (a) Through any subsidiary company including its own subsidiaries; or (b) Through investment or group of investment companies; or (c) When the company has defaulted in • Repayment of deposit or interest thereon, • Redemption of debentures or preference shares or Payment of dividend or • Repayment of any term loan or interest thereon to any financial institution or bank. ***The prohibition does not apply if the default has been remedied and a period of three years has elapsed after such default ceased to subsist.*** (e) Company has defaulted in filing of Annual Return (section 92), declaration of dividend (section 123) or punishment for failure to distribute dividend (section 127) and financial statement (section 129). In given case, company has defaulted in payment of interest on Debenture, which cannot be considered as an event of default u/s 70 **Conclusion: -** Thus, we may conclude that Grow Chemical limited can go ahead in its decision of buy-back of shares

PRACTICAL QUESTION	
Quest-35	*Sujeev, a shareholder, holding 2000 shares of ₹100 per share of Touchwood Pharma Ltd. The company has called and collected ₹60 per share. Sujeev has paid ₹40 per share (the balance amount not yet demanded by the company) as calls in advance. At the time of annual general meeting of the company, he demanded that he is entitled to vote in respect of the advance money paid by him. The directors of the company rejected his demand. He claimed for refund of calls in advance amount paid by him with interest.* *Examine the validity of Sujeev's claim for voting or refund of money with interest with reference to the provisions of the Companies Act, 2013.*
Solution	According to Section 50 of the Companies Act, 2013, a company may, if so authorized by the Articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares by him, even if no part of that amount has been called up. The amount so received shall be treated as calls in advance. **Consequences of calls in advance shall be as follow:-** (i) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable [Section 50)]. (ii) The shareholder's liability to the company in respect of the call for which the amount is paid is extinguished. (iii) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to articles of association, which shall not exceed 12% p.a. (iv) The amount received in advance of calls is not refundable. (v) In the event of winding up, the shareholder ranks after the creditors, but must be paid his amount with interest, if any, before the other shareholders are paid off. (vi) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company. Conclusion:- Thus, we may conclude that Sujeev is not entitled to vote in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.
Quest-36	*Poorva Limited refuses to register transfer of shares made by Mr. Akbar to Mr. Amar. The company does not even send a notice of refusal to Mr. Akbar or Mr. Amar respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013.*
Solution	Given problem is based on provisions of Sec 58 of the Companies Act, 2013, which deals with consequences in case of refusal by company to register transfer and appeal against refusal. In given case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares. As per Section 58, if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.

PRACTICAL QUESTION	
	Section further provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order— (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 10 days of the receipt of the order; or (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved. In the present case Mr. Amar can make an appeal before the tribunal.
Quest-37	*Rishi Limited's share capital is divided into different classes. Now, Rishi Limited intends to vary the rights attached to a particular class of shares. Advice Rishi Limited as to obtaining consent from the shareholders in relation to variation of rights.*
Solution	**Given problem is based on provisions of Section 48 of the Companies Act, 2013-** As per this section, where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied as per the following provisions:— 1. Before any such variation, company need to obtain prior approval from 1. Shareholders having 3/4th shares of such classor 2. Through Special Resolution ***Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.*** 2. Any such variation can be made only when, power of such variation is contained 1. Under MOA or AOA of company 2. Terms of issue of these shares **Right to Appeal** 1. An appeal can be submitted to Tribunal by shareholder who is not willing to provide his consent and holding at least 10% of shares of this class 2. Such appeal shall be submitted to the court within 21 days of such variation
Quest-38	*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.*
Solution	As per the provisions of Section 92 of Companies Act 2013, Every company is required to file with the Registrar of Companies, the annual return as prescribed in Form MGT – 7 **Return so filed shall contains details in relation to :-** 1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; 2. Its shares, debentures and other securities and shareholding pattern 3. Its indebtedness; 4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;

PRACTICAL QUESTION	
	5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year; 6. Meetings of members or a class thereof, Board and its various committees along with attendance details; 7. Remuneration of directors and key managerial personnel; 8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment; 9. Matters relating to certification of compliances, disclosures; 10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; 11. Such other matters as may be prescribed.
Quest-39	*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?*
Solution	**<u>As per the provisions of section 92 of the Companies Act, 2013</u>** Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting Section also states that if a company fails to file its annual return, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. In the given case, the idea of the directors is that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply is incorrect. In the above case, since the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year Thus, the company has contravened the provisions of section 92 and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92 of the Act.

PRACTICAL QUESTION	
Quest-40	*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?*
Solution	According to Section 58of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal. Section further provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order— (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved; In the given case, Harsh, can make an appeal before the tribunal for remedies that the company shall be ordered to register transfer /transmission of securities within10 days of the receipt of order, or rectify register and pay damages.
Quest-41	*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* *Is special resolution required to be passed?* *(ii)What is the time limit for completion of buy-back?* *(iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?*
Solution	Section 68 of the Companies Act, 2013 deals with the Conditions required for buy-back of shares. As per the Act, the company shall not purchase its own shares unless- (a) The buy-back is authorized by its articles; (b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where— (1) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and (2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting; Section further provides that, every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board.

PRACTICAL QUESTION	
	Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid-up capital, security premium and its free reserves. As per the stated facts, Xgen Ltd. has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company planned to buy back shares to the extent of ₹ 4,50,000. Referring to the above provisions, we may conclude that 1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves of the company, but any such buy back shall be authorized by the Board by means of a resolution passed at its meeting. 2. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board. 3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves. The above buy-back is possible when backed by the authorization by the articles of the company.
Quest-42	*M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.* *(i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.* *(ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members?*
Solution	As per section 94 of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company: Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company. Thus, we may conclude that, Techno Ltd. can also keep the registers and returns at Kolkata provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata. (ii) As per section 94of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture-holders, other security holders or beneficial owners of the company. Any other person (other than specified above) may also inspect the Register of members of company on payment of prescribed fee Thus, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, unless he make payment of prescribed fee
Quest-43	*Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.*
Solution	As per Rule 4 of the Companies (Share capital and Debenture) Rules, 2014, no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:- (1) the articles of association of the company authorizes the issue of shares with differential rights;

PRACTICAL QUESTION	
	(2) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders. (3) However, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot; (4) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time; (5) the company is having consistent track record of distributable profits for the last three years; (6) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares; (7) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend; (8) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or Scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government; (9) However, a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good. (10) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.
Quest-44	*Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?*
Solution	As per Sec 62 of Companies Act 2013, any further issue of shares by the company must be offered to its existing shareholders. ***Exception: - Even though there are certain circumstances where these shares may be offered even to an outsider, which are as follows: -*** **1. Where new shares are issued to employees under a scheme of employees' stock option**, subject to special resolution passed by company and subject to the conditions as may be prescribed; or ***Provided for private limited company , it shall be an ordinary resolution*** **2. Where such shares are issued to any persons, if it is authorised by a special resolution**, if the price of such shares is *determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.*

PRACTICAL QUESTION	
	3. If the existing shareholders to whom the shares are offered decline to accept the shares. 4. Conversion of Debentures or loans into shares 5. Conversion of Debentures or loan into shares based upon the directions issued by Central Government 6. Any Re-issue of forfeited shares also can be issued without being offered to the existing shareholder. Since they are does not treated as further allotment of shares. ***Preference Shareholders***: From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.
Quest-45	*State the difference between shares and stock*

Solution: - DIFFERENCE BETWEEN SHARE AND STOCK

Difference No	**Share**	**Stock**
1	Shares may be fully paid up or partly paid up	Stock shall be fully paid up only
2	Shares cannot be transferred in fractions	Stock can be transferred in fractions
3	Shares has distinctive numbers	No such distinctive numbers shall apply for Stock
4	Shares can be issued originally	Stockcan not be issued originally
5	No resolution of members is required prior to issue of shares	Stock can be issued only after passing o O/R
6	No such Authorization is required for issue of shares	Stock can be converted only when AOA of company so authorized

CHAPTER 7 Charge

PRACTICAL QUESTION	
Quest-1	*State the difference between fixed charge and floating charge*
Hint	**Fixed/Specific Charge: -** A charge is said to be fixed or specific when it is made specifically to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge e.g. land, buildings, or heavy machinery. **Other Important Points** 1. The company cannot deal with the property charged in the ordinary course of its business without obtaining prior consent of lender. 2. The company can create another specific charge on the same property. However, in such a case, the specific charge which is which is created first takes priority over the subsequent charge. **Floating Charge: -** A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security. **Other Important Points** 1. The company can deal with the property charged till the charge becomes fixed. 2. The company can create a subsequent specific charge on the same property having priority over the floating charge. 3. The company cannot create a second floating charge, over the same property, having priority over the first floating charge.
Quest-2	*ABC Limited realized on 2nd May, 2017 that particulars of charge created on 12th March, 2017 in favour of a Bank were not filed with the 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, 2017 instead of 12th March, 2017? Explain with reference to the relevant provisions of the Companies Act, 2013.*
Hint	As per the provisions of Sec 77 of companies act 2013 It shall be duty of the company creating a charge, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

PRACTICAL QUESTION	
	However, the Registrar is empowered under proviso to section 77 (1) to extend the period of 30 days by another 300 days on payment of such additional fee as may be prescribed. Taking advantage of this provision, ABC Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge. There will be no change in the situation if the charge was created on 12th February,2017.
Quest--3	*A charge requiring registration with Registrar of Companies was created on 1st February, 2018 by XYZ Limited. The Secretary of the Company realised on 15th March, 2018 that the charge was not filed with the Registrar. State the steps to be taken by the Secretary to get the charge registered with the Registrar.*
Hint	A charge should be registered within 30 days after the date of its creation. In this case the charge was created on 1st Feb, 2018. Hence the particulars of charge are required to be filed with the Registrar on or before 2nd March, 2018 [Section 77 (1)]. The Secretary of the company realised only on 15th March, 2018 that the charge was not filed with the Registrar. It is, however, open to the Registrar to extend the time for filing of the charge within 300 days if the company satisfies the Registrar that it had sufficient cause for not filling the particulars within 30 days. [Proviso to Section 77(1)]. The Secretary may take advantage of this provision and immediately file the particulars of charge with the Registrar giving adequate reasons for the delay. If the Registrar is satisfied, he may allow registration on payment of additional fee.
Quest--4	*State whether Registrar is empowered to make entry for satisfaction of charge without intimation by company*
Hint	Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company. (i) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,— (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or (b) that part of the property or undertaking charged has been released from the charge, enter in the register of charges a memorandum of satisfaction of the fact that part of the property has been released from the charge, despite the fact that no intimation has been received by him from the company.
Quest--5	*Describe the term Satisfaction of charge* *Or* *A limited has taken a loan from IDBI Bank limited. On due date company has made payment of such loan along with other dues. Define the formalities to be completed by company upon completion of charge*

PRACTICAL QUESTION	
Hint	According to section 82 of the Companies Act, 2013, a company shall give intimation to the Registrar about the payment or satisfaction in full of any charge registered under this Chapter within a period of thirty days from the date of such payment or satisfaction ***Provided*** *that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed.* The Registrar shall, on receipt of intimation, cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar If no cause is shown, by such holder, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges and hall intimate the company about it.
Quest--6	*A Company realised after 300 days from creation of charge that it had failed to submit details of creation of charge with ROC. As a Chief Finance Officer of company Top management consulted you to provide any way out to overcome this situation*
Hint	According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87 by submitting an application to Central Government **<u>As per Sec 87, The Central Government on being satisfied that—</u>** (i) (a) the omission to file with the Registrar the particulars of any charge created by a company; or (b) the omission to register any charge within the time required under this Chapter; or (c) the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

PRACTICAL QUESTION	
	(ii) on any other grounds, it is just and equitable to grant relief, it may on the application of the company or any person interested and, on such terms, and conditions as it may seem to the Central Government as suitable, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended (2) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered. **Conclusion**-Thus company shall be advised to submit an application in prescribed form to Central Government seeking extension of limit u/s 87
Quest--7	*State the consequences of non-registration of charge*
Hint	1. The charge shall be void against the liquidator and any creditor of the company in event of winding up of company. Thus, unregistered charge holder shall be treated as unsecured creditor therein. 2. Money secured by charge immediately becomes payable. 3. The security for the debt may not be valid but the debt itself remains good as simple debt. 4. In case an earlier charge and a subsequent charge have been created. Said subsequent charge would get priority over unregistered charge
Quest--8	*Describe the provision in relation to opening and maintaining of Register of Charge by company*
Hint	Section 85 govern the provisions in relation to Register of Charge 1. **Meaning of Register of Charge-** It is the register in which the particulars about the charge created on company's assets, are entered. 2. **Requirement-** Every company shall create a register of charge. This register has to be maintained by both, the Registrar of Companies as well as the company itself. 3. **Where to Place this Register-** Such register needs to be kept at the registered office of the company. 4. **Particular to be entered-** The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be. Entries in the register shall be authenticated by a director or the secretary of the company or any other person authorized by the Board for the purpose. The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.

PRACTICAL QUESTION	
Quest--9	*Describe the different rules in relation to allotment of securities*
Hint	Rules in relation to allotment of Securities can be discussed as follow: - 1. **Minimum subscriptions and application money [Section 39]** **Minimum Subscription-** It means receipt of an application for at least 90% of the shares issued No allotment shall be made unless the amount of minimum subscription has been subscribed and received by company **Application money-** It represent the amount which is payable on each share along with the application for purchase or shares. This amount must not be less than 5% of the nominal value of shares. 2. **Consequences in case of failure to received Minimum Subscription-** Company shall keep the entire amount received on application with Scheduled bank and in case company failed in obtaining Minimum Subscription within 30 days, or such period as may be prescribed by SEBI, the amount received shall be returned within such time and manner as may be prescribed. As per **Provisions as per According to the Companies (Prospectus and Allotment of Securities) Rules, 2014,** Where the minimum subscription amount has not been subscribed, then the application money shall be repaid within a period of fifteen days from the closure of the issue. 3. **Listing of public issue with recognized stock exchange [Section 40]-** Every public company, who intends to offer its shares or debentures to the public for subscription by the issue of a prospectus, must make an application to at least one recognized stock exchange for permission for its shares or debentures to be dealt with the stock exchange. Such an application shall be made prior to issue of shares. Fact of Such Application must be stated in Prospectus
Quest--10	*A Limited has taken loan from Bank. Even after completion of 30 days borrower failed to submit CHG-1 i.e. form required for registration. Top management was aware that if they proceed to recall the loan due to non-registration, it may drag the company into liquidation, thus as a chartered accountant they approach you for course of action available to them*
Hint	According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. Further as per the provisions of Sec 78, where a company fails to register the charge within the period 30 days, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge within a period of fourteen days after giving notice to the company

PRACTICAL QUESTION	
	Thus, in given case, Bank have an option:- 1. To Instruct company to submit Form CHG-1 to Registrar within 300 days after obtaining his approval u/s 77 2. To submit form CHG-1 itself within 14 days after completion of 30 days
Quest--11	*Define the term Charge and also list out the different charge which need to be registered*
Hint	***According to section 2(16) of the Companies Act, 2013 "charge" has been defined*** as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage. Section provides that the following charges must be registered with the Registrar of Companies. Otherwise, such charges shall be void, and the charge-holders will not get the benefit of the securities if the company goes into liquidation:— 1. A charge for the purpose of securing any issue of debentures. 2. A charge on uncalled share capital of the company. 3. A charge on any immovable property wherever situated 4. A charge on any book debts of the company 5. A charge, not being a pledge, on any movable property of the company. 6. A floating charge on the undertaking or any property of the company including stock. 7. A charge on calls made, but not paid. 8. A charge on a ship or any share in a ship. 9. A charge on goodwill, or a patent, or a license under a patent, on a trade mark, or a copy right.
Quest--12	*Mr. Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr. Antriksh comes to know that the title deed of the company is not free, and the company expresses its inability to get the title deed transferred in the name of Mr. Antriksh saying that he ought to have had the knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?*
Hint	According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. Conclusion:- Based upon the above provision of law, we may conclude that contention of NRT Ltd. is correct. And Mr. Antriksh ought to have had the knowledge of charge created on the property of the company

CHAPTER 8 General Meeting

PRACTICAL QUESTION	
Quest-1	*Which one of the following required ordinary resolution?* *(a) to change the name of the company* *(b) to alter the articles of association* *(c) to reduce the share capital* *(d) to declare dividends.*
Solution	To declare dividends
Quest-2	*A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than _____the number of votes, if any, cast against the resolution.* *(a) Twice* *(b) Three times* *(c) One third* *(d) One fourth*
Solution	Three times
Quest-3	*Register of members, debenture holders, other security holders or copies of return may also be kept at any other place in India in which more than _____ of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance.* *(a) one-half* *(b) one-eight* *(c) one-tenth* *(d) one-third*
Solution	one-tenth

PRACTICAL QUESTION	
Quest-4	*The Registrar may grant an extension by _____, for holding the Annual General Meeting to any company for special reasons (except in the case of first AGM of the company).* *(a) 1 Month* *(b) 2 Months* *(c) 3 Months* *(d) 6 Months*
Solution	3 Months
Quest-5	*Every listed company shall file with the Registrar a copy of the report on each annual general meeting within _____ of the conclusion of the annual general meeting.* *(a) 7 days* *(b) 30 days* *(c) 3 months* *(d) 90 days*
Solution	30 Days
Quest-6	*Max Special Business shall be 2?*
Solution	This Statement is incorrect, since as per section 102 of Companies Act 2013, every business other than ordinary business shall be treated as special business
Quest-7	*In case of Private Limited Company, max ordinary business cannot exceed 3*
Solution	This statement is correct, since as per section 102 of Companies Act 2013, Following four businesses to be transacted at Annual General Meeting shall be considered as ordinary business: • Consideration of financial statements and the reports of the Board of Directors and auditors; • Declaration of Dividend; • Appointment of Directors in the place of those retiring. • Appointment of and fixing of the remuneration of the auditors. Now out of this business consisting of appointment/re-appointment/retirement of liable to retire by rotation shall by applicable incase of public company only
Quest-8	*Time limit for submission of proxy can be reduces to 2 hrs*
Solution	This Statement is correct, since Article of company can reduce the limit for submission of proxy form
Quest-9	*Meeting lasted for 60 hrs, at 59th hrs, demand of poll was made. Now poll shall be taken within…..*
Solution	As per Section 109 of Companies Act 2013, every time a poll is demanded, it shall be ensured within 48 Meeting hours (i.e. Max) of its demand, thus in given case, since meeting lasted for 60 hrs only, thus chairperson shall ensure the poll before conclusion of meeting

PRACTICAL QUESTION	
Quest-10	*Whether Chairman by putting casting vote can ensure passing of Special Resolution*
Solution	This statement is incorrect, since incase of casting vote, chairperson can only have 1 vote, on show of hand as well as on poll, thus he can ensure Ordinary Resolution but not special resolution
Quest-11	*Circumstances where poll shall be taken forthwith*
Solution	1. Where demand of poll is in relation to appointment of chairperson 2. Where demand of poll is in relation to adjournment of meeting
Quest-12	*A limited want to enter into a transaction with B limited, which is a Related party. A limited want to consider 2 business at its upcoming EGM including the business with related party i.e. B Limited, in addition they want this meeting to be convened at shorter notice. Explain as to how A limited shall proceed provided following information is also available* *Total members of A limited = 100* *No of shares held by related parties in A Limited = 20,000 out of total share capital of A Ltd of 1,00,000 shares* *Different agenda* *1. Dealing with related party i.e. B Limited* *2. Increase in authorized share capital in A limited*
Solution	As per the proviso to Section 101 of Companies Act 2013 as amended by companies Amendment Act 2017, general meeting may be called after giving shorter notice than that specified in Section 101 if consent, in writing or by electronic mode, is accorded thereto— (i) in the case of an annual general meeting, by not less than 95% of the members entitled to vote thereat; and (ii) in the case of any other general meeting, by members of the company— (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or (b) having, if the company has no share capital, not less than 95% of the total voting power exercisable at that meeting: Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.". Based upon the above provisions, we may conclude that, since upcoming meeting is Extra Ordinary General Meeting, thus consent shall be obtained from In respect of 1st Agenda, where B ltd is a related party: - Atleast 50 Members i.e. Majority excluding the related party B Ltd holding atleast 95% (1,00,000-20,000) i.e. 76,000 shares In respect of 2nd Agenda, where B ltd is not a related party: - Atleast 51 members i.e. Majority holding atleast 95,000 shares

PRACTICAL QUESTION	
Quest-13	*Decide whether following persons can appoint a valid proxy:* *(i) When a body corporate is a member in the company.* *(ii) When a foreign company is a member in the company.*
Solution	As per Section 113 of Companies Act 2013- ▪ Where a body-corporate is a member of another company, it may attend the meeting of any other company through a representative. ▪ The representative must be appointed by a resolution of the board of directors. Thus in given case, we may conclude that:- (i) Body corporate is entitled to appoint its proxy (ii) Foreign company is also a body corporate as per Sec 2(11) of companies Act 2013, thus it may also appoint a proxy
Quest-14	*Can EGM be held at a place situated outside India?*
Solution	No, EGM of a company cannot be held outside India. However, as per the Companies Amendment Act, 2017, EGM of a company, other than a wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.
Quest-15	*Who can be appointed as proxy?*
Solution	As per Section 105 of the CA, 2013, proxy need not be a member of the company and any person can be appointed as a proxy.
Quest-16	*Can a member of Section 8 Company appoint any other person as its proxy?*
Solution	No, as per Rule 19 of Companies (Management and Administration) Rules, 2014, a member of Section 8 Company can appoint only another member of the same company as its proxy.
Quest-17	*For how many members can a person be appointed as a proxy?*
Solution	As per Section 105 of the CA, 2013, read with Rule 19 of the Companies (Management and Administration) Rules, 2014, a person can act as proxy on behalf of maximum 50 members and holding voting rights on shares not more than 10% of total share capital. In case of a person holding proxy for a member, holding voting rights on shares for more than 10% of total share capital, he/she cannot hold a proxy for another member in the same company.
Quest-18	*Can one member appoint more than one proxy?*
Solution	Yes, a person can appoint more than one proxy.
Quest-19	*When can a proxy be appointed? Can a person be appointed as a permanent proxy for a member?*
Solution	As per the provisions of Section 105 of the CA, 2013, proxy can be appointed by a member any time after the notice is issued, but the same should reach the company 48 hours before the scheduled meeting. A person cannot be appointed as a permanent proxy for a member.

PRACTICAL QUESTION	
Quest-20	*Can a director appointed as a Chairman at the meeting of the Board for the purpose of convening such meeting be considered as a person holding the position of Chairman of the Company?*
Solution	A director appointed as a Chairman at the meeting of the Board for the purpose of convening such meeting cannot be considered as a person holding the position of Chairman of the company. In case a company is willing to designate a director as Chairman of the company, a separate resolution with this affect is required and the necessary intimations shall be given to the ROC.
Quest-21	*Section 96(2) provides for holding of Annual General Meeting on a day which is not a 'National Holiday'. Define the term 'National Holiday'.*
Solution	"National Holiday" includes Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government.
Quest-22	*According to section 103 of Companies Act, 2013, in case of a private limited company, 2 members personally present shall be the Quorum. If Quorum is not present within half an hour from the time appointed for holding a meeting, then the meeting shall stand adjourned, and if at the adjourned meeting also, Quorum is not present, the members present shall be the Quorum. If the private company has only 2 shareholders and out of these, if one cannot attend the AGM then according to above, whether one person attending the adjourned AGM, would be taken as quorum?*
Solution	No, one person cannot form quorum of an adjourned meeting. This is as per the view taken by Department of Company Affairs, where it was held that a single person cannot by himself constitute a quorum at the adjourned AGM. However, if the other person attends the meeting through video conferencing, then he will be counted for the purposes of quorum.
Quest-23	*Whether show of hands under section 107 is possible in case of companies which are covered under rule 20 of Companies (Management and Administration) Rules, 2014 relating to voting through electronic means?*
Solution	It has been clarified by the MCA that voting by show of hands under section 107 would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable i.e. Voting by Electronic Mode
Quest-24	*Whether concept of demand for poll u/s 109 of the Companies Act, 2013 is relevant for companies covered under Rule 20 of Companies (Management and administration) Rules, 2014 relating to voting through electronic means.*
Solution	The Ministry of Corporate Affairs has clarified that for companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules, 2014, the provisions relating to demand for poll would not be relevant.

PRACTICAL QUESTION	
Quest-25	*Whether a person who has voted through e-voting facility provided by the company can participate in general meeting? Further, can he change his vote?*
Solution	It has been clarified by MCA that a person who has voted through e-voting shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final. Therefore, a member of the company who has voted through electronic means may attend the general meeting and participate in the discussion, though the member is not allowed to change his vote once casted.
Quest-26	*Whether concept of proxy is relevant in respect of a general meeting wherein e-voting facility has been provided to the members.*
Solution	Proxy is a facility given to a member to exercise his voting rights in case the member is unable to attend and vote himself. Any member who has not exercised his vote electronically, may attend and vote at the general meeting either personally or by appointing a proxy to attend and vote on his behalf. Thus the concept of proxy is still relevant
Quest-27	*Whether the provisions of quorum under section 103 requiring specified persons to be physically present need to be complied with even in cases where electronic voting is mandated.*
Solution	Section 103 requires the personal presence of certain number of members in case of public and private companies for valid conduct of general meetings. Personal presence of specified number of persons is, therefore, mandatory in all general meetings even though the resolutions have been put to vote by electronic means before the meeting. Any embers who have voted by electronic means have a right to attend the general meeting and their presence shall be counted for the purposes of quorum.
Quest-28	*Mr. Zoey purchased the shares of Luxy Hairstyles Private Limited, at market price, in the name of his daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the updation of said change in the register of members, since Mila, being a minor is incompetent to contract in her capacity.*
Solution	• Mila i.e. a minor is not competent to enter into any contract, thus her name cannot be entered in the register of members. • While filing MGT – 1 and MGT – 2, the names of the minor can only be entered only if the details of the guardian are present. • Thus, in given case, name of Mr. Zoey shall appear in the register of members of Luxy Hairstyles Private Limited

PRACTICAL QUESTION	
Quest-29	*Mrs. And Mr. Taneja, recently got married and jointly purchased the shares of New Hopes India Private Limited on 14th August 2016. Mr. Taneja intimated the company that only the name of his wife should appear in the records of the company, for the shares purchased by them. The secretary of the company is not sure whether this is possible, given that the shares are held in the names of both the persons.*
Solution	As per the companies Act 2013, Joint holders of shares may request the company to enter their names on the register in some specified order, or they may even request the company to split their holding in a manner that part of the holding is entered in the name of one holder and part showing the name of another. But, in given case, the condition of Mr. Taneja that only the name of his wife should appear in the register as a member cannot be considered, even though company may ensure that the names can be entered in the order such that the name of his wife appears first.
Quest-30	*Ms. Emma gifted the shares purchased by her of the Company Bio-Optics Limited, to her sister Cathy. Emma had purchased these shares on the occasion of her birthday in February 2017. However, neither Emma nor Cathy were aware that they had to intimate about the transaction of transfer of such shares as a gift, to the company. Discuss the same in light of the provisions of section 89 of the Act.*
Solution	**<u>As per Sec 89 of Companies Act 2013</u>** Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying ▪ the nature of his interest, ▪ particulars of the person in whose name the shares stand registered in the books of the company and ▪ such other particulars as may be prescribed If any person fails, to make a declaration as required, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. ***In given case, since shares are gifted away, they become the property of the donee. Hence, the provisions relating to declaration of beneficial interest are not applicable.***
Quest-31	*Big Fox Private Limited called its Annual General Meeting on 30th September, 2016 for laying down the financial statement for approval of its shareholders for the financial year ended 31st March 2016. However, due to want of quorum, the meeting could not take place and was cancelled. The company has not filed the annual financial statements, or the annual return for the year ending March 2016, with the ROC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92. Discuss.*

PRACTICAL QUESTION	
Solution	• As per the provisions of Section92, every company has to file an annual return with the ROC in Form MGT –7 within 60 days of date on which annual general meeting was held or the date when it must have been held. • In given case, the annual general meeting of Big Fox Private Limited should have been held by 30th September 2016, but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 and shall be liable for a penalty as specified in Section 92
Quest-32	*Mr. Himanshu is the director of Road Less Travelled Limited and has been appointed as a nominee director of the company. On 6th December 2016, he expressed his interest to inspect the register of members of the company. The company secretary refused to show him the register. In respect of the provisions of the Companies Act, 2013, do you think that the company secretary was right in refusing Himanshu for not showing the register of members of the company?*
Solution	**As per the provisions of section 94 of the Act,** it is clear that the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture-holders, other security holders or beneficial owners of the company, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed. Section does not entitle a director to make an inspection in to the records of the company, as per the provisions of this section. Thus, the company secretary was right in refusing to show the register of members to Himanshu, since he is a director of the company. Even though as any other person director shall have such right on payment of prescribed fee
Quest-33	*Mr. Abeer filed a complaint against the company, Elixir Private Limited since it did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abeer, inviting him to attend the annual general meeting of the company. Abeer alleges that he never received the email. State whether the company is liable as guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with rules.*
Solution	As per Sec 101 of Companies Act 2013, the notice may be served ▪ Personally or ▪ Sent through post to the registered address of the members and in the absence of any registered office in India, to the address, within India furnished by him to the company for the purpose of serving notice to him or ▪ Through electronic mode. As per the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Thus, company shall not be in default for not delivering notice via e-mail.

PRACTICAL QUESTION	
Quest-34	*There are 5400 members of Dicey Private Limited. The company held its annual general meeting on 1st July 2017 at 2.00 p.m. and 28 members were present till 2.45 p.m. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions as discussed in the meeting. Comment whether the meeting took place as per the provisions of Companies Act, 2013.*
Solution	As per the provisions of Section 103 of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present. Thus, the quorum for the annual general meeting of Dicey Private Limited was complied with and the company is not in contravention with any of the provisions of the Companies Act, 2013.
Quest-35	*Abbey Limited has 2300 members and the annual general meeting of the company is due to be held on 23rd February 2017 at 10.30 a.m. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the chronicles of the meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 & 5 and accordingly passed resolution as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.*
Solution	**Steps in formation of answer for this case** *1. Mention about the meaning of quorum u/s 103* *2. Provide the limit of quorum as applicable incase of public limited company* *3. Provide conclusion (As provided below)* **Conclusion: -**In the above case, while the quorum was present at the time when the meeting started as per section 103 of the Companies Act, 2013, however the same was absent at the time of deciding Agenda 4 & 5. Thus, we may conclude that where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.
Quest-36	*What happens in case of voting by joint shareholders? Suppose that Mr. & Mrs. Iyer are joint shareholders of Goal Private Limited and they hold 500 shares of the company. Regarding a particular special business being transacted at the extra-ordinary general meeting of the company, Mr. Iyer is in the favour of the decision, whereas Mrs. Iyer is against the resolution. Decide how should the vote be casted in case of this situation?*
Solution	In a situation where joint holder failed to reach to some consensus in finalizing something in relation to general meeting, then priority shall be given in order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. Thus, opinion of Mr Iyer will prevail in said case

PRACTICAL QUESTION	
Quest-37	*Can an insolvent shareholder vote at the meeting by show of hands?*
Solution	Yes. Even though he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are available to him as member.
Quest-38	*How does the counting happen at the time of postal ballot?*
Solution	Any member who is voting by way of postal ballot, has votes in proportion to his share in the paid-up share capital of the company. Company may receive postal ballot in following 4 forms from the shareholders– • Ballots which contain assents; • Ballots which contain dissents; • Ballots wherein the member has voted partially assenting, partially dissenting or using not all his shares in any particular way; and • Invalid ballots (due to absence/ mismatch of signature, overwriting, etc Thus, company shall open and maintain a register to contain all such assent and dissent
Quest-39	*Difference between Motion & Resolution*
Solution	• A motion is a proposal, and a resolution is the adoption of a motion duly made and seconded. But every motion need not be followed by a resolution, as where a motion is made for the adjournment of the meeting. • A motion whether it is passed for the closure of discussion or adjournment, etc. can be passed by an ordinary resolution unless there is a specific provisions in the articles.
Quest-40	*In the annual general meeting of Black Mango Limited, the notice contained the agenda for 8 special businesses to be transacted. The Chairman decided to move all the resolutions at one time in order to save time of the members present at the meeting. Discuss whether two or more resolutions can be moved together as per the provisions of the Companies Act, 2013.*
Solution	Nothing in law impose any restriction where the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any. The only case where are solution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.
Quest-41	*The extra-ordinary general meeting of the company, Purple Banana Private Limited was due to be held on 23rd September 2016. However, due to want of quorum, the meeting was adjourned to a later date on 1st October 2016 and two resolutions were passed on that date. What would be the date of passing of resolution as passed on 1st Oct 2016*
Solution	**According to section 116 of the Companies Act, 2013,** where a resolution is passed at an adjourned meeting of— (a) a company; or

PRACTICAL QUESTION	
	(b) the holders of any class of shares in a company; or (c) the Board of Directors of a company, then, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date. Thus, in given case, said two resolutions shall be deemed to have been passed on the original date of meeting, i.e. 1st October 2016 and not on the earlier date.
Quest-42	*Describe law in relation to Maintenance and inspection of documents in electronic form*
Solution	As per Sec 120 of Companies Act 2013, any document, record, register or minute, etc., required to be kept or allowed to be inspected or copies given may be kept or inspected in the electronic form in the manner as specified in Rule 27, 28 and 29 of the Companies (Management and Administration) Rules, 2014. **Rule 27 of the Companies (Management and Administration) Rules, 2014:- Maintenance and inspection of documents in electronic form.** Every listed company or a company having at least 1000 shareholders, debenture-holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made thereunder, in electronic form. **Rule 28 -Security of records maintained in electronic forms** Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records. **Rule 29-Inspection** Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be on payment of not exceeding ten rupees per page.
Quest-43	*The Requisitionist of Illusions Private Limited, a company registered in New Delhi, has decided to call an extra-ordinary general meeting in Madrid, Spain on 2nd October 2016. Discuss whether the general meeting can be convened on the said date*
Solution	*No, the meeting cannot be convened in the manner as stated.* As per the Companies (Management and Administration) Rules, 2014, the requisitionist should convene the meeting in the registered office of the company or in the same city or town in which the registered office is situated and it should be a working day.
Quest-44	*The members of the Blumove Peacocks Private Limited, holding 1/10th voting power of the company, requisitioned a meeting on 14th August 2016 to the Board of Directors. However, the directors did not pay any heed to such a requisition and did not call an extra-ordinary meeting. Discuss the consequences of the contravention of the same in accordance with the Companies Act, 2013.*

PRACTICAL QUESTION	
Solution	Member can exercise an option to opt for EGM as per Sec 100(4) read with Companies (Management & Administration) Rules, 2014 in following manner: - 1. The members may requisition convening of an extraordinary general meeting, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting. 2. The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. — *Explanation.—For the purposes of this sub-rule, it is here by clarified that requistionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day.* 3. No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting. 4. The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting. 5. Where the meeting is not convened, the requistionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition. 6. The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.
Quest-45	*In a General meeting of Alpha Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013 ?*
Solution	Under Section 118 of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting: (i) is defamatory of any person; (ii) is immaterial to the proceeding; or (iii) is detrimental to the interests of the company; Further, under section 118 the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified above. **Conclusion: -** Thus, we may conclude that , the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons

PRACTICAL QUESTION	
Quest-46	*A General Meeting was scheduled to be held on 15th April, 2016 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2016 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 the same day with the 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 12-04-2016 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?*
Solution	As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a right to appoint another person as his proxy. It is not necessary that the proxy shall be a member of the company. Any provision in the articles requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. • Where two proxy instruments by the same shareholder are lodged before the expiry of the time required for submitting, then the proxies, submitted later on shall be counted and • where one is lodged before and the other after the date fixed for submission, the former will be counted. Thus, in case of Member X, the proxy Z will be permitted to vote, whereas in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.
Quest-47	*S, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions?*
Solution	As per Section 105 of the Companies Act, 2013 every member entitled to vote at a meeting of the company shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company. In the said case, S has given proper notice. Thus, S can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.
Quest-48	*A limited want to pursue following 2 agendas for upcoming general meeting of company* *Agenda-1: - To consider the change in business of company from Chemical to Garments, which require Special Resolution* *Agenda-2: - To increase the authorized share capital of company from ₹10 Cr to ₹15 cr, which require Ordinary Resolution*

PRACTICAL QUESTION	
	Company want to change its Article, whereby company want to alter the requirement of passing above resolutions and to insert requirement of O/Res for Agenda No-1 and S/Res for Agenda No-2 *Discuss the validity of decision so taken by company*
Solution	**<u>A resolution shall be an Ordinary Resolution when</u>** ▪ The notice of general meeting required under the Act has been duly given, The votes cast (*whether on a show of hands, or electronically or on a poll)* including the casting vote if any of the chairmen exceed the votes if any cast against the resolution. **<u>A resolution shall be a Special Resolution when</u>** ▪ The notice of general meeting required under the Act has been duly given, ▪ The votes cast (*whether on a show of hands, or electronically or on a poll*) are at least 3 times the number of votes if any cast against the resolution ▪ The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members. In addition to the requirements of the Act, a company's own articles may prescribe for special resolution where under the Act only an ordinary resolution is necessary. However, where the Act specifies for a special resolution, the articles cannot provide for the different kind of resolution. **Conclusion: -** Thus in given case, we may conclude that Alteration in Article shall be valid for Agenda-2, as it requires S/res in place of O/res. However, Alteration in Article which require O/res in place of S/Res shall be void
Quest-49	*To remove the Managing Director, 40% members of Global Ltd. Submitted requisition for holding extra-ordinary general meeting. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of 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 resolution passed therein in the light of the companies Act, 2013.*
Solution	It was held by the SC in case of ***LIC* v *Escorts*** that, Every shareholder of a company has a right to requisition for an extraordinary general meeting. He is not bound to disclose the reasons for the resolution to be proposed at the meeting. Section 100 of the companies Act contains provisions regarding holding of extraordinary general meetings. It provides that if directors fail to call a properly requisitioned meeting, the requisitionists or such of the requisitionists as represent not less than 1/10th of the total voting rights of all the members (or a majority of them) may call a meeting to be held on a date fixed within 3 months of the date of the requisition. Where a meeting is called by the requisitionists and the registered office is not made available to them, still meeting will remain a valid meeting and Further, resolutions properly passed at such a meeting, are binding on the company. Thus, in the given case, since all the above mentioned provisions are duly complied with. Hence the meeting with the resolution removing the managing director shall be valid.

PRACTICAL QUESTION	
Quest-50	*To remove the Managing Director, 49% members of A Ltd, submitted requisition for holding EGM. The company failed to call said meeting and hence the Requisitionist held the meeting. Since the managing Director did not allow the holding of meeting at a Regd office, said meeting was held at some other place and a resolution for removal of Managing Director was passed. Examine the validity of said meeting and Resolution passed therein in light of company Act 2013*
Solution	Section 100 of the companies Act 2013 contains provisions regarding holding of extraordinary general meetings. It provides that if directors fail to call EGM even after the submission of request by any member u/s 100(4), the Requisitionist or such of the Requisitionist as represent not less than 1/10th of the total voting rights may call a meeting themselves. This section further provides that where a meeting is called u/s 100(4), it shall be held within 3 months from submission of requisition. Further, It was held by the SC in case of ***LIC* v *Escorts*** that, Requisitionist is not bound to disclose the reasons for the resolution to be proposed at the meeting. Where a meeting is called by the Requisitionist and the registered office is not made available to them, still meeting will remain a valid meeting and Further, resolutions properly passed at such a meeting, are binding on the company. Thus, in the given case, since all the above-mentioned provisions are duly complied with. Hence the meeting with the resolution removing the managing director shall be valid.
Quest-51	*Dinesh, a director in a company, gave in writing to the company that notice for any General Meeting and the Board of Directors' Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, under certificate of posting. Dinesh did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 2013:* *(i) Whether the contention of Dinesh is valid?* *(ii) Would your answer be still the same in case Dinesh remained outside India for two months (when such notices were given, and meetings held).*
Solution	**Acc to the provisions of Section 101**, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. If, however, a member wants to notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected. **Based upon the above provisions, we can conclude as follow: -** (i)The contention of Dinesh is valid as the notice was not properly served and meetings held by the company shall be invalid. (ii)In view of the provisions of the Companies Act, 2013, as contained in Section 102, the company is not bound to send notice to Dinesh at the address outside India.

PRACTICAL QUESTION	
Quest-52	*Suppose in Question 51 above, what would be your answer if Company was a Nidhi Company, having total share capital of ₹ 10,00,000 divided into 1,00,000 shares of ₹ 10 each and Dinesh was holding 100 shares of company and no notice of meeting was served to him by company*
Solution	As per Section 20 of Companies Act 2013 i.e. Service of notice by members, this section shall apply subject to the modification in the case of a Nidhi. ***Thus, in case of Nidhi company, the document may be served only on members who hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital of the Nidhi whichever is less.*** For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi. In given case, Dinesh is holding shares of face value of ₹ 1000 only, which are even less than 1% of share capital **Conclusion: -**Thus in given case, we may conclude that contention on part of company for not servicing any notice to Dinesh is valid, provided company served a notice through publication in newspaper as per the provisions of sec 20.
Quest-53	*Dev Limited issued a notice for holding of its Annual General Meeting on 7th November, 2005. The notice was posted to the members on 16.10.2005. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Act, decide:* *(i) Whether the meeting has been validly called?* *(ii) If there is a short fall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?* *(iii) Can the short fall, if any, be condoned?*
Solution	As per Section 101 of companies act 2013, the notice may be served either ▪ Personally or ▪ Sent through post to the registered address of the members and in the absence of any registered office in India, to the address, within India furnished by him to the company for the purpose of serving notice to him or ▪ Through electronic mode. The length of the notice must be **21 clear days** i.e. while computing the 21 days, the day of service of the notice and day of holding of the meeting are to be excluded. Where a notice is sent by post, It shall be deemed to be received at the expiration of the 48 hours after the letter containing the same is posted. ***Based upon above provisions, we may conclude as follow:-*** (i) In given case 21 clear days notice has not been served (only 19 clear days notice is served) and the meeting is, therefore, not validly convened. (ii) Based upon the above calculation, notice falls short by 2 days.

PRACTICAL QUESTION	
	An AGM called at a notice shorter than 21 clear days shall be valid if consent is given in writing or by electronic mode by not less than **ninety-five per cent of the members** entitled to vote at such meeting in writing **either before or during or even after the meeting**,
Quest-54	*A Company served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such Meeting. A shareholder complains that the amount of the proposed increase was not specified in the notice. Is the notice valid?*
Solution	Whenever any special business is to be transacted at the meeting, an explanatory statement is required to be annexed to the notice. It shall include (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of— *(i) every director and the manager, if any;* *(ii) every other key managerial personnel; and* *(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);* (b) **any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.** **(c)** Where any item of special business affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, and of every other key managerial personnel (KMP), if the same is atleast 2 % of the paid-up share capital of company. **In given case,** A Company served a notice of General Meeting upon its members for increase the share capital of the Company, however a shareholder complains that the amount of the proposed increase was not specified in the notice. **Conclusion**:- We may conclude that notice so given is an invalid notice since it does not contain the information which may enable the members to understand implication of proposed agenda and assist them to take decision thereon.
Quest-55	*XYZ Limited called its Annual General meeting on 28th September, 2007. The notice of the meeting was posted on 6th September, 2007. With reference to the provisions of the Companies Act, 2013 examine whether the notice given by the company was valid.*
Solution	Date of Posting = 6th Sept 2007 Notice shall be deemed to be received on =8th Sept 2007 21 clear days shall be taken from 9th Sept and would end on 29th September However meeting was conducted on 28th Sept 2007 Thus it would amount to AGM on shorter notice and company is required to obtain consent from all members for conducting AGM at shorter notice

PRACTICAL QUESTION	
Quest-56	*STD Ltd. convened its Board of Directors meeting on 1st August, 2008 During the course of the meeting the date for calling annual general meeting was discussed but no decision could be taken on it in the meeting. However, the Secretary of the company issued the notice for calling the annual general meeting of the shareholders without taking any authority from the Board of Directors.* *State who is the proper authority to issue the notice for calling the annual general meeting and to whom such notice is to be given.*
Solution	Notice calling a General meeting can only be issued by 1. Board of Directors 2. Tribunal under Section 97 and Section 98 3. Requisitionist under Section 100(4) Thus secretary is not entitled to issue any notice without authority from BOD Every notice calling AGM shall be issued to 1. Members 2. Legal representatives/official assignee 3. Auditors 4. Director
Quest-57	*The Articles of Association of X Ltd. require the personal presence of 7 members to constitute quorum of General Meetings; The following persons were present in the extra-ordinary general meeting to consider the appointment of Managing Director:* *(i) A, the representative of Governor of Madhya Pradesh.* *(ii) B and C, shareholders of preference shares,* *(iii) D, representing Y Ltd. and Z Ltd.* *(iv) E, F, G and H as proxies of shareholders.* *Can it be said that the quorum was present in the meeting?*
Solution	For the purpose of quorum, only members present in person and not by proxy are to be counted. If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of a latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum (Section 113) Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company. Again Section 112 of the Companies Act, 2013 provides that the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as its representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present. PSH will not be counted for the purpose of Quorum In view of the above there are only three members personally present.

PRACTICAL QUESTION	
Quest-58	*The quorum for a General meeting of a public company is 15 members personally present according to the provisions of the articles of association of the company. Examine with reference to the provisions of the Companies Act, 2013 whether there is proper quorum at a General meeting of the company which was attended by the following persons:* *(i) 13 members personally present* *(ii) 2 members represented by proxies who are not members of the company* *(iii) One person representing two member companies.*
Solution	**As per Section 103 of Companies Act 2013,** Quorum means minimum number of members that must be present in order to constitute a valid meeting. ▪ **As per Sec 113 of Companies Act 2013,** Where a company is a member of another company, it may attend the meeting of any other company through a representative. ▪ The representative must be appointed by a resolution of the board of directors. ▪ *The person so appointed is entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the company as the member personally present may exercise.* (i) **13 members personally present: -**They shall be considered as Member Personally present (ii) **2 members represented by proxies who are not members *of* the company-**Will not be counted as member personally present **(iii) One person representing two member companies-**He shall be counted as 2 members personally present Thus requirement of Article i.e. 15 members personally present is satisfied and meeting can be held as quorum is present
Quest-59	*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.*
Solution	1. Section 113 of the Companies Act, 2013 provides that where a company is a member of another company it may attend the meeting of any other company through a representative. The representative so appointed is entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the company as the individual member of the company may exercise. 2. Foreign company can also make the use of this provision and can appoint their Representatives. [Sec 112]
Quest-60	*The Chairman of the meeting of a company received a Proxy 54 hours before the time fixed for the start of the meeting. He refused to accept the Proxy on the ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. Decide, under the provisions of the Companies Act, 2013 whether the Proxy holder can compel the Chairman to admit the Proxy?*
Solution	As per Sec 105 of companies Act 2013, Every member who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself.

PRACTICAL QUESTION	
	▪ **Legal Formalities regarding instrument Appointing Proxy- Proxy shall be appointed by submission of proxy form, which shall be** ▪ In writing ▪ Signed by the member/his attorney ▪ (If the appointer is body corporate, the instrument should be under its seal) ▪ In Form specified under MGT-11 **Time limit for submission of proxy form-** It should be submitted to the company 48 hours before the meeting. In case Article provides any further shorter period than it should be complied with **In given case, c**hairman of the meeting of a company received a Proxy 54 hours before the time fixed for the start of the meeting, which he refused to accept on the ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. **Conclusion: -** Any provisions contained in the Articles of a company that requires a longer period than 48 hours before a meeting of the company for depositing a proxy shall be void. Thus contention Proxy Holder may compel the Chairperson to accept such proxy form.
Quest-61	*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) voted on a particular resolution in the meeting. K's vote was declared invalid by the chairman stating that since he has appointed the proxy and L's vote has been considered as valid. K objects to the decision of the Chairman. Decide, under the provisions of the Companies Act, 2013 whether K's objection shall be taxable.*
Solution	***Section 105 of Companies Act 2013 lay down the circumstances where Proxy appointed by member may be revoked, As per this section, revocation shall be allowed*** **1.** When a member appointing a proxy, personally attend the meeting. **2.** When a member appointing a proxy, appoint another proxy at a later date, in such a case person appointed proxy subsequently shall be treated as proxy **3.** Where intimation of death or insanity is received prior to commencement of meeting (whether original or adjourned) **4.** Where intimation of transfer of shares is received by company prior to commencement of meeting (whether original or adjourned) Thus, we may conclude that decision by Chairman is invalid. Since K i.e. a member himself attended a meeting and voted on resolution, it will amount to revocation of proxy. Thus any vote put by L i.e. proxy shall be invalid

PRACTICAL QUESTION	
Quest-62	*The articles of ABC Limited provided that only those shareholders would be entitled to vote whose names have been there on the Register of Members for two months before the date of the meeting. X' a member, of the ABC Limited was holding 200 equity shares of the company. X transferred his shares to Y before one month form the date on which the meeting was due. The name of Y could not be entered in the Register of Members as the application of transfer of shares was pending. Y attended the meeting but he was prohibited by the company from exercising his voting right on the ground that he has not hold his shares for specified period as provided in the articles before the date of the meeting.* *State whether Y can exercise his voting right in the meeting? State also the grounds upon which Y may be excluded from exercising his voting rights in the meeting of the shareholders.*
Solution	As per Section 106 of companies act 2013, voting right of members may be restricted in following circumstances:- (i) In case of nonpayment of Calls due on shares (ii) In case of non-payment of other dues against the members (iii) Where right of lien is exercised by the company in respect of shares In given case:- Articles of ABC Limited provided that only those shareholders would be entitled to vote whose names have been there on the Register of Members for two months before the date of the meeting. Conclusion:- we may conclude that A public limited company cannot impose any restriction on voting right of its members on any ground other than those specified under section 106. Since above ground of restriction is not covered under section 106, thus restriction so imposed shall be invalid ***Situation, where company is a private limited company*** Section 106 shall apply to a private company; unless otherwise specified in the articles of the company. Thus, situation would have been different, if ABC would have been a private limited company, since the Law allow private limited company to insert an additional condition through its Article.
Quest-63	*C, a member of LS & Co. Ltd., holding some shares in his own name on which Final call money has not been paid, is denied by the company voting right at a general meeting on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him. With reference to the provisions of the Companies Act, 2013, examine the validity of company's denial to C of his voting right.*
Solution	As per Section 106 of companies act 2013, voting right of members may be restricted in following circumstances:- (i) In case of non-payment of Calls due on shares

PRACTICAL QUESTION	
	(ii) In case of non-payment of other dues against the members (iii) Where right of lien is exercised by the company in respect of shares Section 106 shall apply to a private company; unless otherwise specified in the articles of the company. In given case:-C a member of LS & Co Pvt Ltd holding some shares in his own name on which Final call money has not been paid and company denied voting right to him Conclusion:- we may conclude that company is justified in its action by imposing restriction on voting power of C
Quest-64	*Suppose in above Question, articles of the company do not contain any provision restricting the exercise of voting right of member, then what would be your answer*
Solution	A member cannot be prevented from voting, even though, calls or other sum payable by him have not been paid or the company has exercised any right of lien over his shares unless the articles contain any such provision. Thus, is there is no such provisions in article, voting power cannot be restricted
Quest-65	*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*
Solution	As per Section 106 of companies act 2013, voting right of members may be restricted in following circumstances:— (i) In case of non-payment of Calls due on shares (ii) In case of non-payment of other dues against the members (iii) Where right of lien is exercised by the company in respect of shares Section 106 shall apply to a private company; unless otherwise specified in the articles of the company. In given case, J a member of LKM Limited holding 100 shares on which Final call money has not been paid and company denied voting right to him Conclusion: - we may conclude that company is justified in its action by imposing restriction on voting power of J.
Quest-66	*At a General meeting of a company, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed.* *With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration.*
Solution	**<u>As per Section 114 of Companies Act 2013</u>** A resolution shall be a Special Resolution when ▪ The notice of general meeting required under the Act has been duly given,

PRACTICAL QUESTION	
	▪ The votes cast (*whether on a show of hands, or electronically or on a poll*) are at least 3 times the number of votes if any cast against the resolution The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members. Since, In the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), if other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.
Quest-67	*For a special resolution in a Company's general meeting, 10 voted in favour, 2 against and 4 abstained. The chairman declared the resolution as passed. Is it a valid resolution as per the provisions of the Companies Act, 2013?*
Solution	**<u>As per Section 114 of Companies Act 2013</u>** A resolution shall be a Special Resolution when ▪ The notice of general meeting required under the Act has been duly given, ▪ The votes cast (*whether on a show of hands, or electronically or on a poll*) are at least 3 times the number of votes if any cast against the resolution The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members. *In given case, in a Company's general meeting, 10 voted in favour, 2 against and 4 abstained.* **<u>Conclusion: -</u>** Thus, we may conclude that S/Res has been passed, as votes in favour are at least 3 times the number of votes if any cast against the resolution
Quest-68	*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.*
Solution	Under section 118 of the Companies Act, 2013 any matter which in the opinion of the Chairman of the meeting: (i) Reasonably be regarded as defamatory of any person; (ii) Irrelevant or immaterial to the proceedings, or (iii) Detrimental to the interests of the company, The Chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified above. Since the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes, the insistence of the shareholders will be of no avail.

PRACTICAL QUESTION	
Quest-69	*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.*
Solution	As per Section 118 of companies act 2013, Minutes may be defined as a process of keeping of a record of proceedings at a meeting including decision arrived at such meeting. Every company shall maintain minutes of all proceedings of general meetings. Entries of the proceedings must be made in the books kept for that purpose within thirty days of every such meeting **Signature on minutes:-**Each page of every such minute book should be initialed or signed. ▪ Last page of book shall be dated and signed by the chairman of the same meeting within a period of thirty days ▪ In the event of death or inability of the chairman, by a director duly authorized by the board for the purpose. In given case, Mr. V, the Chairman of the said meeting left India to look after his father who fell sick in London, when minutes of the annual general meeting were not yet recorded and signed. Thus, we may conclude that in given case, minutes shall be signed by a director duly authorized by the board for the purpose.
Quest-70	*MN Limited held its Annual General Meeting on 27th March, 20011. Mr. M, the Chairman of the said meeting died on 1st April, 2008, when minutes of the annual general meeting were not yet recorded and signed. How would you deal with the situation? Would your answer be" different in case the meeting held on 27th March, 2008 was a Board meeting?*
Solution	As per Section 118 of companies act 2013, Minutes may be defined as a process of keeping of a record of proceedings at a meeting including decision arrived at such meeting. Every company shall maintain minutes of all proceedings of general meetings. Entries of the proceedings must be made in the books kept for that purpose within thirty days of every such meeting **Signature on minutes:-**Each page of every such minute book should be initialed or signed. ▪ Last page of book shall be dated and signed by the chairman of the same meeting within a period of thirty days ▪ In the event of death or inability of the chairman, by a director duly authorized by the board for the purpose. In given case, Mr. M, the Chairman of the said meeting died on 1st April, 2008, when minutes of the annual general meeting were not yet recorded and signed. Thus we may conclude that in given case, minutes shall be signed by a director duly authorized by the board for the purpose.

PRACTICAL QUESTION	
	Situation if meeting held on 27th March, 2008 was a Board meeting Section 118 also deals with maintaining of minutes of board meetings. Thus if the meeting in above case was a Board Meeting, then minutes shall be signed by Chairman of same meeting or chairman of succeeding meeting. In addition there is no time limit for signing minutes for meeting of Board.
Quest-71	*The Board of Directors of Alltronix Ltd, have passed resolution to the effect that no member who is indulging in activities detrimental to the interest of the company be permitted to examine the records or obtain certified copies thereof. A member of the Company, considered by the Company to be acting against the interests of the Company, demands inspection of the register of members and minutes of General Meeting and certified true copies thereof. The Company refuses the inspection etc. on the strength of the resolution referred to above. Examine the correctness of the refusal by the Company referring to the provisions of the Companies Act, 2013.*
Solution	As per Section 118 of companies act 2013, Minutes may be defined as a process of keeping of a record of proceedings at a meeting including decision arrived at such meeting. Every company shall maintain minutes of all proceedings of general meetings. Entries of the proceedings must be made in the books kept for that purpose within thirty days of every such meeting According to the provisions contained in Section 119 (1) of the Companies Act, 1956, every member of the Company is entitled to inspect the Register of Members without payment of any fee subject to reasonable restrictions imposed by the company by its Articles. There is no qualification to this right granted to every member of the company and any resolution passed by the Board to the contrary cannot override the provisions of the Act and will therefore be null and void. Therefore the refusal of the company in the present case is illegal.
Quest-72	*30 out of 75 members of a company submitted a requisition for holding of an EGM. Main motto was there to remove Mr. Ram i.e. a managing director. Company fails to call the meeting consequently Requisitionists themselves called the meeting at the registered office of the company.* *On the appointed day, registered office was kept under lock and key was kept by Ram himself. Thus, members were obliged to hold the meeting elsewhere and adopted resolution removing the managing director from office. Is the resolution valid?*
Solution	**As per Section 100 of Companies Act 2013-** Extraordinary General Meeting may be called by ▪ Board, ▪ Requisitionist or ▪ Tribunal. Eligibility of members to call EGM:- **Case➔ A➔ For company having share capital-**Members holding at least *10% of the paid up share capital* of the company, **Case➔B➔ For company having no share capital-** Members having at least *1/10 of the total voting power*

PRACTICAL QUESTION	
	As per Companies (Management and Administration) Rules, 2014 Requisitionist shall be entitled to convene EGM. The notice of EGM by Requisitionist shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. — Requistionists should convene meeting at Registered office or in the same city or town where Registered office is situated, and such meeting should be convened on working day. In given case, since *Company fails to call the meeting consequently Requisitionist themselves convene the meeting at the registered office of the company.* *On the appointed day, registered office was kept under lock and thus members were obliged to hold the meeting elsewhere and adopted resolution removing the managing director from office.* Conclusion: - We may conclude that requirement to convene the meeting at registered office have been duly complied as law impose a restriction on convening of meeting only and there is no restriction on conducting the meeting at place other than registered office.
Quest-73	*The auditor of a company was not provided a notice of a general meeting of the company. Company contends that since no part of the business of that meeting concerned the auditor, no notice was required to be given to him, Advice? Whether Auditor is entitled to participate in the meeting*
Solution	**<u>As per Section 101 of Companies Act 2013</u>** The notice of meeting may be served ▪ Personally or ▪ Sent through post to the registered address of the members and in the absence of any registered office in India, to the address, within India furnished by him to the company for the purpose of serving notice to him or ▪ Through electronic mode. **<u>Section further requires that notice shall be send to</u>** (i) Every member of the company. (ii) Legal Representative/Official Assignees (iii) Auditor of a company (iv) Every director of company **Further As per Sec 146**, all notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor. **<u>In given case,</u>** *the auditor of a company was not provided a notice of a general meeting of the company, as Company contends that since no part of the business of that meeting concerned the auditor, no notice was required to be given to him*

PRACTICAL QUESTION	
	Conclusion- We may conclude that contention on part of company is not valid, as Auditor is entitled to received notice of meeting whether or not he is concerned with proposed agenda
Quest-74	*Jai Mata Di (Pvt.) Ltd. provides in the Articles of Association of the company, special requirements for the forms of proxy. 'Z', a member, submits a form of proxy to the company in the form given in Schedule MGT-11 of the Companies Act, 2013. The company rejects the proxy.*
Solution	As per Section 105 of Companies Act 2013 Every member who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself. **Legal Formalities regarding instrument Appointing Proxy-Proxy shall be appointed through a proxy form** ▪ In writing ▪ Signed by the member/his attorney ▪ (If the appointer is body corporate, the instrument should be under its seal) ▪ In Form specified under MGT-11 ▪ It should be submitted to the company, 48 hours before the meeting *In given case, Jai Mata Di (Pvt.) Ltd. provides in the Articles of Association of the company, special requirements for the forms of proxy. 'Z', a member, submits a form of proxy to the company in the form given in Schedule MGT-11 of the Companies Act, 2013, which was rejected by company.* **Conclusion: -**We may conclude that Company has to accept the proxy submitted as per Schedule MGT-11
Quest-75	*The chairman counts six votes in favour and seven against the resolution. Can the chairman cast his own vote, which he had not exercised earlier, in favour of the resolution and also casting vote which the Articles authorize and declare the resolution as passed?*
Solution	***Now try to make answer yourself through following steps*** Step-1-Mention provisions of Section 104 i.e. Chairperson and also mention right of voting available to chairperson Step-2-provide problem which exist in given case Step-3-Provide conclusion **Conclusion: -** Vote so cast by chairperson is not valid, since if a chairman wants to put his vote he shall cast it along with other members, but not after declaration of result.

PRACTICAL QUESTION	
Quest-76	*The paid-up share capital of ABC Limited is ₹5 lakhs consisting of 50,000 equity shares of ₹10 each fully paid-up. Certain members of the company holding the following shares requisitioned an extraordinary general meeting on 1-2-2000:* *A 2,250 shares* *B 2,000 shares including 500 bonus shares* *C 1,000 shares including 500 right shares.* *The directors have failed to call the meeting on the pretext that the articles have not permitted the same. What is the course of action open to the aforesaid members?*
Solution	As per Section 100 of companies act 2013, Extraordinary General Meeting may be called by • **Board Suo motto**- The Board may, whenever it thinks fit, call an extraordinary general meeting. Wherein notice of 21 clear days shall be provided to members • **Requisitionist** – Eligible requisitionist may submit requisition for convening such meeting. *If board failed to proceed on such requisition, requisitionist may proceed to convene meeting u/s 100(4). Any such EGM u/s 100(4) by requisitionist shall be conducted within 3 months from submission of requisition to board of directors. For EGM u/s 100(4), procedure prescribed under company (Management and administration) rules 2014 shall be complied* • **Tribunal.-**May also conduct such meeting u/s 98, if it become impracticable to conduct such meeting Section 100 further provide eligibility of requisitionist to convene such meeting, which shall be Case➔ 1➔ For company having share capital Members holding at least 10% of the paid up share capital of the company, Case➔2➔ For company having no share capital Members having at least 1/10 of the total voting power In given case, certain members holding the following shares requisitioned an extraordinary general meeting for ABC Limited A 2,250 shares B 2,000 shares including 500 bonus shares C 1,000 shares including 500 right shares. **Conclusion: -** Based upon the above provisions, we may conclude that in aggregate since all A. B & C are holding more than 10% of share capital of company (i.e.5250 shares @ Rs 10 each out of 50,000 share of Rs 10 each), thus directors were liable to convene said meeting due to refusal by directors in such convening, requisitionist may convened the meeting u/s 100(4)

PRACTICAL QUESTION	
Quest-77	*A, a non-member of XYZ Ltd, had been appointed as a director of the company. Later on, he became Chairman of the company. In an annual general meeting of XYZ Ltd., A presided over the meeting. Z, a member of the company, objected to his chairmanship on the ground that A is not a member of the company. Discuss the validity of Z's claim.*
Solution	***Try to make answer yourself through following steps*** Step-1-Mention provisions of Section 104 i.e. Chairperson and how he can be appointed Step-2-provide problem which exist in given case Step-3-Provide conclusion **Conclusion:** -Company may mention name of any person as their chairman in their AOA. Thus, it is not mandatory that such person shall be a member only, hence claim by Z is not valid
Quest-78	*Notice of meeting by electronic mode is not an ordinary notice. Comment on this statement*
Solution	**This statement is true, since notice of meeting wherein E-Voting facility as provided u/s 108 is available shall also includes the particulars such as:-** (a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting; (b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting; (c) that the members who have cast their vote by remote c-voting prior to the meeting may also attend the meeting but shall not been titled to cast their vote again; **In addition notice shall also: -** (a) indicate the process and manner for voting by electronic means; (b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting; (c)provide the details about the login ID; (d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.
Quest-79	*Whether company can withdraw the resolution proposed for voting by electronic mode*
Solution	**As per Sec 108 read with Rule 20-** are solution proposed to be considered through voting by electronic means shall not be withdrawn.
Quest-80	*Discuss the validity of Notice of meeting as dispatched to members* *A company want to pass a resolution for alteration in its object clause, which require special resolution as per Sec 13 of Companies Act 2013. Requirement of proposed agenda was specified in agenda convening meeting along with explanatory statement, however requirement to pass S/res was not mentioned in notice*
Solution	As per Section 114(2) of the Act, a resolution shall be a special resolution, when– a. The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution **Thus in above case, notice of meeting was invalid**

PRACTICAL QUESTION	
Quest-81	*Z Ltd i.e. a listed company submitted their Annual Return, however office of ROC refused to accept such Return stating that it has not been signed by authorized persons on behalf of company. In light of provisions of companies Act 2013 states* *1. When Annual Return shall be submitted* *2. In case of Listed Company, by whom its shall be signed* *3. Also prescribe the relevant form no*
Solution	Above case is based upon the provisions of sec 92 of companies act 2013 1. Every company shall file with the Registrar a copy of the annual return, within 60days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting 2. As per the provisions of this section, the annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act. 3. Every company shall prepare its annual return in Form No. MGT.7.
Quest-82	*M.H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M.H. Company Limited Complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M.H. Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain fully*
Solution	According to Section 102 an explanatory statement shall be annexed to every notice if it proposes any special business in upcoming meeting. Explanatory statement is the responsibility of BOD. If any notice is issued without providing such statement, then it shall be considered as Invalid Notice In given case, notice so issued shall be taken as invalid notice as it does not contain an explanatory statement
Quest-83	*Annual General Meeting of a Public Company was scheduled to be held on 15.12.2003. Mr. A, a shareholder, issued two Proxies in respect of the shares held by him in favour of Mr. 'X' and Mr. 'Y'. The proxy in favour of 'Y' was lodged on 12.12.2003 and the one in favour of Mr. X was lodged on 15.12.2003. The company rejected the proxy in favour of Mr. Y as the proxy in favour of Mr. Y was of dated 12.12.2003 and thus in favour of Mr. X was of dated 15.12.2003. Is the rejection by the company in order?*
Solution	As per Section 105 of the Companies Act, 2013, a proxy should be deposited 48 hours before the time of the meeting. In the given case, the proxies should have, therefore, been deposited on or before 13.12.2003 (the date of the meeting being 15.12.2003). X deposited the proxy on 15.12.2003. Therefore, proxy in favour of Mr. X has become invalid. Thus, rejecting the proxy in favour of Mr. Y is unsustainable. Proxy in favour of Y is valid since it is deposited in time.

PRACTICAL QUESTION	
Quest-84	*Zenab Limited held its Annual General Meeting on September 15, 2016. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2016, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.*
Solution	**Given problem is based on Section 118 of companies Act 2013** As per this Section, every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot **within thirty days of the conclusion of every such meeting concerned**. Minutes kept shall be evidence of the proceedings recorded in a meeting. Further as per Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by the chairman of the same meeting or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose. Conclusion:- Thus , in above case we may conclude that the minutes of the meeting can be signed in the absence of Mr. Venkat, by any director who is authorized by the Board.
Quest-85	*Glowing Products Ltd. wishes to sell one of its line of Business and decides to call an extra ordinary general meeting (EGM) and to pass a resolution thereat. State the material facts to be set out in the statement to be annexed to the notice of the EGM on this special business to be transacted at the meeting.*
Solution	As per Section 102(1) of Companies Act, 2013 explanatory statement shall includes: (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of- (i) every director and the manager, if any; (ii) every other key managerial personnel; and (iii) relatives of the persons mentioned in sub-clauses (i) and (ii); (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. Further, where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is atleast 2% of the paid up share capital of that company, also be set out in the statement.

PRACTICAL QUESTION	
Quest-86	*The date of approval of financial statements by the Board of Directors of KMP Ltd. is 17thJuly, 2016 and the date of notice of Annual General meeting (AGM) is 25th August, 2016. Accountant of KMP Ltd. has advised that the time gap between date of approval of financial statements by the Board of Directors and the date of notice of AGM should be 45 days. The Directors have approached you to advise them regarding the same in view of the provisions of Companies Act, 2013.*
Solution	As per the provisions of Section 101 of the Companies Act, 2013, a general meeting of a company may be called by giving at least clear 21 days' notice. However, the Companies Act, 2013 does not prescribe the time limit between the date of approval of financial statements by the Board of Directors of a company and the date of notice of Annual General Meeting. Thus, in the given question, Board of directors of KMP Ltd. should ensure that the gap between the board meeting in which the financial statements are approved and the AGM, shall contain a minimum gap of 21 clear days, unless the meeting is at a shorter notice.
Quest-87	*Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.* (i) *In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.* (ii) *In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.*
Solution	As per the provisions of Section 109 of the Companies Act, 2013 **Order of demand for poll by the chairman of meeting**: A poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:- (a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power. **Withdrawal of the demand**: The demand for a poll may be withdrawn at any time by the persons who made the demand. Hence, on the basis on the above provisions of the Companies Act, 2013: (i) The chairman cannot reject the demand for poll subject to provision in the articles of company. (ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

PRACTICAL QUESTION	
Quest-88	*Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid.*
Solution	As per Section 106 of the Companies Act, 2013, articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien. In the given case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting may refuse him the right to vote at the meeting and Mr. Pink's contention is not valid.
Quest-89	*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.*
Solution	As a general practice, to avoid any confusion, the resolutions are generally moved separately in the annual general meeting. However, there is no restriction in companies Act 2013 stating that if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any. The only occasions, where law specifically requires a resolution to be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution. Thus, in the given case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.
Quest-90	*The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.*
Solution	According to section 100 of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members. As per Section 103 of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, in the given case, meeting shall stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

PRACTICAL QUESTION	
Quest-91	*Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.* *In an Annual General Meeting of Vrinda Ltd. having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.*
Solution	As per section 109 of the Companies Act, 2013 ***Demand of poll may be made by*** **(a)In the case a company having a share capital,** by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and **(b) in the case of any other company,** by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.
Quest-92	*Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?*
Solution	As per Section 67 of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company. However, section 67 makes an exception by allowing companies to give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company Thus, in given case Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided amount of loan shall not exceed 6 months salary of an employee.

CHAPTER 9

Dividend

PRACTICAL QUESTION	
Quest-1	*The shareholders at an annual general meeting passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution under the Companies Act, 2013.*
Hint	As per Regulation 80 of Table F, the company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. Thus we may conclude that shareholder cannot pass a resolution for payment of dividend at higher rate
Quest-2	*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 Annual 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 the Companies Act, 2013, state:* *(i) Whether the act of directors is in violation of the provisions of the Act and also the consequences 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 shareholder?*
Solution	According to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, **if he is knowingly a party to the default,** is liable for the punishment under the said section. In the given case, the Board of Directors of XYZ Company Limited at its meeting decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result dividend was paid to shareholders after 45 days. Thus, based on above situation, we may conclude as follow:- (i)The Board of Directors of XYZ Company Limited is in violation of section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company. **Consequences:** The following are the consequences for the violation of above provisions: (a)every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to 2years and with fine which shall not be less than one thousand rupees for every day during which such default continues; and the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

PRACTICAL QUESTION	
	(b)If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence as per section 127 of the Companies Act, 2013.
Quet-3	*The Board of Directors of ABC Limited 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.*
Solution	**Given problem is based on provisions of Section 123(6) of the Companies Act, 2013** According to said section, a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares. In the given instance, the Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. **Conclusion: -**Based upon the above provision, declaration of dividend by the ABC Limited is not valid.
Quest-4	*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 the year ended 31st March, 2015, 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 2014-15 as per the provisions of the Companies Act, 2013.*
Hint	**As per Rule 3 of the Companies (Declaration and Payment of Dividend) Rules), 2014**, A company may declare dividend out of surplus subject to the fulfillment of the following conditions: (a)The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year; Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year. (b)The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement; The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared; (c) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement. In the given case therefore, the company can declare a dividend of 20% provided balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

PRACTICAL QUESTION	
	Thus, in this case company shall put up the Dividend recommended by Board for the approval of the members at the Annual General Meeting since the authority to declare lies with the members of the company.
Quest-5	*The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2014. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30th June, 2014. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum 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.*
Solution	Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period. Under section 127 where a dividend has been declared by a company but has not been paid within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend: (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to 2 years and with fine which shall not be less than one thousand rupees for everyday during which such default continues; and (b) the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues. Therefore, in the given case Mr. Rajan will not succeed in his claim for 20% interest as the limit under section 127 is 18% per annum.
Quest-6	*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?*
Solution	**Given problem is based on provisions of Section 123(3) of the Companies Act, 2013** According to this section, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared. However, in case the company has incurred loss during the current financial year up to the end of quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years. In the given case the company is facing loss during the current financial year 2015-16. In the immediate preceding three financial years, the company declared dividend at the rate of 8%, 10% and 12%. Conclusion:-Based upon the above provisions, we may conclude that 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 [i.e. 8+10+12=30/3=10%]. Therefore, decision of Board of Directors to declare 12% of the interim dividend for the current financial year is not tenable.

PRACTICAL QUESTION

Quest-7

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 analyses these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

Solution

Both situations are based on provisions of section 127 of Companies Act 2013

(i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(ii) Section 127also provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

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

Quest-8

Blacksmith Coal Limited suffered losses in the first and second quarter of the financial year 2015-16. In the third quarter of the year company has earned large amount of profits. In order to maintain credibility of the company, the Board of Directors declares an interim dividend at the rate of 25 percent on the paid-up equity share capital. The Managing Director of the company gives the Board the following details regarding the dividend declared in the previous 4 years:

Financial year ending 31st March	***Rate of Dividend declared***
2012	*15%*
2013	*15%*
2014	*15%*
2015	*30%*

Examining the provisions of the Companies Act, 2013, decide the validity of the Board's declaration of 25% interim dividend as stated above.

Solution

Given problem is based on provisions of Section 123(3) of the Companies Act, 2013

According to this section, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

PRACTICAL QUESTION	
	However, in case the 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. Thus, after taking into account the above provisions, the declaration of interim dividend at the rate of 25% is violative of the provisions of the Act and therefore, invalid for there as on s that the rate of dividends declared is in excess of the average profits of the preceding three years, which is 20% [(15%+15%+30%)/3]. The Interim dividend proposed to be declared should not be more than 20 percent.
Quest-9	*Mr. Ramesh had purchased shares from Mr. Bhanu on 31st December, 2015. He applied to the company for the transfer of shares in his name but the company failed to register the shares in his name. On 20th January, 2016, the company declared dividend. Referring to the provisions of the Companies Act, 2013, comment whether Mr. Ramesh, is entitled to receive the dividends?*
Solution	**Given problem is based on provisions of Section 126 of the Companies Act, 2013** As per this section , where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, the company shall transfer the dividend in relation to such shares to the Unpaid Dividend Account referred in section 124 unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer. Applying the above provisions to given situation, the company shall transfer the dividend in relation to Mr. Ramesh's share to the unpaid dividend account unless the company is authorised by Mr. Bhanu, the registered holder of such shares, in writing to pay such dividend to Mr. Ramesh, the transferee, specified in the instrument of transfer.
Quest-10	*XYZ, a Government Company(100% paid up capital is held by a State Government) has been declaring dividend at the rate of 20% during the last 3 years. The Company has not made adequate profits during the year ended 31st March, 2015, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. State in the light of the Companies Act, 2013 whether the XYZ company can declare dividend for the year 2014-15.*
Solution	**Given problem is based on provisions of Section 123(1) of the Companies Act, 2013** As per the second proviso to section 123(1) of the Companies Act, 2013, where a company, owing to inadequacy or absence of profits in any financial year, proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made only in accordance with prescribed ***rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.*** However as per the Notification by MCA, this proviso shall not apply to a Government Company where the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments. In the given case, therefore, the XYZ, a Government Company cannot declare dividend out of accumulated Reserves in the financial year 2014-15.

PRACTICAL QUESTION	
Quest-11	*Mr. Representative had purchased shares from Mr. Owner on 30th November 2015. He applied to the company for the transfer of shares in his name but the company failed to register the shares in his name. On 20th January 2016, the company declared dividend. Referring to the provisions of the Companies Act, 2013, comment whether Mr. Representative is entitled to receive the dividends?*
Solution	**Given problem is based on provisions of Section 126 of the Companies Act, 2013** As per this section , where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, the company shall transfer the dividend in relation to such shares to the Unpaid Dividend Account referred in section 124 unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer Accordingly in the given situation, Mr. Representative is entitled to receive the dividend. The company shall transfer the dividend in relation to Mr. Representative's share to the Unpaid Dividend Account unless the company is authorized by Mr. Owner, the registered holder of such shares, in writing to pay such dividend to Mr. Representative, the transferee, specified in the instrument of transfer.
Quest-12	*Adarsh Ltd. declared the dividend at the rate of 8% to their shareholders. Many shareholders failed to claim the payment of dividend. Examine the legal position in the following situations -* *(i) What shall be duty of the company where the payment of dividend have not been claimed by the shareholders.* *(ii) Where the company put the unpaid dividend amount in circulation for the business purpose.*
Solution	According to the section 124 of the Companies Act, 2013 where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account. **Default in transferring of amount:** If any default is made in transferring the total amount as referred above or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them. (i) Where the payment of dividend have not been claimed by the shareholders, there the company Adarsh Ltd. shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of unpaid/ unclaimed dividend to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

PRACTICAL QUESTION	
	(ii)Since the Adarsh Ltd. put the unpaid dividend amount in circulation for the business purpose, it is considered as default made on the part of the company in transferring the total amount to the Unpaid Dividend Account of the company. Here the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent per annum.
Quest-13	*R Limited did not have sufficient profits during the preceding financial year. The Board of Directors of the company propose to declare dividend out of the accumulated profits earned during the previous years which were transferred to some other reserves other than free reserves. Examine the validity of the above act referring to the provisions of the Companies Act, 2013.*
Solution	As per section 123(1) of the Companies Act, 2013, where a company, owing to inadequacy or absence of profits in any financial year, proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made only in accordance with prescribed rules of the Companies (Declaration and Payment of Dividend) Rules, 2014. Such dividend shall be declared or paid by a company only from its free reserves. No other reserve can be utilized for the purposes of declaration of such dividend. Hence the decision of the Board of Directors of R Ltd. is not valid to declare dividend from any reserve other than free reserves.
Quest-14	*You are required to examine with reference to the provisions of the Companies Act, 2013 the following issues pertaining to declaration and payment of dividend:* *(i) Brix Limited has earned a profit of ₹ 1,000 crore for the financial year 2016-17. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves of the company out of the profits earned. Can Brix Limited do so?* *(ii) Wilson Limited is facing loss in business during the current financial year 2016-17. 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. Is the act of Board of Directors valid?* *(iii) The Director of Som Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the Annual General Meeting of the company held on 20th September, 2017. The Directors declared the approved dividends.* *Mr. Ninja was the holder of 1,000 equity shares on 31st March, 2017, but he has transferred the shares to Mr. Raj, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend.* *(iv) Mr. Alok, holding equity shares of face value of ₹ 10 lakh has not paid an amount of ₹ 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?*

PRACTICAL QUESTION	
Solution	(i) The amount to be transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its Board of Directors. The company is free to transfer any part of its profits to reserves as it deems fit. There is no restriction to transfer any specific amount (i.e. even no amount can be transferred) to the reserves before declaration of dividend. (ii) 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 [i.e. (8+10+12)/3 = 30/3 =10%]. Therefore, decision of Board of Directors to declare 12% interim dividend for the current financial year is not tenable. They can declare a maximum 10% interim dividend. (iii) According to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Mr. Ninja, the holder of equity shares transferred the shares to Mr. Raj whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend. (iv) Yes, as per law, where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case the dividend can be lawfully adjusted by the company against any sum due to it from the shareholder. Thus, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. Alok.
Quest-15	*Examine the validity of given situations as per the Companies Act, 2013:* *(i) A company wants to transfer more percentage of profits to reserves than it had transferred in the previous year.* *(ii) A company wants to declare dividends out of past reserves instead of current year profits.*
Solution	Section 123 of the Companies Act, 2013 deals with the provision related to the declaration of dividend. (i) The first proviso to 123 (1) of the Companies Act, 2013 provides that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, under the Companies Act, 2013 the amount transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its Board of Directors. Therefore, the company is free to transfer any part of its profits to reserves as it deems fit. (ii) The second proviso to section 123 (1) of the Companies Act, 2013 permits a company to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves subject to the rules prescribed in this behalf. Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 provides for the declaration of dividend out of reserves as under: *(1) The rate of dividend declared does not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.*

PRACTICAL QUESTION	
	However, this rule will not apply if a company has not declared any dividend in each of the three preceding financial year. *(2)The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to 1/10th of the sum of its paid-up capital and free reserves as appearing in the latest audited financial statement. The amount so drawn must first be utilized to set off losses incurred in the financial year before any dividend in respect of equity shares is declared.* *(3)The balance of reserves after such drawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.*
Quest-16	*Alma limited proposes to transfer more than 10% of the profits of the company to the reserves for the current year, before the declaration of dividend @ 12%. Is Alma Limited allowed to do so?*
Solution	The company is free to transfer any part of its profits to reserves as it deems fit.
Quest-17	*Section 8 companies are also entitled to declare dividend to their members. Comment on this statement*
Solution	***This statement is incorrect.*** As per section 8(1), the companies having license under Section 8 i.e. companies which are formed with Charitable Objects, etc. are prohibited from paying any dividend to its members. These companies are intended to be applied only in promoting the objects of the company.
Quest-18	*Referring to the provisions of the Companies Act, 2013, examine the validity of the Following* *The Board of Directors of ABC Limited 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.*
Solution	As per Section 123(6) of the Companies Act, 2013, a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74(Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares. In the given case, the Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Thus, we may conclude that, declaration of dividend by the ABC Limited is not valid.

PRACTICAL QUESTION	
Quest-19	*PET Ltd., incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. Inspite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of PET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.*
Solution	**According to section 123(3) of the Companies Act, 2013,** Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared. However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years. In given case, Interim dividend by PET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years i.e.15%. Thus decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

CHAPTER 10 Accounts of Company

PRACTICAL QUESTION	
Quest -1	*The Board of directors of Bharat 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 its books of account 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. Advise.*
Solution	**According to section 128(1) of the Companies Act, 2013** Every company shall prepare and keep at its registered office • books of account and other relevant books and papers and • financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any. Such books of Accounts shall be kept on accrual basis and according to the double entry system of accounting. The company may also keep all or any of the books of accounts at any other place in India as the Board of directors may decide. In such a case, the company should file with the Registrar of Companies, a notice in writing giving the full address of that place within 7 days of the Boards' decision. (AOC-5) Therefore, the Board of Bharat Ltd. is empowered to keep its books of account at its corporate office in Mumbai by following the above procedure.
Quest -2	*Rajasthan Textiles Limited (RTL) is a company in India with a subsidiary company M and subsidiary company S in USA. Decide the liability of RTL with respect to the filing of the financial statements under the Companies Act, 2013.*
Solution	**<u>As per the provisions of Section 129 of Companies Act 2013</u>** At every annual general meeting of a company, the Board of directors of the company shall lay before the company the financial statements for the financial year. • Where a company has one or more subsidiaries or associate, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries and associates in the same form and manner as that of its own. • The Consolidated financial statements shall also be laid before the annual general meeting of the company along with the laying of its own financial statement.

PRACTICAL QUESTION	
	• The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in *Form AOC-1.* Based upon the provisions of section 129, we may conclude that RTL (holding company of M & S) is required to prepare in addition to its own financial statements, a CFS of the company and of all the subsidiaries in the same form and manner as that of its own. And thus, the CFS prepared by RTL shall include the financial statement of RTL and of its subsidiaries M and S in USA.
Quest -3	*Mr. D, one of a Director in PQR Limited was not satisfied with the performance of its subsidiary company in financial matters. He authorized Mr. F, a financial expert, to inspect the books of accounts of the company on his behalf. Decide, under the provisions of the Companies Act, 2013 whether the said company can refuse to allow Mr. F to inspect the books of accounts of its subsidiary company?*
Solution	**<u>As per Section 128 of the Companies Act, 2013,</u>** Books of account and other documents maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to conditions as prescribed under Rule 4 of the Companies (Accounts) Rule, 2014. Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorized in this behalf by a resolution of the Board of Directors. In the given case, Mr. D being the director in PQR Limited authorized Mr. F to inspect the books of accounts of its subsidiary company. As per the above provision, the inspection in respect of any subsidiary of the company shall be done only by the person authorized in this behalf by a resolution of the Board of Directors. Since in the given problem, Mr. F was authorized by the Mr. D at its own without seeking approval of the Board of Directors to inspect the books of accounts of its subsidiary company. **<u>So, company can refuse to allow Mr. F to inspect the books of accounts of its subsidiary company.</u>**
Quest -4	*XYZ Ltd. wants to maintain its books of account on cash basis.*
Solution	**Mention the whole provision of Section 128** The Companies Act, 2013 vide section 128(1) states that the books of accounts must be maintained on accrual basis and according to the double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement. Hence, it is clear that XYZ Ltd. cannot maintain its books of accounts on cash basis.

PRACTICAL QUESTION	
Quest -5	*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 Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?*
Solution	Under section 134(1) of the Companies Act, 2013 the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least: (a) The chairperson of the company where he is authorized by the Board; or (b) Two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, and (c) the Chief Financial Officer and the company secretary of the company, wherever they are appointed. In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.
Quest -6	*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 have been avoiding declaration of dividend due to alleged inadequacy of profits. Unconvinced, Mr. Bhagvath seeks permission of the Company to allow him to examine the Books of Accounts, which is summarily rejected by the Company. Examine and advise the provisions relating to inspection of Books of Accounts and remedy available.*
Solution	**<u>As per Section 128 of the Companies Act, 2013,</u>** Books of account and other documents maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to conditions as prescribed under Rule 4 of the Companies (Accounts) Rule, 2014. Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorized in this behalf by a resolution of the Board of Directors. Thus, we may conclude that Mr. Bhagvath has no right to carry out an inspection of the books of accounts of the company even though he holds 76% of the equity shares of M/s Renowned Company Ltd. **According to Regulation 89(ii) of the Table F** of the Companies Act, 2013, a member shall have right of inspecting any account or book or document of the company only if conferred by law or authorized by the Board or by the company in general meeting

PRACTICAL QUESTION	
Quest -7	*The directors of Element Ltd. Want to voluntary revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.*
Solution	As per Sec 131 of Companies Act 2013 (1)If it appears to the directors of a company that— (a) the financial statement of the company; or (b) the report of the Board, do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar: Provided that the Tribunal shall give notice to the Central Government and the Income-tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made. **(2) Scope of revision** Where copies of the previous financial statement or report have been sent out to members or delivered to the registrar or laid before the company in general meeting, the revisions must be confined to— (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and (b) the making of any necessary consequential alternation.
Quest -8	*DJA Company Limited, incorporated under the provisions of the 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 do not comply with the Accounting Standards?*
Solution	**(i) In accordance with the provisions of Section 129 of the Companies Act, 2013** Where a company has one or more subsidiaries or associate companies, it shall, in addition to its own financial statements, prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid

PRACTICAL QUESTION	
	before the annual general meeting of the company. The consolidated financial statements shall also be laid before the AGM of the company along with the laying of its own financial statement. The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiaries in Form AOC-1. (ii)***According to Companies (Accounts) Rules, 2014, the consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III to the Act and the applicable accounting standards.*** However, for a company which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions of consolidated financial statements provided in Schedule III to the Act The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements. (iii)If the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements the following viz. (a) The deviation from the accounting standards, (b) The reasons for such deviation, and (c) The financial effects, if any, arising out of such deviation.
Quest -9	Mary Ltd is a listed company having turnover of₹ 1200 crores during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. The company finalized the project under its CSR initiatives which require funds @ 5% of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise the company.
Solution	**<u>In terms of Section 135 of the Companies Act, 2013</u>** The Board of every company covered u/s 135, shall ensure that the company spends, in every Financial year at least 2 percent of net profits of the company made during the immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending. Hence, such excess expense will not be counted in subsequent financial years as a part of CSR expenditure.
Quest -10	*S Ltd is subsidiary of H Ltd, Which itself is subsidiary of A Ltd. Management of H Ltd has decided not to prepare consolidated financial statement as the consolidation will be done at level of A Ltd. Discuss the decision of Management in light of provisions of Companies Act 2013.*
Solution	As per the provisions of Section 129(3) • Where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own. • The Consolidated financial statements shall also be laid before the annual general meeting of the company along with the laying of its own financial statement.

PRACTICAL QUESTION	
	• The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC-1. • Even though proviso to said sub section require that No requirement of consolidation on part of a company shall arise, if following conditions are satisfied:- (i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing, do not object to the company not presenting consolidated financial statements; (ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and (iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards. In given case, H Ltd has decided not to prepare consolidated financial statement as the consolidation will be done at level of A Ltd i.e. Ultimate Parent company **Conclusion: -** Based upon the above provisions, we may conclude that H Ltd may be exempted from such requirement of preparing Consolidated financial statement, if all above conditions are satisfied
Quest -11	*A Ltd is filing its Financial statement for past 10 years. Suddenly management has realized one of its error, which they are committing of treating Capital Expenditure as revenue. Now they want to rectify said mistake. Decide in light of Companies Act 2013, is there any option available to them.*
Solution	***Given problem is based on provisions of Section 131 of Companies Act 2013*** According to this section, if it appears to the directors of a company that— (a)the financial statement of the company; or (b) the report of the Board, do not comply with the provisions of section 129 or section 134,they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made. In given case, Management of A ltd want to rectify 1 of their mistake which they are committing over a period of time **Conclusion: -** Based upon the provisions of Section 131, we may conclude that A Ltd may revise its financial statement provided 1. Revision may be in respect of any of 3 preceding 3 Financial Years 2. Reason for such revision shall be disclosed in boards report

PRACTICAL QUESTION	
Quest 12	*Z ltd is a Listed company with Paid up capital of Rs 10 Cr. 1 of the member raised an objection to Board Report as finalized and contended that the same does not reflect evaluation on performance of Management of company. Provide your opinion.*
Solution	As per the provisions of Section 134(3) A report by its Board of Directors in case of • Every listed company and • Every other public company having a paid up share capital of 25 crore rupees or more calculated at the end of the preceding financial year shall include, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors. **Conclusion:-** Thus we may conclude that Board Report of Z Ltd is incomplete
Quest 13	*Expenditure incurred by Foreign Holding Company for CSR activities in India on behalf of its Indian Subsidiary would entitled the Indian subsidiary to claim it as CSR Expenditure.*
Solution	***As per the clarification by MCA on Section 135 of Companies Act 2013*** Any expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.
Quest 14	*A Ltd has established a school for children of their employees. They want to consider entire expenditure on Opening and maintenance as part of their CSR expenses. Decide. Also describe different activities which would not qualify as CSR expenses.*
Solution	As per the clarification by MCA, Any CSR projects or programs or activities that benefit only the employees of the company and their families would not qualify as CSR activity. In addition, following activities shall also not form part of CSR activities:- • One-off events such as marathons/ awards/ charitable contribution/advertisement/ sponsorships of TV programmes etc. • Expenses incurred by companies for the fulfillment of any other Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act, 2013, Apprentice Act, 1961 etc.) • Contribution of any amount directly or indirectly to any political party. • Activities undertaken by the company in pursuance of its normal course of business. • The project or programmes or activities undertaken outside India.
Quest 15	*H Ltd is having net profit of Rs 4 Cr and S ltd i.e. Subsidiary of H Ltd is having a net profit of Rs 3 Cr. State whether Section 135 is applicable to them or not.*
Solution	As per the clarification by MCA, Holding or subsidiary of a company does not have to comply with section 135(1) unless the holding or subsidiary itself fulfills the criteria. Thus, we may conclude that Section 135 is not applicable to Both H ltd and S Ltd as both of them failed to satisfy the requirement of said section in their own

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Quest 16	*H Ltd is having subsidiary company in USA. Company H Ltd is listed in India. Company provides its Financial statement at its website, however refused to provide separate financial of its foreign subsidiary of USA. In response to a query from 1 of its member, it replies since, subsidiary in US is not required to get its accounts audited, thus there is no requirement to provide its financial on its website. Provide your comment on above decision by H Ltd.*
Solution	**<u>Given problem is based on provisions of Section 136 of Companies Act 2013</u>** According to this Section • A copy of the financial statements, including consolidated financial statements, if any, auditor's report and • every other document required by law which are to be laid before a company in its general meeting, shall be sent to every member of the company, • to *every trustee for the debenture-holder of any debentures* issued by the company, and *to all persons other than such member or trustee*, not less than 21 days before the date of the meeting As per proviso to subsection (1), every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any: Provided also that a listed company which has a subsidiary incorporated outside India i.e. "foreign subsidiary" which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website. **<u>Conclusion:-</u>** Based upon the above provision, we may conclude that H Ltd is required to provide un-audited financials in respect of its foreign subsidiary and the same shall be translated in English if not already in English language
Quest-17	*Whether a financial statement can be send even at shorter notice. If yes then state the circumstances*
Solution	**<u>As per the provisions of Sec 136 of Companies Act 2013</u>** • A copy of the financial statements, including consolidated financial statements, if any, • auditor's report and • every other document required by law to be annexed or attached to the financial statements, • which are to be laid before a company in its general meeting, shall be sent to every member of the company, • to *every trustee for the debenture-holder of any debentures* issued by the company, and • *to all persons other than such member or trustee*, being the person so entitled, not less than 21 days before the date of the meeting:

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	Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall be deemed to have been duly sent if it is so agreed by members— *(a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or* *(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at the meeting* Thus, we may conclude that financial statement may be send even at shorter notice subject to consent of members as stated in sec 136
Quest-18	*Whether a listed company shall dispatch its financial statement to every members*
Solution	No, this statement is incorrect **<u>As per the provisions of Sec 136 of Companies Act 2013</u>** • In the case of a listed company, the provisions of Sec 136 shall be deemed to be complied with, • if the copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting and • a statement containing the salient features of such documents in the prescribed form (AOC-3) • are sent to every member of the company and to every trustee for the holders of any debentures issued by the company • not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements Thus listed company is not compulsory required to dispatch its financial statement individually to each of its members
Quest-19	*Company may allow restriction of its financial statement to its members; however, no inspection shall be allowed to members in respect of books of account*
Solution	This statement is correct. Provisions regarding inspection of Books of accounts are governed by Sec 128(3) of Companies Act 2013, whereby inspection of books of accounts shall be allowed to directors only. Thus, members are not normally allowed to inspect books of company. **Still above stated rule has certain exceptions and there are certain cases where even a member may inspect books of accounts**. 1. Inspection in respect of any subsidiary of the company shall be done only by the person authorized in this behalf by a resolution of the Board of Directors. 2. Regulation 89(ii) of Table F also allow facility to members On the other hand, Sec 136 is dealing with inspection of financial statement. As per this Section A company shall allow every member or trustee of the holder of any debentures

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	issued by the company to inspect the documents stated under section 136 at its registered office during business hours. Thus, we may conclude that *Company may allow restriction of its financial statement to its members; however, no inspection shall be allowed to members in respect of books of account*
Quest-20	*Drishti Ltd. Finalized its books of accounts as per the applicable provisions of the companies Act, 2013. It also filed the Income tax return for the assessment year 2016-2017 within the due date. The Income Tax Authorities found some irregularities in the said accounts and want the company to revise the accounts. Referring to the provisions of the Companies Act, 2013 advise whether and how the accounts of the company can be re-opened and revised.*
Solution	**As per section 130 of the Companies Act, 2013**, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by— (a) the Central Government, (b) the Income-tax authorities, (c) the Securities and Exchange Board, (d) any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that— *(i) the relevant earlier accounts were prepared in a fraudulent manner; or* *(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:* Court or the Tribunal shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and **shall take into consideration the representations**, if any, made by them. Section further states that the accounts so revised or re-cast, shall be final. ***No order shall be made under this section in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:*** So, the accounts of Drishti Limited can be re-cast and revised in the above manner.
Quest-21	*Hydra Clay Limited is having a foreign subsidiary company. The said Indian holding company failed to furnish particulars of its foreign subsidiary company in its Balance Sheet. Decide the liability of Hydra Clay Limited under the Companies Act, 2013.*
Solution	• Section 129 of the Companies Act, 2013 lays down that Where a company has one or more subsidiaries or associate, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries and associates in the same form and manner as that of its own. • The Consolidated financial statements shall also be laid before the annual general meeting of the company along with the laying of its own financial statement. • The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in *Form AOC-1*.

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	Requirement of this section has to be complied even if subsidiary is a foreign subsidiary Now this section further states that If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with (1) Imprisonment for a term which may extend to 1 year; or (2) Fine which shall not be less than ₹50,000 but which may extend to ₹5 Lakhs; or (3) Both with imprisonment and fine. Thus, in given case , we may conclude that in event of failure by Hydra Clay limited, penalty as specified in section 129 shall be levied
Quest-22	*Explaining the provisions of the Companies Act, 2013, answer the following:* *(i) Manner in which the companies are required to present the financial statements.* *(ii) What kinds of companies are exempted from the preparation of the above statements in terms of nature and the contents?* *(iii) State the consequences and the penalties in case the company does not comply with the accounting standards?*
Solution	As per the provisions of Sec 129 of Companies Act 2013, the financial Statements of a company shall be prepared in such a manner so that these: (a) Give a true and fair view of the state of affairs of the company or companies. (b) Comply with the accounting standards notified under Section 133 of the Act. (c) Shall be in the form or forms as may be provided for different class or classes of companies in Schedule III to the Act. (ii) The above provisions relating to nature and content of financial statement shall not apply to following companies: (a) Insurance companies. (b) Banking companies. (c) Company engaged in the generation or supply of electricity. (d) Any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company. (iii) According to section 129(5) of the Act, in case the financial statements of a company are not prepared in compliance with the Accounting Standards, the company shall disclose in its financial statements the following viz. (a) The extent to which the financial statements do not comply with Accounting Standards i.e. deviation from the Accounting Standards. (b) The reasons for such deviation i.e. what has led the company to deviate from the Accounting Standards. (c) The financial effects, if any, arising out of such deviation.

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	As per section 129, if a company contravenes the provisions relating to preparation of financial statements, the Managing Director, the Whole-time Director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with: (a) Imprisonment for a term which may extend to 1 year; or (b) Fine which shall not be less than ₹ 50,000 which may extend to ₹ 5 lacs; or (c) Both with imprisonment as well as the fine.
Quest-23	*State the circumstances where company may be exempted from requirement of preparing consolidated financial statement*
Solution	As per Section 129 of Companies Act 2013 • Where a company has one or more subsidiaries or associate, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries and associates in the same form and manner as that of its own. • The Consolidated financial statements shall also be laid before the annual general meeting of the company along with the laying of its own financial statement. **<u>However as per Rule 6 of Companies Accounts rules 2014</u>** No consolidation shall be required if following conditions are satisfied: - (i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements; (ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and (iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.
Quest-24	*Define functioning of **National Financial Reporting Authority***
Solution	Section 132 of Companies Act 2013 authorize Central Government that it may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act. **<u>National Financial Reporting Authority shall—</u>** (a) make recommendations to the Central Government on the **formulation and laying down of accounting and auditing policies and standards** for adoption by companies or their auditors, as the case may be; (b) monitor and enforce the **compliance with accounting standards** and auditing standards in such manner as may be prescribed;

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	(c) oversee the **quality of service of the professions associated with ensuring compliance with such standards,** and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and (d) perform **such other functions as may be prescribed.**
Quest-25	*Define Powers of* ***National Financial Reporting Authority constituted under Section 132 of companies Act 2013***
Solution	National Financial Reporting Authority shall— (a) have the power to investigate, either Suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949: Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section; (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— *(i) discovery and production of books of account and other documents* *(ii) summoning and enforcing the attendance of persons and examining them on oath;* *(iii) inspection of any books, registers and other documents* *(iv) issuing commissions for examination of witnesses or documents;* (c) where professional or other misconduct is proved, have the power to make order for— (A) imposing penalty of— *(I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and* *(II) not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;* (B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.
Quest-26	*Describe the main content of Boards Report*
Solution	Board of Directors report shall include — (a) The extract of the annual return as provided under sub-section (3) of section 92; (b) Number of meetings of the Board; (c) Directors' Responsibility Statement; (d) Details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government (e) the state of the company's affairs;

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	(f) the amounts, if any, which it proposes to carry to any reserves; (g) the amount, if any, which it recommends should be paid by way of dividend; (h) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report; (i) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year; (j) Every listed company and every other public company having a paid up share capital of 25 crore rupees or more calculated at the end of the preceding financial year shall include (as prescribed under the *Companies (Accounts) Rules, 2014*), in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
Quest-27	*Whether a holding or subsidiary of a company which fulfils the criteria under section 135(1) has to comply with section 135, even if the holding and subsidiary itself does not fulfill the criteria.*
Solution	Holding or subsidiary of a company does not have to comply with section 135(1) unless the holding or subsidiary itself fulfils the criteria individually
Quest-28	*Define the term "Books of Accounts"*
Solution	"Books of account" as defined in Section 2(13) includes records maintained in respect of— (a) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (b) all sales and purchases of goods and services by the company; (c) the assets and liabilities of the company; and (d) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.
Quest-29	*The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?*
Solution	As per Section 129 of the Companies Act, 2013at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Section 134 further provides that signed copy of every financial statement, including consolidated financial statement shall be issued, circulated or published along with a copy of: (a) any notes annexed to or forming part of such financial statement; (b) the auditor's report; and (c) the Board's report. **Conclusion: -** Thus, we may conclude that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. Thus, such an act of ABC Ltd,is not valid.

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Quest-30	*XYZ is the company who has not prepared and filed statements for the last 5 years, whether the current directors can sign all the financial statements for the past 5 years?*
Solution	**<u>As per section 134 of companies Act 2013</u>** Financial statements of the company shall besigned by • the chairperson of the company where he is authorised by the Board; or • two directors out of which one shall be managing director and • other the Chief Executive Officer, if he is a director in the company, • the Chief Financial Officer, if appointed; and • the company secretary of the company, wherever they are appointed. Therefore, if the financial statements are being prepared for the last 5 years in the current year, the current directors can sign the financial statements for the last 5 years.
Quest-31	*ABC Company is a one person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board 'report?*
Solution	In case of a One-Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.
Quest-32	*Define the different mode in which CSR activities may be undertaken by a company*
Solution	***Section 135 of companies Act 2013 read with Rule 4 of the Companies (CSR Policy) Rules, 2014 authorise the Board of a company to undertake its CSR activities approved by the CSR Committee, through*** (a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or along with any other company, or (b) a company established under section 8 of the Act or a registered trustor a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature: *Provided that- if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub- rule,* ***such company or trust or society shall have an established track record of three years in undertaking similar programs or projects;*** (3) A company may also collaborate with other companies for undertaking projector programs or CSR activities in such manner that the CSR Committees of respective companies are in a position to report separately on such projector programs in accordance with these rules.

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Quest-33	*Whether a company can undertake any CSR activity which is outside the purview of Schedule VII*
Solution	Activities which may be included by companies in their CSR Policies Activities as specified under Schedule VII only Statutory provision and provisions of CSR Rules, 2014, provides that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. Thus, we may conclude that no activity outside Schedule VII shall be allowed as CSR
Quest-34	*What would be the case, if company could not spend even 2% as required under Sec 135*
Solution	As per Section 135 of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of net profits of the company made during the immediately preceding financial years, in pursuance of its CSR policy. Even though there is no penal provision for non-compliance of Section 135, however section require that Board Report u/s 134 shall mention the fact of under spending along with its reasons
Quest-35	*The Annual General Meeting of R Ltd., for laying the Annual Accounts thereafter the year ended 31st March 2016 was not held. What remedies is available with the company regarding compliance of the provisions of section 137 of the Companies Act,2013 for filing of copies of financial statements with the Registrar of Companies? Will it make any difference in case the Annual Accounts were duly laid before the Annual General Meeting held on 27th September 2016 but the same were not adopted by the shareholders?*
Solution	As per sections 96 of the Companies Act, 2013Annual General Meeting of company was ought to be held by 30th September 2016. As per section 137(2) the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held i.e. by 30th October 2016 along with such fees or additional fees as may be prescribed. Now in the given case, since the Annual General Meeting has been held in time on 27th September2016, thus unadopted financial statements along with the required documents undersection 137 shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned annual general meeting for that purpose.

PRACTICAL QUESTION	
Quest-36	*ABC Ltd is an unlisted public company engaged in pharma sector and has paid up capital of rupees 10 crores and achieved turnover of rupees 200 crores during financial year 2015-16. Is it necessary for ABC Ltd to file its financial statement in XBRL mode?*
Solution	The following class of companies shall file their financial statement in XBRL(extensible Business Reporting Language) mode and by using the XBRL taxonomy: • all companies listed with any stock exchange(s) in India and their Indian subsidiaries; or • all companies having paid up capital of rupees 5 crores or above; or • all companies having turnover of rupees 100 crores or above; or • all companies which were covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011. However, Banking Companies, Insurance Companies, Power Companies and Non-Banking Financial Companies (NBFCs) and housing finance companies need not file financial statements under this rule. ABC Ltd is required to file its financial statement in XBRL mode.
Quest-37	*Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of ₹ 100 crore, net profit ₹ 3 crore, accumulated loss of ₹ 50 crore and securities premium ₹ 300 crore as per the audited accounts of the company for the Financial Year 2016-17.* *The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not.*
Solution	As per the provisions of Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having - (1) net worth of rupees 500 crore or more, or (2) turnover of rupees 1000 crore or more or (3) a net profit of rupees 5 crore or more *during immediate preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.* In the present case, turnover of Rera Ltd. is ₹ 100 crore,-net profit of ₹ 3 crore and net worth of ₹ 253 crore (Net profit + securities premium -accumulated loss= 3 + 300 – 50=253 crore). Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee. **Assumption used by ICAI:** -Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital.

PRACTICAL QUESTION	
Quest-38	*State any four contents of a Directors Responsibility Statement as required under Section 134 of the Companies Act, 2013.*
Solution	**The Directors' Responsibility Statement referred to in 134 shall state that—** (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures; (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period; (3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; (4) the directors had prepared the annual accounts on a going concern basis; (5) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively. Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; and (6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

CHAPTER 11

Audit & Auditor

PRACTICAL QUESTION	
Quest-1	*Explain how the auditor will be appointed in the following cases:* *(i) A Government Company within the meaning of section 394 of the Companies Act, 2013.* *(ii) The Auditor of the company has resigned on 31st December 2013, while the Financial year of the company ends on 31st March 2014.* *(iii) A company, whose shareholders include the following:* *(a) Bank of Baroda (A Nationalized 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*
Solution	(i) The appointment and re-appointment of auditor of a Government Company or a government-controlled company is governed by the provisions of section 139 of the Companies Act, 2013: **According to section 139(7**), the first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting. **According to Sec 139(5**), In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting. (ii) This situation relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. **As per section 139 (8)**, the Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board. Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

PRACTICAL QUESTION	
	(iii) In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company also not a deemed Government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply, thus in existing situation Auditor shall be appointed in accordance with Sec 139(1) or Sec 139(2).
Quest-2	*Parkash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September 2009. Initially, he accepted the appointment. But he resigned from his office on 31st October 2009 for personal reasons. The Board of directors seeks your advice for filling up the vacancy by appointment of Mr. Albert as auditor. Advise as per the provisions of the Companies Act, 2013.* *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.*
Solution	As per section 139(8) of the Companies Act, 2013, any casual vacancy in the office of an auditor shall in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting. In Given case Since the auditor has resigned, thus casual vacancy so created can be filled up by the Board appointing Mr. Albert. However, the appointment of Mr. Albert must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board. **<u>Situation where company want to remove Mr. Albert</u>** As per section 140(1) of the Companies Act, 2013, the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner: Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard. Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term: (a) The application to the Central Government for removal of auditor shall made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014 (b) The application shall be made to the Central Government within thirty days of the resolution passed by the Board. (c) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

PRACTICAL QUESTION	
Quest-3	*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 2014 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.*
Solution	As per the section 2(45) of the Companies Act, 2013," Government Company means any company in which not less than fifty-one per cent of the paid-up share capital is held by— (i) the Central Government, or (ii) by any State Government or Governments, or (iii) partly by the Central Government and partly by one or more State Governments, And the section includes a company which is a subsidiary company of such a Government company In existing case the holding of 25% shares of AMC Ltd. by the government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company. As per section 139 of the Companies Act, 2013, the appointment of subsequent auditor shall be by members of the company through ordinary resolution except in the case of the first auditors where the power to appoint the auditor vests with the Board of Directors. Therefore, the contention of Mr. Sanjay is not tenable since neither the company is a government company nor there is any provision in Companies Act requiring Special resolution for appointment of Auditor. Thus, appointment is valid under the Companies Act, 2013.
Quest-4	*Examine the validity of the following with reference to the provisions of the Companies Act, 2013: —* *EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September 2014. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of ₹ 1 lakh of EF Limited on 15th October 2014. But Naresh & Company continues to function as statutory auditors of the company.*
Solution	According to section 141(3) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014. In the case Mr. Naresh, chartered accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit. Thus Naresh & Company can continue to function as auditors of the Company, since shares as held by Mrs. Kamala are within the limit as prescribed under the Act

PRACTICAL QUESTION	
Quest-5	*Mr. Independent who is an individual auditor wants to compute the specified number of audits under the Companies Act, 2013 and for this purpose, he has drawn out a list of which identify, the company which shall be/not be taken into account for the purpose of calculating specified number of audits:* *(i) Audit of Private Company* *(ii) Guarantee companies not having share capital* *(iii) Audit of non-profit companies* *Further, he wants to know that as a member of the ICAI, whether there are any other restrictions on him as a member in the matter of inclusion/exclusion of audit of private companies for the purpose of calculating specified number of audit assignments. Advise.*
Solution	Sec 141 (g) any person holding appointment as its auditor of more than twenty companies other than one-person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees shall not be eligible for appointment as Auditor. Limit of 20 companies shall be for each auditor **Thus, we may conclude as follow: -** (i)Audit of Private Company – It shall be counted in total no of audit where the paid-up capital of Company exceeds Rs 100 Cr (ii)Guarantee companies not having share capital – If it is a public limited, then it shall be counted. However, the same shall not be counted if it is a private limited company (iii)Audit of non-profit companies If it is a public limited, then it shall be counted. However, the same shall not be counted if it is a private limited company and its paid-up share capital does not exceed Rs 100 cr
Quest-6	*An audit firm, comprising of two partners, holds office as auditor of 41 private companies out of which paid-up capital of 20 companies exceeds 100 Cr. Such audit firm wants to appoint as an auditor in XYZ Pvt. Ltd. Decide whether this is in consonance with the applicable law.*
Solution	Sec 141 (g) any person holding appointment as its auditor of more than twenty companies other than one-person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees shall not be eligible for appointment as Auditor. Limit of 20 companies shall be for each auditor In given case, an audit firm, comprising of two partners, holds office as auditor of 41 private companies out of which paid-up capital of 20 companies exceeds 100 Cr. Thus, such audit firm is eligible to be appointed as an auditor in XYZ Pvt. Ltd as including the proposed audit, overall limit of audit shall be within the allowed criteria
Quest-7	*The auditors of a company refuse to make their report on the annual accounts of a company before it is signed on behalf of the Board of directors. Advise the company.*
Solution	The auditor is right. Since accounts are presented to auditors only after they are approved by the Board and signed by authorized persons.

PRACTICAL QUESTION	
	The auditor is only expected to submit his report on the accounts presented to him for audit after conducting an examination of the necessary documents, analyzing relevant information and test checking accounting records in order to be able to form an opinion of the financial statements presented to him. In practice, the checking of accounts is already completed before accounts are approved by the Board. Auditor informally approves the draft account with notes etc., before the accounts are approved by the Board. However, auditor signs the accounts only after these are approved by Board and signed by persons authorized by Board of the company.
Quest-8	*On recommendation of the Board of Directors of DJA Company Limited, Mr. R is appointed at the company's Annual General Meeting held on 1st October 2014 as the company's auditor for a 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 an audit firm R & Associate is appointed as the company's auditor?*
Solution	Appointment of Auditor [Section 139 of the Companies Act, 2013 and the Companies (Audit and Auditors) Rules, 2014]: Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one-person companies and small companies) shall not appoint or re-appoint- (1) an individual as auditor for more than one term of five consecutive years; and (2) an audit firm as auditor for more than two terms of five consecutive years. The Companies (Audit and Auditors) Rules, 2014 has prescribed the following classes of companies for the purposes of section 139(2): (1) all unlisted public companies having paid up share capital of rupees 10 crore or more; (2) all private limited companies having paid up share capital of rupees 20 crore or more; (3) all companies having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more. In the above question, status of the company is not specified, whether listed or unlisted; amount of paid up share capital, public borrowings from financial institutions, banks or public deposits are not known; Thus, we are assuming that DJA Company Limited is a listed company or within the prescribed classes of companies specified under the above said Rules (i) As per the provisions of the Sec 139(2) of Companies Act, 2013, the appointment of Mr. R as auditor of the company for 10 years is not valid because an individual shall not be appointed as auditor for more than one term of five consecutive years. The said resolution is not valid. (ii)An audit firm can be appointed as an auditor for two terms of five consecutive years. This means that a firm can be appointed for five years and thereafter may be appointed/ reappointed for further five years. The total period for which a firm can be appointed is 10 years. A firm cannot be appointed as auditor for ten years by a single resolution. Thus, the appointment of R & Associate as the company`s auditor for ten years by a single resolution is not valid.

PRACTICAL QUESTION	
Quest-9	*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?*
Solution	As per Section 143 of the Companies Act, 2013 It is the duty of the auditor to make a report to the members of the company on the accounts examined by him and the balance sheet and the profit and loss account of the company and on every document, which is annexed to the balance sheet or profit and loss account laid before the company in general meeting. The auditor owes a duty to the members to state whether the accounts give a true and fair view of the affairs of the company at the end of the financial year and of the profit and loss account of the year. The duty of an auditor is to give information in direct and express terms and not merely to arouse inquiry. If he discovers that any illegal or improper payments or any other papers have been made, his duty will be to make it public by reporting. The auditor occupies a fiduciary position in relation to the shareholders and in auditing the accounts maintained by the directors, he must act in the best interest of the shareholders who are in the position of beneficiaries. But there is a limitation relating the duties to be performed by the auditor. An auditor is not bound to be a detective and is not expected to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is justified in believing servants of the company in whom confidence was placed by the company. He is entitled to assume that they are honest and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion, he should probe it to the bottom, but in the absence of anything of that kind he is only bound to be reasonably cautions and careful. *This question is related to case of* ***Kingston Cotton Mill Co.*** *In this case it was held that, it is not auditor's duty to take stock. There are many matters in which he may rely on the honesty and accuracy of others. Further auditors do not guarantee the discovery of all frauds.* Even though, it is not the duty of auditor to examine the books of accounts very minutely, they are supposed to examine the quantity of stock at the beginning of year with the purchases & sales and arriving at the figures of closing stock which would have become clear that there was overvaluation of stock.

PRACTICAL QUESTION	
	Thus, the auditor of the company will be responsible for the violations and shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend up to ₹ 5 lakhs or four times the remuneration of the auditor, whichever is less as per provisions of Section 147(2) of the Act. Provided that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less
Quest-10	*Mr. Zed was appointed as an auditor of a company on 1st December 2015. The company was incorporated on 1st November 2015. Mr. K, a relative of Mr. Zed was holding securities of that company having face value of ₹ 1,10, 000. Mr. Murthy, a shareholder of the company raised an objection on the appointment of the auditor. Referring to the provisions of the Companies Act, 2013, comment whether the contention of Mr. Murthy is tenable.*
Solution	As per section 141(3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he or his relative or partner is holding any security of or interest in the company or its subsidiaries, or of its holding or associate company or a subsidiary of such holding company. As per proviso to this section the relative of the auditor may hold the securities or interest in the company of face value not exceeding ₹ 1,00,000. Referring the above provisions to the given situation, Mr. K, the relative of Mr. Zed, an auditor, is holding securities of Face value of ₹ 1,10,000 in the company, which is in contravention to the provisions of Section 141(3)(d)(i). Thus, Mr. Zed is not eligible for appointment as an auditor of the company. Hence, the contention of Mr Murthy is tenable.
Quest-11	*MNR Limited incorporated on 1st January 2016 as a public limited company wants to appoint its first auditors. Explaining the provisions of the Companies Act, 2013 in this regard, answer the following:* *(i) What shall be your answer in case 60% of the paid-up share capital of the company is held by the Central Government?* *(ii) What shall be your answer if the Managing Director of the company wants to appoint his close friend Mr. John, who is a Chartered Accountant holding Certificate of Practice issued by the Institute of Chartered Accountants of India, as the company's first auditor?*
Solution	(i) Since 60% of the paid-up share capital of the company is held by the Central Government, the company falls within the meaning of a government company under section 2(45)]. As per section 139(7), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration of the company.

PRACTICAL QUESTION	
	In case the Comptroller and Auditor-General of India does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days. Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting. (ii) In the given case, the appointment of Mr. John, a practicing Chartered Accountants holding Certificate of Practice, as the first auditor by the Managing Director of the company by himself is in violation of the provisions of the said section. Therefore, the Managing Director of the company is advised not to appoint the first auditor of the company.
Quest-12	*Selected Directors of Confidence Ltd. conspired with the Auditor of the company to embezzle the accounts of the company in their interest. Tribunal on an application filed by the certain directors passed the order for the removal of auditor. In view of the given facts state the following-* *(i) Whether the order directing removal of auditor by tribunal on an application of certain directors is valid?* *(ii) If an order of removal passed against the auditor, will he be eligible to be appointed in other company?*
Solution	**Given problem is based on removal of auditor by Tribunal in event of fraud u/s 140(5) of companies Act 2013** As per the provisions of Section 140(5) of the Companies Act, 2013, Tribunal may either • Suo motto or • on an application made to it by the Central Government or • by any person concerned, if it is satisfied that the auditor of a company has acted in a fraudulent manner, it may, by order, direct the company to change its auditors. Section further states that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place: An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447. Based upon the above provision, we may conclude as follow: - 1. This section authorize Tribunal to pass order for removal of Auditor on ground of any fraudulent acts. Thus, the order directing removal of auditor by tribunal on an application of certain directors is valid 2. Auditor so removed shall not be eligible for appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

PRACTICAL QUESTION	
Quest-13	*M/s ABC is conducting Audit of H Ltd for past 10 years. Now due to requirement of Rotation of Auditor, M/s ABC is going to retire at upcoming AGM and in its place M/s XBZ will join as Auditor. Both Firms have common partner in form of Mr. B. Decide considering provisions of Companies Act, about appointment of XBZ.*
Solution	**<u>As per the proviso to Section 139(2)</u>** As on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years Conclusion: -Thus we may conclude that M/s XBZ cannot be appointed as Auditor for 5 years as Firm is having a common partner Mr. B, who was an auditor of earlier firm i.e. M/s ABC as well
Quest-14	*An audit firm, comprising of two partners, holds office as auditor of 40 private companies. Such audit firm wants to be further appointed as an auditor in XYZ Pvt. Ltd with a paid-up capital of 110 crore. Decide whether this is in consonance with the applicable law.*
Solution	As per section 141(3)(g) of the Companies Act, 2013, private companies shall also be included in the provisions with respect to ceiling on number of audits if their paid up capital is ₹ 100 crore or more, in other words the private companies having paid up share capital less than 100 crore rupees shall not be included for calculation of specified number of audits. As per the provision, a person shall not be eligible for appointment as an auditor of a company if such person or partner is at the date of such appointment or reappointment holding appointment as an auditor of more than twenty companies. Since XYZ Pvt. Ltd. is with paid up share capital 110 crore and so will be included in the prescribed ceiling limit of audit, therefore, such audit firm cannot be appointed as an auditor of XYZ Pvt. Ltd as it will exceed the ceiling prescribed for number of audits. Assumption: Here, it is assumed that all the 40 private companies in which the said audit firm holds the office of auditor are having the paid-up capital of ₹ 100 crore or more.
Quest-15	*Examine the validity and advice on the following matters with reference to the provisions of the Companies Act, 2013:* (i) *Prakash Carriers Limited appointed Mr. Rahul as its auditor in the Annual General Meeting held on 30th September 2017. Initially, he accepted the appointment, but he resigned from his office on 31st October 2017 due to personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr. Samuel as auditor.* (ii) *Managing Director of PQR Ltd. himself wants to appoint Mr. Raj, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director.* (iii) *"Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of ₹90,000/-. Whether "Mr. P" is Qualified from being appointed as an Auditor of "ABC Ltd."?*
Solution	**(i)** In the given case, as the auditor Mr. Rahul has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Samuel. However, the appointment of Mr. Samuel shall be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board.

PRACTICAL QUESTION	
	Mr. Samuel will be entitled to hold office till the conclusion of the next Annual General Meeting. (ii) Section 139(6) of the Companies Act, 2013 lays down that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". In the instant case, the appointment of Mr. Raj, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which authorizes the Board of Directors to appoint the first auditor of the company. In view of the above, the Managing Director of PQR Ltd should be advised not to appoint the first auditor of the company. (iii) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. As per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹90,000 face Value in the ABC Ltd., which is as per allowed as pe the proviso to section 141 (3)(d)(i), Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.
Quest-16	*Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.*
Solution	Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies shall not appoint or re-appoint- (1) an individual as auditor for more than one term of five consecutive years; and (2) an audit firm as auditor for more than two terms of five consecutive years. An individual auditor who has completed his term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term; An audit firm which has completed its term shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term. In the given case, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of upto5 years. Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term

PRACTICAL QUESTION	
Quest-17	*PKCLtd.,wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)?*
Solution	As per proviso to section 139(1) of the Companies Act, 2013, before the appointment of Auditor, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, shall be in accordance with the conditions as may be prescribed, shall be obtained. The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that – (A) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder; (B) the proposed appointment is as per the term provided under the Act; (C) the proposed appointment is within the limits laid down by or under the authority of the Act; (D) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct. The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.
Quest-18	*Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.* *CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013 :* *(1)Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during cooling-off period?* *(2)Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?*
Solution	According to Section 139 (2) of the Companies Act, 2013, Listed companies and other prescribed class or classes of companies (except one-person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term. As on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.

PRACTICAL QUESTION	
	Applying the above provisions, (1) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company. However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period. (2) As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company. *Accordingly, M/s Lemon & Company can be appointed as an internal auditor of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company).* *The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.*
Quest-19	*Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of ₹75000/- on 15th March 2018. CA 'Arjun' issued his audit report on 25th April 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares has been ₹150000/- (market value ₹95000/-)*
Solution	As per Section 141(3) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, shall not be appointed as an auditor of the company. However, Rule 10 of the Companies (Audit and Auditors) Rules, 2014, states that a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh. In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15th March 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of ₹ 1 lakh, such a transaction is valid. Yes, the answer will be different in case where the face value of acquired shares is ₹ 1,50,000. Then in that case: (i) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or (ii) Auditor has to vacate his office, since it would result in contravention of Sec 141(3)

CHAPTER 12 Interpretation of Statute

PRACTICAL QUESTION	
Quest-1	*Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory?*
Solution	Any provision which is mandatory, must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as: • the nature of the thing empowered to be done, • the object for which it is done, and • the person for whose benefit the power is to be exercised.
Quest-2	*Define Grammatical Interpretation.*
Solution	Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one. For example, when we talk of disclosure of **the nature of the concern or interest'** of a director or the manager of a company in the subject-matter of a proposed motion , we can not confine the words to **Pecuniary Concern or Interest** alone but we have to include any concern or interest whatever. Here a restricted narrow interpretation would defeat the very purpose of the disclosure. The phrase and sentences are to be construed according to the rules of grammar.
Quest-3	*The 'Statute should be read as a Whole'. Explain the statement*
Solution	The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions and the same approach would apply with equal force with regard to Acts and Rules passed by the legislature. One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them.

PRACTICAL QUESTION	
	If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.
Quest-4	*Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause.*
Solution	**Proviso:** proviso means to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. **Distinction between Proviso, exception and saving Clause** **Proviso-**'Proviso' is used to remove special cases from general enactment and provide for them specially **Exception-** Exception' is intended to restrain the enacting clause to particular Cases **Saving Clause**-'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing
Quest-5	*Which are the different elements of Documents*
Solution	**(i) Matter—**This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive. **(ii) Record—**This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description. **(iii) Substance—**This is the third element on which a mental or intellectual element comes to find a permanent form. **(iv) Means—**This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.
Quest-6	*How will you interpret the definitions in a statute, if the following words are used in a statute?* *(i) Means, (ii) Includes* *Give one illustration for each of the above from statutes you are familiar with*
Solution	Any definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

PRACTICAL QUESTION	
	When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section. But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section. **Example—** Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition. Definition of Whole time director [Section 2(94) of the Companies Act, 2013]— Whole time director includes a director in the whole-time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.
Quest-7	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?
Solution	***Function of a proviso*** To except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. To qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment
Quest-8	Explain the effect of usage developed by contemporary opinion through practice under any statute with an example.
Solution	Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. In this connection, we have to bear in mind two Latin maxims: (i) 'Optima Legum interpresest consuetudo' (the custom is the best interpreter of the law); and (ii) 'Contempranea expositoest optima et fortissima in lege' (the best way to interpret a document is to read it as it would have been read when made). Therefore, the best interpretation of a statute or any other document is that which has been made by the contemporary authority. Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea exposition to interpret not only ancient but even recent statutes in India. Example: Documents issued by the Government simultaneously with the notification under section 16(1) of the Securities Contracts (Regulation) Act, 1956 were used as contemporanea expositio of the notification. [*Desh Bandhu Gupta & Co.* v *Delhi Stock Exchange Association Ltd.*]

PRACTICAL QUESTION	
Quest-9	There is a prohibition on importation of "arms, ammunition or gun power or any other goods" under a particular statute. How would you interpret the words "any other goods" applying the rules of interpretation of statues? Also state when this particular rule will not be applicable citing an example.
Solution	The word “any other goods” in the given provision shall be interpreted through application of the Rule of Ejusdem Generis. According to this Rule, general words following specific words are to be construed (and understood) with reference to the words that precede them. Those general words are to be taken as applying to things of the same kind as the specific words previously mentioned, unless there is something to show that a wider sense was intended. Thus, the rule of ejusdem generis means where general words are used and after specific words, the general words would take their colour from the specific words used earlier. **Example:** -Where there was prohibition on importation of ‘arms, ammunition, or gunpower or any other goods’ the words ‘any other goods’ would be meaning ‘of the same kind or species’ and shall be construed as referring to goods similar to ‘arms, ammunition or gun powder’ ***Non- applicability of rule of Ejusdem Generis*** The general principle of ‘ejusdem generis’ applies only where the specific words are of the same nature. Thus, if they are of different categories, then the meaning of the general words following those specific words remains unaffected, in other words those general words would not take their colour from the specific words used earlier. *For example, Section 271 of companies Act empower the Tribunal to order winding up of company on ‘just and equitable’ ground, however such ground is held to be not restricted by the first four specific situations in which the Tribunal may wind up a company.*
Quest-10	There are several provisions under the, Companies Act, 2013 which start with the words 'not withstanding' and 'without prejudice'. Explain the nature and significance thereof, applying the principles of Statutory Interpretation.
Solution	The provision containing the word ‘notwithstanding’ which is also termed as termed as ‘non-obstante clause’ has an overriding effect on the other provision, i.e., such provision shall prevail over the other provision. It means, if there is any inconsistence or departure between the non-obstante clause and another provision, it is the non-obstante clause which will prevail over the other clause. Thus, a non-obstante clause restricts the operation and effect of all the contrary provisions.

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	For example, Section 163 of the Companies Act, 2013 provides option to adopt principle of proportional representation for appointment of directors.
	It reads as – "Notwithstanding anything contained in this Act,". The effect of the non-obstante provision is that the appointment of directors under Section 163 is not to be affected by any other provision of Companies Act, 2013. In other words, the directors can be appointed by way of proportional representation even if such appointment would not be permissible under any other provision of the Act.
	The words 'without prejudice' are used in an Act as follows: An expression containing the words 'without prejudice to the generality of …' indicates that anything contained in the provision following such words is not intended to cut down the generality of the meaning of the preceding provision. It means a provision enacted 'without prejudice' to another provision has not the effect of affecting the operation of the other provision and any action taken under it must not be inconstant with such other provision. This view was upheld in the case of **[*Central Bank of India* v *State of Kerala*]**

CHAPTER 13 Negotiable Instruments Act, 1881

PRACTICAL QUESTION	
Quest-1	*Mr. X executes a promissory note in the following form, 'I promise to pay a sum of ₹10,000 after three months'. Decide whether the promissory note is a valid promissory note.*
Solution	Invalid, as promissory note cannot be made payable to bearer
Quest-2	*State whether the following statements are promissory notes or not?* *(a) "I acknowledge myself to be indebted to L in ₹20,000 to be paid on demand, for value received".* *(b) "Mr. Ravi, I.O.U. ₹15,000".* *(c) "I promise to pay G ₹18,000 and all other sums which shall be due to him".* *(d) "I promise to pay G ₹21,000 when he delivers the goods".* *(e) "I promise to pay K ₹200 and deliver one quintal of paddy".*
Solution	(a) valid- since There is a valid promise to pay (b) Invalid- Since it is just an acknowledgement of debt (c) Invalid- since amount is not certain (d) Invalid- since conditional (e) Invalid- since conditional
Quest-3	*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 ₹20,000. 'A' tells 'B'.* *(ii)'X' promises to pay 'Y' a sum of ₹10,000, six months after 'Y's marriage with 'Z'*
Solution	According to Section 4:-Definition of PN (i) It is not a promissory note in the first case, since there is no promise to pay. (ii) In the second case also it is not a promissory note since as it is probably that Y may not marry.
Quest-4	*S writes "I promise to pay 'B' a sum of ₹500, seven days after my marriage with 'C'. Is this a promissory note?*
Solution	**According to Section 4:-Definition of PN** In the given case the promise to pay is conditional as it depends upon an event, which may not happen. Hence, it is not a promissory note.

PRACTICAL QUESTION	
Quest-5	*Which of the following is a bill of exchange? Give reasons.* *(a) "To Ram, Dear Ram, we hereby authorize you to pay on our account, to the order of Jai, the sum of six thousand rupees."* *(b) "₹500." "Pay to my order the sum of five hundred rupees, for value received." It is neither signed by any person as drawer nor addressed to any person as drawee. It is accepted by Jai.*
Solution	(a) Invalid Bills of exchange, since there is no order to pay (b) Invalid Bills of exchange, since for a valid bills of exchange signatures of maker are essential
Quest-6	*What is the difference between a cheque and a bill of exchange?*
Solution	**Distinction between a cheque and a bill of exchange** 1. In a cheque the drawee is always a bank, whereas in a bill the drawee may be a 'bank' or any other person. 2. In a cheque day of grace are not allowed, whereas in a bill three days of grace are allowed for payment. 3. Notice of dishonor is not needed in a cheque, whereas notice of dishonor is usually required in case of a bill. 4. A cheque can be drawn to bearer and made payable on demand, whereas a bill cannot be bearer, if it is made payable on demand. 5. Cheque does not require presentment for acceptance. It needs presentment for payment. Bill, sometimes, require presentment for acceptance and it is advisable to present them for acceptance even when it is not essential to do so. 6. Cheque does not require to be stamped in India, whereas bill must be stamped according to the law. 7. A cheque may be crossed, whereas a bill cannot be crossed. 8. A cheque being a revocable mandate, the authority may be revoked by countermanding payment, and is determined by notice of the customer's death or insolvency. This is not so in the case of a bill.

PRACTICAL QUESTION	
Quest-7	*State with reasons whether each of the following instruments is bearer or order:* (a) *A bill is drawn payable to X or bearer.* (b) *A bill is drawn payable to X who endorses it in blank in favour of Y.* (c) *A bill is drawn payable to X.* (d) *A bill is drawn payable to X or order.*
Solution	(a) Order, since word order is written (b) Bearer, since endorsement in blank took place (c) Order, since not a bearer (d) Order, since not a bearer and payable to order
Quest-8	*A draws a bill of exchange on B, payable to C or order. C endorsed it to D without consideration. On maturity bill is dishonored. Whether D can sue C for the payment?*
Solution	No, since consideration is missing between both of them
Quest-9	*A draws a bill on B and B accepts it without consideration. A endorses that bill to C without consideration. C endorses it to D for value consideration. TO whom D can sue*
Solution	D being a Holder for consideration can sue all prior parties
Quest-10	*A draw a bill on B for ₹1000 payable to the order of A. B accept the bill but later on dishonor it for non-payment. A sued B on the bill. B proves that it was accepted for Value of ₹800 and as on accommodation for balance. How much A can recover from B?*
Solution	As per the provisions of Sec 44 of Negotiable Instruments Act 1881 "A" can only recover ₹800 from "B" as both of them are in immediate relation, but if such instrument is obtained by HDC, then such HDC can recover the entire amount of ₹1,000
Quest-11	*State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument:* (a) *A bill drawn in Delhi upon a merchant in Agra and accepted payable in London.* (b) *A bill drawn in Jaipur upon a merchant in London and accepted payable in Agra.* (c) *A bill drawn in Jaipur upon a merchant in London and accepted payable in London.* (d) *A bill drawn in London on a merchant in Agra and endorsed in Jaipur.*
Solution	(a) Foreign Bill u/s 12 (b) Inland Bill u/s 11 (c) Inland Bill u/s 11 (d) Foreign Bill u/s 12

PRACTICAL QUESTION	
Quest-12	*A draw 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?*
Solution	Section 43 of the Negotiable Instruments Act, 1881 (i) According to provisions of the aforesaid section 43**,** in case the bill which was drawn without consideration comes into the hands of Holder for Consideration ultimately, then such Holder for Consideration is entitled to sue any of the prior parties i.e. A, B or C. (ii) Section 43 has clearly lays down that a negotiable instrument which is made, drawn, accepted, endorsed or transferred without consideration creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration. Thus, prior parties other than D are not entitled to sue each other due to lack of consideration
Quest-13	*P draws a bill on Q for ₹10,000. Q accepts the bill. On maturity the bill was dishonored by non-payment. P files a suit against Q for payment of ₹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 ₹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.*
Solution	**Provision of section 44** According to the above provision, if a bill consists of an amount for which no consideration has been transferred, then parties who are standing in immediate relation to each other can only recover the amount for which consideration has been moved. Thus, in given problem, P can only recover ₹7,000 from Q.
Quest-14	*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 dishonored. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C.*
Solution	**Provision of section 20** According to the provisions of above section, once a blank instrument comes into the hands of HDC, such HDC is entitled to recover the amount mentioned on the instrument provided such amount does not exceed the amount covered by stamp Thus C i.e. HDC can recover the amount mentioned on instrument from A as well as B B i.e. Holder can recover only the amount which A is liable to pay.

PRACTICAL QUESTION	
Quest-15	*P, the holder of a Bill of Exchange, transfers it to Q without consideration. Q also transfers it to R without consideration. R transfers it to X for consideration. X transfers it to Y without consideration. State giving reasons whether Y can recover the amount on such instrument from X or P.*
Solution	**Provision of section 43** According to the provisions of above section, any holder who derives his title from holder for consideration is entitled to recover the amount from transferor for consideration and all prior parties. Thus, Y cannot recover it from X, however he can recover the mount from R and all prior parties including P
Quest-16	*'A' sign, as maker, a blank stamped paper and gives it to 'B' and authorizes him to fill it as a note for ₹500, to secure an advance which 'C' is to make to '8', 'B' fraudulently fills it up as a note for ₹2,000, payable to 'C', who has in good faith advanced ₹2,000. Decide, with reasons, whether' C' is entitled to recover the amount, and if so, up to what extent?*
Solution	As per the provisions of Sec 20 of negotiable instruments Act 1881 ▪ " When one person signs and delivers to another ▪ **a paper stamped,** in accordance with the law relating to negotiable instruments then in force in India ▪ and **either wholly blank** or **having written thereon an incomplete negotiable instrument,** ▪ he thereby gives **prima facie authority to the holder thereof to make or complete**, as the case may be, upon it a negotiable instrument ▪ for **any amount specified therein not exceeding the amount covered by the stamp.** ▪ **The person, so signing shall be liable** upon such instrument, in the capacity he signed the same **to any holder in due course**, for such amount ▪ Provided that no person other than holder in course, shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under." **Conclusion: -**Based upon the above provisions, we may conclude that "C" can recover ₹2,000
Quest-17	*Bal Bharti executed a promissory note in favour of Kulbhushan for ₹ 1 crore. The said amount was payable three days after sight. Kulbhushan, on maturity, presented the promissory note on 1stJanuary, 2015 to Bal Bharti. Bal Bharti made the payments on 4thJanuary, 2015. Kulbhushan wants to recover interest for one day from Bal Bharti. Advise Bal Bharti, in the light of provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay the interest for one day?*
Solution	Section 24 of the Negotiable Instruments Act, 1881 states that whereas bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.

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	Therefore, in the given case, Bal Bharti will succeed in objecting to Kulbhushan's claim. As Bal Bharti paid rightly "three days after sight" which was 4th January. Since the bill was presented on 1st January, Bal Bharti was required to pay only on the 4th and not on 3rdJanuary, 2015 as contended by Bal Bharti.
Quest-18	*Ascertain the 'Date of maturity' of a bill payable 120 days after the date. The Bill of exchange was drawn on 1st June, 2005.*
Solution	Day of presentment for sight is to be excluded i.e. 1st June, 2005. The period of 120 days ends on 21st September, 2005 (June 29 days + July 31 days + August 31 Days + September 29 days = 120 days). Three days of grace are to be added. It falls due on 2nd October, 2005, which happens to be a public holiday. As such it will fall due on 1st October, 2005 i.e., the preceding Business Day.
Quest-19	*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 1st January, 2008 to Bharat. Bharat made the payments 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?*
Solution	Section 24 of the Negotiable Instruments Act, 1881 states that where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run. Therefore, in the given case, Bharat will succeed in objecting to Bhushan's claim. Bharat paid rightly "three days after sight". Since the bill was presented on 1st January, Bharat was required to pay only on the 4th and not on 3rd April, as contended by Bharat.
Quest-20	*A Bill is drawn payable at No. A-17 CA apartments, Mayur Vihar, New Delhi, but does not contain drawee's name. Mr. Vinay who resides at the above address accepts the bill. Is it a valid Bill?*
Solution	Yes, it is a valid Bill and Mr. Vinay is liable thereon. The drawee may be named or otherwise indicated in the Bill with reasonable certainty. In the present case, the description of the place of residence indicates the name of the drawee and Mr. Vinay, by his acceptance, acknowledges that he is the person to whom the bill is directed (*Gray vs. Milner*)
Quest-21	*Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881:* *(i) X who obtains a cheque drawn by Y by way of gift.* *(ii) A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.* *(iii) M, who finds a cheque payable to bearer, on the road and retains it.* *(iv) B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee.* *(v)B, who steals a blank cheque of A and forges A's signature.*
Solution	(i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.

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	(ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein. (iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name. (iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name. (v)No, B is not a holder because he is in wrongful possession of the instrument.
Quest-22	*The drawer, 'D' is induced 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.*
Solution	According to the Provisions of Section 42 of the Negotiable Instrument Act, 1881, an acceptor of a bill of exchange which is drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due cause . In given case, P is not a fictitious payee and D, the drawer can recover the amount of the cheque from A's bankers
Quest-23	*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 still the same in case C is a fictitious person?*
Solution	I. In this case B, the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement. II. Here C is not a fictitious payee because the drawer intended him to receive payment. III. The result would be different if C is not a real person or is a fictitious person or was not intended to have the payment.
Quest-24	*B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1881, decide whether D can recover the money from A in the given case.*
Solution	In this case, even though D was aware of the fraud, but he himself was not a party to it. He obtained the instrument from C who was a holder in due course. So, D gets a good title and can recover from A.

PRACTICAL QUESTION	
Quest-25	*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.*
Solution	The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious. Accordingly, in the instant case, Y cannot avoid payment by raising the plea that the drawer (Z) is Fictitious.
Quest-26	*J accepted a bill of exchange and gave it to K for the purpose of getting it discounted and handing over the proceeds to J.K having failed to discount it returned the bill to J. J tore the bill in two pieces with the intention of canceling it and threw the pieces in the street. K picked up the pieces and pasted the two pieces~, together, in such manner that the bill seemed to have been folded for safe custody, rather than cancelled. K put it into circulation and it ultimately reached L, who took it in good faith and for value. Is J liable to pay the bill under the provisions of the Negotiable Instruments Act, 1881?*
Solution	L is a Holder in due course, because he acquired the bill in good faith and for value. (Section 9) J cannot deny the validity of the bill since no drawer or acceptor of a bill shall, in a suit by a holder in due course be permitted to deny the validity of the bill as originally drawn. (Section 120) Thus, L is entitled to recover the bill amount from all prior parties including J since a holder in due course has the right to sue all the prior parties (Section 36)
Quest-27	*Give the answer of the following:* *(a) A draws a cheque in favour of M ,a minor. M endorses the same in favour of X. The cheque is dishonored by the bank on grounds of inadequate funds. Discuss the rights of X.* *(b) A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument .Does this amount to material alteration?* *(c) A draws a cheque for ₹100 and hands it over to B by way of gift. Is B a holder in due course? Explain the nature of his title, interest and right to receive the proceeds of the cheque.* *(d) A cheque is drawn payable to "B or order". It is stolen and the thief forges B's endorsement and endorses it to C. The banker pays the cheque in due course. Can B recover the money from the banker?*
Solution	**(a)** As per Section 26, a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. X can, thus, proceed against A.

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	(b) As per the provision of the Negotiable Instruments Act,1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence adding the words "on demand" does not alter the business effect of the instrument. (c) B is a holder but not a holder in due course as he does not get the cheque for value and consideration. His title is good and bonafide. As a holder he is entitled to receive ₹ 100 from the bank on whom the cheque is drawn (d) According to Section 85,the drawee banker is discharged when he pays a cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the endorsement of Mr. is forged, the banker is protected, and he is discharged. The true owner, B, cannot recover the money from the drawee bank.
Quest-28	*M drew a cheque amounting to ₹ 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After some time, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?*
Solution	No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)
Quest-29	*M owes money to N. Therefore, he makes a promissory note for the amount in favour of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how a right of the parties are to be adjusted.*
Solution	The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a P/N is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable. M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.
Quest-30	*X by inducing Y obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the bill as a Holder- in-due-course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity the bill is dishonored. X sues Y for the recovery of the money.* *With reference to the provisions of the Negotiable Instruments Act, decide whether X will succeed in the case ?*
Solution	The problem stated in the question is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 53. The section provides: 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in

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	some stage of its journey. Thus, any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Section 53). Thus, applying the above provisions, it is quite clear that X who originally induced Y in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as X himself was a party to the fraud.
Quest-31	*X, a legal successor of Y, the deceased person, signs a Bill of Exchange in his own name admitted a liability of ₹ 50,000 i.e. the extent to which he inherits the assets from the deceased payable to Z after 3 months from 1st January, 2002. On maturity, when Z presents the bill to X, he (X) refuses to pay for the bill on the ground that since the original liability was that of Y, the deceased, therefore he is not liable to pay for the bill.* *Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether Z can succeed in recovering ₹50,000 from X. Would your answer be still the same in case X does not state the limit in the bill and the liability is more than the assets he inherits from Y.*
Solution	The problem is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 29. A legal representative of a deceased person who signs his own name on a negotiable instrument, is personally liable for the entire amount thereon, unless he expressly limits his liability to the extent of the assets received by him as such (Section 29). • Applying the above provisions to the given problem Z is entitled to recover ₹ 50,000/- from X. X cannot refuse to pay the amount since he has inherited the assets of the deceased. He will be liable to the extent of the full amount of the bill even if he inherits the property valued less than the amount of the bill. Thus, in the first case he will be liable to full amount of ₹ 50,000/-. In the second case since he has made a limit in the instrument itself before signing on it, his liability will be only to the extent of ₹ 50,000/- and not to the extent of the full amount as given on the instrument though he might have inherited the property of value greater amount than that of the instrument.
Quest-32	*Raman is the payee of an order cheque. John steals the cheque and forges Raman's signatures and endorses the cheque in his own favour. John then further endorses the cheque to Anil, who takes the cheque in good faith and for valuable consideration.* *Examine the validity of the cheque as per provisions of the Negotiable Instruments Act, 1881 and also state whether Anil can claim the privileges of a Holder in Due course.*
Solution	Forgery confers no title and a holder acquires no title to a forged instrument. A forged document is a nullity. The property in the instrument remains vested in the person who is the holder at the time when the forged signatures were put on it. Forgery is also not capable of being ratified. In the case of forged endorsement, the person claiming under forged endorsement even if he is purchaser for value and in good faith, cannot acquire the rights of a holder in due course. Therefore, Anil acquires no title on the cheque *(Mercantile Bank vs.D'Silva,30 Bom.L.R.1225*).

PRACTICAL QUESTION	
Quest-33	*Is notice of dishonor necessary in the following cases:* *(a) X having a balance of ₹ 1,000 with his bankers and having no authority to over draw, drew a cheque for ₹ 5,000/-. The cheque was dishonored when duly presented for repayment.* *(b) X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonored on the presentment for payment.*
Solution	Notice of dishonor is not necessary in both the cases. [Section 98 of the Negotiable Instruments Act, 1881].
Quest-34	*A, a major, and B, a minor, executed a Promissory Note in favour of C. Examine with reference to the provisions of the negotiable Instruments Act, 1881 the validity of the Promissory Note and State whether it is binding on A and B.*
Solution	The 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 his immunity from liability does not absolve the other joint promissory, viz., A from liability **[*Sulochona* v *Pondiyan Bank Ltd.*,]**
Quest-35	*X, a major, and M, a minor, executed a promissory note in favour of P. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on X and M.*
Solution	In view of the provisions of Section 26, the promissory note executed by X and M is valid even though a minor is a party to it. M, being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely X from liability **[*Sulochana* v *Pandiyan Bank Ltd]***
Quest-36	*A, a broker draws a cheque in favour of B, a minor. B indorses the cheque in favour of C, who in turn indorses it in favour of D. Subsequently, the bank dishonored the cheque. State the rights of C and D and whether B, can be made liable?*
Solution	According to Section 26 of the Negotiable Instruments Act, 1881 a minor may draw, endorse, deliver and negotiate a negotiable instrument to bind all parties except himself. Therefore, C and D cannot claim from B, who being a minor does not incur any liability on the cheque. C can claim payment from A, the Drawer, only and D can claim against C, the endorser and A, the drawer.
Quest-37	*Difference between Negotiation and Assignment*

Solution:-DIFFERENCE BETWEEN NEGOTIATION AND ASSIGNMENT

S No.	Negotiation	Assignment
1.	In case of Negotiation, consideration is always presumed	Here Consideration needs to be proved
2.	Instrument payable to bearer are negotiated by delivery only, whereas	Assignment is always done by mean of a Written and Registered Docs under the Provisions of Transfer of

PRACTICAL QUESTION		
	instrument payable to order are negotiated by endorsement and delivery	Property Right, 1882.
3.	Title of HDC is better than that of transferor	Title of assignee is subject to all equities in the title of assignor. In Other words, assignee gets the right of assignor only
4.	Negotiation can be done only in respect of negotiable instruments	Assignment can be done in respect of other instrument also, in addition to negotiable instruments

Quest-38	*A is a payee holder of a bill of exchange. He endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. State giving reasons whether D as bearer of the bill of exchange is entitled to recover the payment from A or B or C.*
Solution	Yes, Once a Bearer always a Bearer
Quest-39	*A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A.A to B and B to X. State with reasons whether X can recover the amount of the bill from Y. Z, A and B, if he has originally endorsed the bill to Y by adding the words 'Sans Recours.*
Solution	X is entitled to recover the amount from all of them since he has done the Sans Recourse Endorsement
Quest-40	*A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A,A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally endorsed the bill to Y by adding the words 'Sans Recours..*
Solution	In the problem X, the endorser becomes the holder after it is negotiated to several parties. Normally, in such a case, none of the intermediate parties is liable to X. This is to prevent 'circuitry of action'. But in this case X's original endorsement is 'sans recours' and therefore, he is not liable to Y, Z, A and B. But if the bill is negotiated back to X, all of them are liable to him and he can recover the amount from all or any of them (Section 52 para 2).
Quest-41	*'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 'a'* *Third endorsement 'R'* *Fourth endorsement 'S'* *'N' strikes out, without S's consent, the endorsement by 'a' and 'R'. Decide with reasons whether 'N' is entitled to recover anything from 'S' under the provisions of Negotiable Instruments Act, 1881.*
Solution	If the holder of an instrument cancels the name of any of the parties liable under the instrument with the intention to discharge him, such party and any subsequent parties deriving their title from such party are discharged from the liability to the holder. Thus, N will not be entitled to recover anything from S

PRACTICAL QUESTION	
Quest-42	*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 Instrument Act, 1881:* *(i) An oral acceptance* *(ii) An acceptance by mere signature without writing the word "accepted".*
Solution	(i) It is one of the essential elements of a valid acceptance that the acceptance must be written on the bill and signed by the drawee. An oral acceptance is not sufficient in law. Therefore, an oral acceptance of the bill does not stand to be a valid acceptance. (ii) The mere signature of the drawee without the addition of the words 'accepted' is a valid acceptance.
Quest-43	*What are the essential elements of a valid acceptance of a Bill of Exchange? An acceptor accepts a "Bill of Exchange" but write on it "Accepted but payment will be made when goods delivered to me is sold." Decide the validity.*
Solution	The essentials of a valid acceptance are as follows: 1. *Acceptance must be written*: The drawee may use any appropriate word to convey his assent. It may be sufficient acceptance even if just signatures are put without additional words. An oral acceptance is not valid in law. ' 2. *Acceptance must be signed*: A mere signature would be sufficient for the purpose. Alternatively, the words 'accepted' may be written across the face of the bill with a signature underneath; if it is not so signed, it would not be an acceptance. 3. *Acceptance must be on the bill*: The acceptance should be on the face of the bill normally, but it is not necessary. An acceptance written on the back of a bill has been held to be sufficient in law. What is essential is that must be written on the bill; else it creates no liability as acceptor on the part of the person who signs it. 4. *Acceptance must be completed by delivery*: Acceptance would not be complete, and the drawee would not be bound until the drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some person on his behalf. 5. Where a *bill is drawn in sets,* the acceptance should be put on one part only. Where the drawee signs his acceptance on two or more parts, he may become liable on each of them separately. 6. *Acceptance may be either general or qualified:* An acceptance is said to be general when the drawee assents without qualification order of the drawer. The qualification may relate to an event, amount, place, time etc. (Explanation to Section 86 of the Negotiable Instruments Act, 1881). In the given case, the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated.

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	As a rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance. Where, he refuses to take it, the bill shall be dishonored by non-acceptance. But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto (Section 86).
Quest-44	*Mr. Wise obtains from Mr. Decent, a cheque crossed 'Not Negotiable' fraudulently. He later transfers the cheque to Mr. T, who gets the cheque encashed from Bank, which is not the Drawee Bank. Mr. Decent comes to know about the fraudulent act of Mr. Wise, he sues Bank for the recovery of money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether Mr. Decent will be successful in his claim. Would your answer be still the same in case Mr., Wise does not transfer the cheque and gets the cheque encashed from Bank himself?*
Solution	According to Section 130 of the Negotiable Instruments Act, 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 it, had. In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect. Thus, based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title, but if the transferor has a defective title, the transferee is affected by such defects, and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. In the given case as Mr. Wise had obtained the cheque fraudulently from Mr. Decent, so he had no title to it and is not capable of giving better title to the cheque or money to the Bank; and as such the bank would be liable for the amount of the cheque for encashment. (*Great Western Railway Co. v. London and Country Banking Co.)* In case, where Mr., Wise does not transfer the cheque and gets the cheque encashed from Bank himself. The answer would not change and shall remain the same for the reasons given above. Thus Mr. Decent in both the cases shall be successful in his claim from the bank.
Quest-45	*State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881?* *(i) The holder of the bill inserts the word "or order" in the bill,* *(ii) The holder of the bearer cheque converts it into account payee cheque,* *(iii) A bill payable to ' is converted into a bill payable to X and Y.*
Solution	(i) Not a Material Alteration (ii) Material Alteration Material Alteration

PRACTICAL QUESTION	
Quest-46	*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 this legal notice from D,A pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether A's argument is valid or not?*
Solution	Any change made in the instrument that causes it to speak a different language from what it originally intended, or which changes the legal identity of the instrument in its terms or in relation or parties there to is a material alteration. In this problem, -the cheque bears two alterations when it is presented to the paying banker (i) the word 'bearer' has been struck off and (ii) the cheque has been crossed, Both of these alterations do not amount to material alteration under the provisions of the Act and hence the liability of any including the drawer is not at all affected. 'A' is liable to pay the amount of the cheque to the holder.
Quest-47	*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.*
Solution	▪ Section 130 of the Negotiable Instruments Act, 1881 provides that a person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable', shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. ▪ In view of these provisions, B, even though he was a holder in due course, did not acquire any title to the cheque as against its true owner. ▪ B is liable to repay the amount of the cheque to the true owner. He can, however, proceed against the person from whom he took the cheque. ▪ In the given case, both the collecting banker and the paying bankers would be discharged from their respective liability. Since the collecting banker, in good faith and without negligence, had received payment for B, who was its customer of the cheque which was crossed generally. The paying banker on whom the crossed cheque was drawn, had paid the same in due course, the banker would also not be liable to the true owner.
Quest-48	*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 payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether B can recover the money from A?*
Solution	Since all the requirements of Section 84 are getting satisfied, thus the drawer is discharged from the liability to pay the amount of cheque to B. However, B can sue against the bank for the amount of the cheque applying the above provisions.

PRACTICAL QUESTION	
Quest-49	*'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 the drawer*
Solution	Based upon the above provisions since the payee has not presented the cheque to the drawer's bank within a reasonable time when the drawer had funds to pay the cheque, and the drawer has suffered actual damage, the drawer is discharged from the liability.
Quest-50	*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?*
Solution	In the case of **[*Modi Cements Ltd.* v *Kuchil Kumar Nandi*]** It was held by Supreme Court held that once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.
Quest-51	*J. a shareholder of a Company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonored 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 Act and decide whether he (J) can be held liable for the payment, for the goods purchase from the Mall (Departmental Store).*
Solution	In the Case of **[*HNB Mulla Feroze* v *C.Y. SomayaJulu*]** It was held by Andhra Pradesh High Court that although the petitioner has a legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonored, and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instrument Act, 1881. Therefore, J also is not liable for the cheque but legally liable for the payments for the goods.
Quest-52	*A cheque was dishonored at the first instance and the payee did not initiate action. The cheque was presented for payment for the second time and again it was dishonored. State in this connection whether the payee can subsequently initiate prosecution for dishonor of cheque.*
Solution	Supreme Court in Sadanandan Bhadran v. Madhavan Sunil Kumar (1998) 4 CLJ 228 held that Section 138 does not put any embargo upon the payee to successively present a dishonored cheque during the period of validity. It is not uncommon for a cheque being presented again and again within its validity period in the expectation that it would be encashed. The question whether dishonor of the cheque on each occasion of its presentation gives rise to a fresh cause of action, the following facts are required to be proved to successfully to prosecute the drawer for an offence under section 138:-

PRACTICAL QUESTION	
	(1) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonored; (2) that the cheque was presented within the prescribed period; (3) that the payee made demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; (4) that the drawer failed to make the payment within 15 days of the receipt of the notice. If one has to proceed on the basis of the generic meaning of the terms "cause of action", certainly each of the above facts would constitute a part of the cause of action, but it is significant to note that clause (b) of section 142 gives a restrictive meaning in that it refers to only one fact which will give rise to the cause of action and that is failure to make the payment within 15 days from the date of receipt of the notice. Besides the language of section 138 and section 142 which clearly postulates only one cause of action, there are other formidable impediment which negates the concept of successive causes of action. The combined reading of sections 138 and 142 leave no room for doubt that cause of action within the meaning of section 142(c) arises and can arise only once. The final question as how apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other giving him only one opportunity to file a complaint for its dishonor and that too within one month from the date of cause of action arises can be reconciled, the Court held that the two provisions can be harmonized with the interpretation that on each presentation of the cheque and its dishonor, a fresh right and not initiate such prosecution on the earlier cause of action. [Note: As per the RBI notification, the validity period of cheques has been reduced from 6 months to 3 months w.e.f. 1st April, 2012]
Quest-53	*Mr. X executed an account payee cheque on the name of the Mr. B for the amount of rupees 20,000. Mr. B submitted the cheque in the bank. Later B finds that no amount has been credited to his account. In fact, the amount has been credited to some other person with the same name. State the legal position of B with respect to the Negotiable Instruments Act, 1881.*
Solution	As per the Negotiable Instruments Act, 1881, a cheque marked "Account Payee" is a form of restrictive crossing, represented by the words "Account Payee" entered on the face of the cheque. Such a crossing acts as a warning to the collecting bankers that the proceeds are to be credited only to the account of the payee. If the collecting banker allows the proceeds of the cheque so crossed to be credited to pay any other account, he may be held guilty of a negligence in the event of an action for wrongful conversion of funds being brought against him. These words are not an addition to the crossing but are mere direction to the receiving or collecting bankers. These do not affect the paying banker who is under no duty to ascertain that the cheque in fact has been collected for the account of the person named as the payee.

PRACTICAL QUESTION	
	Thus accordingly Mr. B can hold the bank with whom the cheque is deposited for the credit (collecting banker), liable for negligence for wrongful conversion of funds to the other account.
Quest-54	*On a Bill of Exchange for ₹ 1 lakh, X's acceptance to the Bill is forged. 'A 'takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'A' can be considered as a 'Holder in due course 'and whether he (A) can receive the amount of the Bill from 'X'.*
Solution	According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration becomes the possessor of promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. As 'A' in this case prima facie became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course. But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives nontitle when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.
Quest-55	*Decide about the consequences, where a promissory note carry amount which are different in words and figure*
Solution	As per the provisions of Sec 18 of Negotiable Instruments Act 1881, If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.
Quest-56	*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 dishonored. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C.*
Solution	Section 44 of the Negotiable Instruments Act, 1881 is applicable in this case. According to Section 44 of this Act, 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 the amount entered in the cheque. However, the right of C, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from B.
Quest-57	*M drew a cheque amounting to ₹ 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After some time, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?*
Solution	No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)

PRACTICAL QUESTION	
Quest-58	*M owes money to N. Therefore, he makes a promissory note for the amount in favour N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent requires M to send the other half of the promissory note. Decide how a right of the parties are to be adjusted.*
Solution	The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a P/N is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable. M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.
Quest-59	*P draws a bill on Q for ₹ 10,000. Q accepts the bill. On maturity the bill was dishonored by non-payment. P files a suit against Q for payment of ₹ 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 ?*
Solution	As per Section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced. ***Explanation—****The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.* On the basis of above provision, P would succeed to recover ₹ 7,000 only from Q and not the whole amount of the bill because it was accepted for value as to₹ 7,000 only and an accommodation to P for ₹ 3,000.
Quest-59	*What are the characteristics of any negotiable instruments?*
Solution	**1. Freely transferable.** **In case payable to bearer-** Merely by giving delivery **In case payable to Order-** By endorsement as well as delivery. **2. Title of transferee i.e. HDC is good- <u>Provided he gets instrument</u>** ▪ before due date, ▪ for value consideration and ▪ in good faith. Thus, even if the title of transferor is defective, still title of transferee would not be affected. **3. NI can be transferred indefinitely**

PRACTICAL QUESTION	
Quest-60	*Mr. X executed an account payee cheque on the name of the Mr. B for the amount of rupees 20,000. Mr. B submitted the cheque in the bank. Later B finds that no amount has been credited to his account. In fact, the amount has been credited to some other person with the same name.* *State the legal position of B with respect to the Negotiable Instruments Act, 1881.*
Solution	**Restrictive crossing or A/c Payee Crossing** - Where a cheque crossed generally or specially also contain the words' A/c Payee only' it is known as restrictive crossing. *Restrictive crossing provides a direction to the paying banker that proceeds of a cheque shall be deposited only in the account of 'payee' whose name is mentioned in the cheque.* *This crossing to be valid must be either with general crossing or with special crossing* In given case Mr. X executed an account payee cheque on the name of the Mr. B for the amount of rupees 20,000. Mr. B submitted the cheque in the bank. Later B finds that no amount have been credited to his account. In fact the amount has been credited to some other person with the same name. **Conclusion: -** We may conclude that Mr. B can hold the bank with whom the cheque is deposited for the credit(collecting banker), liable for negligence for wrongful conversion of funds to the other account.
Quest-61	*Mr. V draws a cheque of ₹ 11,000 and gives to Mr. B by way of gift. State with reason whether Mr. is a holder in due course as per the Negotiable Instrument Act, 1881?*
Solution	**According to section 9 of the Negotiable Instrument Act, 1881, "Holder in due course" means-** • any person, who for consideration • becomes the possessor of a negotiable instrument, if payable to bearer, or the payee or endorsee thereof, if payable to order, • before the amount mentioned in it became payable, and • without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. In given case, Mr. V draws a cheque of ₹ 11,000 and gives to Mr. B by way of gift. Thus Mr. B is holder but not a holder in due course since he did not get the cheque for consideration.

PRACTICAL QUESTION	
Quest-62	*Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bhole nath 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?*
Solution	As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surender (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surender. Section 138 of the Negotiable Instruments Act, 1881, states that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence. Once a cheque is issued by the drawer then merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138. ***Same view was also upheld in the case of [Modi Cement Vs Kuchil Kumar Nandi]*** Thus, the act of Bholenath, of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.
Quest-62	*State the rules laid down by the Negotiable Instruments Act, 1881 for ascertaining the date of maturity of a bill of exchange.*
Solution	**1. For PN/BE payable after a stated number of month[Section 23]-**If a promissory note or bill of exchange is made payable a stated number of months:- ▪ After date or ▪ After sight or ▪ After certain event, it becomes payable three days after the corresponding date of month after the stated number of months (section 23). **2. Situation, where month does not have any corresponding day**-If the month in which the period would terminate has no corresponding day, the period shall be terminating on the last day of such month. **3. For PN/BE payable after a stated number of days [Section 24]-**In calculating the date at which promissory note or bill made a certain number of days:- ▪ After date or ▪ After sight or ▪ After certain event, is at maturity, the day of the date of presentation for acceptance or sight or of protest for acceptance or on which the event happens shall be excluded. **4. Situation where day of Maturity is a Public Holiday [Section 25]-**When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument is deemed to be due on preceding business day.

CHAPTER 14 General Clause Act

PRACTICAL QUESTION	
Quest-1	*X owned a land with fifty tamarind trees. He sold his land and the (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897".*
Solution	**As per Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:** (i) Land, (ii)Benefits to arise out of land, and (iii) Things attached to the earth, or (iv) Permanently fastened to anything attached to the earth. Thus, definition of immovable property is an inclusive one. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.
Quest-2	*Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897.*
Solution	As per Section 6 of the General Clauses Act, 1897 Where any Central legislation or any regulation made after the commencement of this Act repeals any Act, the repeal shall not: 1. Revive anything not enforced or prevailed during the period at which repeal is affected or; 2. Affect the prior management of any legislation that is repealed, or anything performed or undergone or; 3. Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or; 4. Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or 5. Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

PRACTICAL QUESTION	
Quest-3	*What is a Document as per the Indian Evidence Act, 1872?*
Solution	As per Section 3 of the Indian Evidence Act, 1872, 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. For Example: A writing is a document, any words printed, photographed are documents.
Quest-4	*What is the meaning of service by post as per provisions of The General Clauses Act, 1897?*
Solution	As per Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be affected by: (i)properly addressing (ii)pre-paying, and (iii) posting by registered post. A letter containing the document to have been affected at the time at which the letter would be delivered in the ordinary course of post.
Quest-5	*Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advice on taxation matters. Now, Mr. Ram is liable e to a fine for acting fraudulently both under the Advocates Act, 1961as 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.*
Solution	As per Sec 26 of General Clause Act, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be punished twice for the same offence. Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.
Quest-6	*A notice when required under the Statutory rules to be sent by "registered post acknowledgment due" is instead sent by "registered post" only. Whether the protection of presumption regarding serving of notice by "registered post" under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case.*
Solution	As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be affected by: 1. properly addressing, 2. pre-paying, and 3. posting by registered post. A letter containing the document to have been affected at the time at which the letter would be delivered in the ordinary course of post.

PRACTICAL QUESTION	
	Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be affected.
Quest-7	*Define the term Good Faith as per General Clause Act, 1897*
Solution	The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. T Definition under this Act may be applied only if there is nothing contrary in subject, and if that is so, the definition is not applicable.
Quest-8	*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?*
Solution	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

CHAPTER 15 Contract of Bailment

PRACTICAL QUESTION	
Quest-1	*In a bailment there is a transfer of possession right for ever.*
Solution	**Incorrect,** As per the provisions of section 148 of the Indian Contract Act, 1872, there is no transfer of possession right forever. The delivery is intended for a temporary purpose. There will be no contract of bailment if the whole property is transferred and things delivered are not specifically returned or accounted for.
Quest-2	*A bailment is the delivery of goods by one person to another for some purpose.*
Solution	**Correct, The** most important feature of bailment is that the goods must be delivered to the bailee for some purpose.
Quest--3	*The Delivery of goods by one person to another as security for the payment of a debt is called* *(a) Bailment* *(b) Pledge* *(d) Mortgage* *(e)Hypothecation.*
Solution	Pledge
Quest-4	*Deposit of money in a Bank Amounts to Bailment.*
Solution	No, since money are not included in term goods
Quest-5	*Placing of Ornament in Bank locker will amount to Bailment*
Solution	No, since there is no delivery
Quest--6	*Mr. G delivered a shopkeeper to repair a watch on the payment of ₹ 100. Subsequently the shopkeeper refused to repair it for the ₹ 100 and also claimed to retain the watch until he is paid for the work done. Decide the right of G by examining the provision of the Indian Contract Act, 1872.*
Solution	This given problem is related to the Bailment given in the Indian Contract Act, 1872. As per provisions of Sec 170- The bailee has a right to claim his lawful charges and in case bailor refuses to pay it, bailee is entitled to retain the goods until the charges due in respect of those goods are paid.

PRACTICAL QUESTION	
	However, this right can be exercised when the services have been performed entirely and the remuneration has become due. Bailee's particular lien in contracts of service may be lost if he does not complete the work within the agreed time or reasonable time. Accordingly, in the given case, it is clearly expressed by the shopkeeper to repair the watch on the payment of ₹ 100. However later his refusal to repair the watch, does not complete the work for which he has promised and therefore he losses his right to exercise particular lien and nothing could be claimed under it. Thus, the shopkeeper was not entitled to retain the watch.
Quest-7	*A hires 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.*
Solution	According to Section 150, of the Indian Contract Act, 1872, if the goods are bailed for hire, the bailor is responsible for damages, whether he was aware about the existence of such types of faults in the goods bailed or not. *Thus in given case, B is liable to compensate A for the injuries suffered even if he has no knowledge of the defect in the carriage.*
Quest--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 also further promises to handover the possession of the same to the 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?*
Solution	According to the provisions as contained in section 149 of Indian Contract Act, 1872, delivery may be by any of the following modes:- (i) Actual (ii) Symbolic (iii) Constructive In the given case, delivery by attornment to the bailee (bank) while goods remain in custody of A proves that delivery is constructive in nature. The transaction was therefore a valid pledge.
Quest--9	*A bailee need not return accretion to the goods to the bailor on the completion of the Contract of Bailment.*
Solution	**Incorrect:** It is the responsibility of the bailee to deliver to the bailor any accretion or profit accruing from the goods bailed.
Quest-10	*A contract of bailment becomes void, if the bailee does any act with regard to the goods bailed, which is inconsistent with the conditions of bailment.*
Solution	**Incorrect:** If the bailee does any act with regard to the goods bailed, inconsistent with the condition of bailment, the contract of bailment becomes Voidable at the option of the bailor.

PRACTICAL QUESTION	
Quest-11	*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 neighborhood and the car was destroyed. Decide whether Mahesh can be held liable under the provisions of the Indian Contract Act, 1872.*
Solution	As per Section 160, it is the duty of the bailee to return or deliver the goods bailed according to the bailor's direction, without demand as soon as the time for which they were bailed has expired. If the bailee fails to do so, he is responsible to the bailor for the loss or destruction of the goods. Hence, in the given case. Mahesh is liable for the loss
Quest-12	*State the difference between general lien and particular lien*

Particular lien	**General lien**
It is available against those goods in respect of which some charges are due.	It is available against all goods whether in respect of which claims are due or not.
It is available to every bailee	It is available only to specific bailee like bankers, factors, Wharfinger's, attorneys of High Court and policy brokers.
It is available only when some service involving the exercise of labor or skill has been rendered.	It is available even when no such service has been rendered.

Quest-13	*State with reasons whether the following statements are correct or incorrect: A pledge of documents of title to goods by a mercantile agent is a valid pledge.*
Solution	(i) Correct, as per section 178 of the Indian Contract Act, 1872, a pledge by mercantile agent will be valid if the agent is in possession of goods or documents of title to the goods and if such possession is with the opinion of the owner.
Quest-14	*State with reasons whether the following statements are correct or incorrect:* *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. (1 mark)*
Solution	Incorrect, As per Section 176 of the Indian Contract Act, 1872 in case of default in payment by Pawnor, Pawnee has a right to sell the thing pledged on giving the pawnor reasonable notice of the sale. **Any sale made by the pawnee without giving a reasonable notice will be void.**

PRACTICAL QUESTION	
Quest-15	*Difference between Bailment and Pledge*

DIFFERENCE BETWEEN CONTRACT OF BAILMENT AND PLEDGE

Basis of Difference	**Contract of Bailment**	**Contract of Pledge**
1. Purpose	Bailment might be for any purpose	Pledge means a bailment for some specific purpose i.e. as security for payment of debt
2. Usage of goods	Bailee is entitled to use the goods as per the terms of Bailment	Pawnee cannot use the goods pledged
3. Right to sell	Bailee can either retain the goods or he can sue the bailor for his dues	After providing a due notice pawnee has a right to sell them

Quest-16	*M lends a sum of ₹5,000 to B, on the security of two shares of a Limited Company on 1st April 2016. On 15thJune, 2016, the company issued two bonus shares. B returns the loan amount of ₹5,000 with interest but M returns only two shares which were pledged and refuses to give the two bonus shares. Advise B in the light of the provisions of the Indian Contract Act, 1872.*
Solution	Given case is based on the provisions of Section 163 of the Indian Contract Act, 1872. As per the section, "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed." Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by B to M. So M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also.
Quest-17	*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 and endorsed and delivered the railway receipt in favor 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?*
Solution	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 pledge, a banker's rights are not limited to his interest in the goods pledged and thus pledgee would have all such remedies that the owner of the goods would have against them. **In *Morvi Mercantile Bank Ltd.* v *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 pledgor. Thus, the bank will succeed in this claim of ₹ 60,000 against Railway.

PRACTICAL QUESTION	
Quest-18	*Mr. Avinash wanted a loan for expanding his business, from ABC Bank. Mr. Avinash has pledged the stock of his business to obtain the loan from bank. However, the expansion of business did not reap the desired results and Mr. Avinash was not able to repay the loan. Now, ABC bank wants to retain the stock for adjustment of their loan. Advise, ABC Bank whether they can retain the stock for the adjustment of their loan and also for payment of interest. Give your answer as per the provisions of the Contract Act, 1872.*
Answer	According to the Indian Contract Act, 1872, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. Hence, ABC Bank can retain the stock of business of Mr. Avinash, not only for adjustment of the loan but also for payment of interest.
Quest-19	*State whether the following will amount to Bailment or not?*
(i)	Mrs. X delivered an old gold jewellery to Mr. Neeraj i.e. a goldsmith for making new out of it, every morning she used to receive the unfinished jewellery and put it into a box kept at Mr. Neeraj's shop. She use to kept the keys of box with herself
Answer	No, since valid delivery is essential for valid bailment and in this case there is no delivery
(ii)	Placing of Ornament in Bank locker
Answer	No, since valid delivery is essential for valid bailment and in this case there is no delivery
(iii)	Deposit of money in a Bank
Answer	Money can not form part of goods, thus not a valid bailment
(iv)	V Parks his car at a Parking lot, locks it and keep the keys with himself
Answer	No, since valid delivery is essential for valid bailment and in this case there is no delivery
(v)	Seizure of goods by custom authority
Answer	Valid bailment, since delivery is involved
(**vi**)	X entered a restaurant for dinner. His coat was taken by a waiter who hung it on a hook behind X. When X rose to leave, coat was gone. Who is responsible and why?
Answer	Valid bailment, since delivery is involved
Quest-20	*State whether following are correct or incorrect*
(i)	A bailee need not return accretion to the goods to the bailor on the completion of the Contract of Bailment.
Answer	Incorrect:- Since goods shall be returned upon completion of purpose
(ii)	A contract of bailment becomes void, if the bailee does any act with regard to the goods bailed, which is inconsistent with the conditions of bailment.
Answer	Incorrect:- as in case of any unauthorized usage, contract become voidable

PRACTICAL QUESTION	
(iii)	A pledge of documents of title to goods by a mercantile agent is a valid pledge.
Answer	Any such pledge shall be valid provided 1. Agent must be in possession of goods 2. He must have obtained such possession with consent of Principal 3. Pawnee has acted in good faith
(iv)	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.
Answer	Incorrect:- Pawnee shall be under an obligation to serve notice prior to its sale
(v)	In case of bailment there is a transfer of possessory right for ever
Answer	Incorrect:- Bailment involve transfer of goods only for particular purpose and goods shall be returned once the purpose gets over
(**vi)**	Bailee is entitled to retain goods until he has been paid lawful charges
Answer	Correct:- Since bailee shall have a right of lien over the goods until he has been paid lawful charges he has incurred in respect of such goods

CHAPTER 16

Contract of Indemnity

PRACTICAL QUESTION	
Quest-1	*X asks Y to beat Z and promises to indemnify Y against the consequences. Y beats Z and is fined ₹1,000. Can Y claim ₹1,000 from X?*
Solution	According to section 124 of Indian contract Act, "a contract of indemnity is a, contract by which one party promises to save the other from loss caused to him either by the conduct of the promisor himself or by the conduct of any third party." Looking at the definition of Indemnity, we may conclude that since it is a contract, thus it must satisfy all conditions of valid contract shall be satisfied in order to constitute a valid contract of indemnity In given case, X asks Y to beat Z and promises to indemnify Y against the consequences. Y beats Z and is fined ₹ 1,000. **Conclusion:-**Based upon the above provisions, we may conclude that since object was unlawful , thus it can not be treated as a valid contract of indemnity
Quest -2	*HARI sold material to NAMIT. Decide whether the agreement of guarantee valid in following cases:* *Case (a): If AJAY agrees to pay for the goods in default of NAMIT.* **Answer-**Consideration received by the principal debtor is a sufficient consideration to the surety for giving the guarantee. In given case, since no consideration is involved from creditor to either principal debtor or surety, thus not a valid contract of guarantee *Case (b): If AJAY requests HARI to allow a credit period of 1 year to NAMIT and in lieu promises that, he will pay for the goods if NAMIT defaults. HARI agrees.* **Answer-**Valid contract of guarantee, since consideration in form of extension of credit period from creditor to principal debtor would be a valid consideration for surety to discharge his liability towards creditors

PRACTICAL QUESTION		
Quest -3	*Difference Between Contract of Indemnity and Contract Of Guarantee*	
Basis of Difference	**Contract of Indemnity**	**Contract of Guarantee**
1. Meaning	It is a contract made for Compensating losses of another party caused to him either by the conduct of the parties or from an event or accident.	It is a contract, to perform the promise or discharge liability of third party in case of his default.
2. Number of Parties	There are two parties in a contract namely indemnity holder and indemnifier.	In a contract of guarantee, there are three parties, the principal debtor, creditor and the surety
3. Number of Contract	In indemnity there is only one contract that is between indemnity holder and indemnifier	There are three contracts in guarantee. One between principal debtor and creditor, another between surely and creditor and third one between principal debtor and surety.
4. Nature of liability	Under contract of indemnity, the liability of indemnifier who makes promise to compensate the loss, is primary in nature	In a contract of guarantee, the liability of the surety is secondary in nature

Quest -4	*A guarantees payment to a grocer to the amount of ₹ 2,000 for any grocery that is being purchased time to time by Y. Grocer supplies more than the value of ₹ 2000 which is paid by the A. Afterwards grocer again supplies the grocery to the value of ₹ 8,000. State the liability of A.*
Solution	According to Section 129 of the Indian Contract Act, 1872 a guarantee which extends to a series of transactions is called a 'continuing guarantee'. The liability of the surety in such a guarantee continues until the performance or discharge of all the transactions entered into or the guarantee is withdrawn. In the given case guarantee given by A was a continuing guarantee and thus he is accordingly liable to grocer to the extent of Rs, 2000.
Quest -5	*Z guarantees payment to Y of the price of the four laptops sets to be sold by Y to X and to be paid for in a month. Y delivers the sets to X. X pays for them. Later on Y delivers three more sets to X. State the liability of Z.*
Solution	Given problem is based on concept of Particular guarantee, which may be defined as guarantee available for particular transaction only and which terminate upon completion of such transaction In this case, the guarantee given by Z is not a continuing but infact it is a specific guarantee. Therefore in the given case Z is not liable for the price of the three sets which are supplied later to Y.

PRACTICAL QUESTION

Quest -6

Ravi stand as Surety for Ajay in some loan transaction with Bank. Discuss the right of Surety in following cases

1- At the time of Loan Ajay Mortgaged the property worth of ₹ 10.0 Lacs and availed a loan of ₹ 50.0 Lacs. However without informing Ravi, Bank released the security of Ajay

Answer:- Where the principal debtor has given securities in addition of guarantee, of the debt. In case he fails to repay and the surety becomes liable to pay. The surety is entitled to those securities which are held by the creditor.

Even if surety has no knowledge of such security, still above entitlement would exist.

If the creditor loses or without the consent of surety, parts with, any security, the surety is discharged from his liability to that extent.

Thus in given case, liability of Ravi shall be reduced by ₹ 10 Lakh

2-Ajay helped the bank in recovery of some loan from one of its defaulter and consequent to which, he was entitled to receive ₹ 1,00,000 as commission.

Answer: - If the principal debtor has got any cross claim against the creditor, the surety becomes entitled to set off that claim against the creditor.

Thus, in given case, liability of surety shall be reduced by ₹ 1,00,000

3 Ajay committed a default in Repayment of Loan and his o/s was ₹ 11.40 Lacs, Bank waive his right to Recover ₹ 2.0 Lacs

Answer: - If there has been some reduction in the amount of debt being guarantee by the surety. The surety is entitled to such reduction.

Thus, in given case, liability of surety shall be reduced by ₹ 2,00,000

Quest --7

A, B and C as sureties for D, enter into three separate bonds, of different amounts-A for ₹ 20,000, B for ₹ 40,000 and C for ₹ 10,000. Discuss the liability of A, B, C if D makes default to the extent of (a) ₹ 30,000 (b) ₹ 90,000

Solution

Case-(a)-Where amount of default is ₹ 30,000

Particulars	**Liability of "A"**	**Liability of "B"**	**Liability of "C'**
Default	10,000	10,000	10,000
Max Liability	20,000	40,000	10,000
Liability upon default	***10,000***	***10,000***	***10,000***

PRACTICAL QUESTION

Case-(b)-Where amount of default is ₹90,000

Particulars	**Liability of "A"**	**Liability of "B"**	**Liability of "C"**
Default	30,000	30,000	30,000
Max Liability	20,000	40,000	10,000
Liability upon default for A and C, since it has crossed max limit	***20,000***		***10,000***
Balance liability (90,000-30,000)		***60,000***	
Liability upon default		***40,000***	
Balance amount of ₹20,000 (90,000 – 70,000) shall be recovered by creditor from principal debtor directly			

Quest --8

Mr. P was a surety for Q for an overdraft given by a bank. The bank gave a blank guarantee form to Q who filled it with the amount guaranteed to be ₹30,000. The bank refused to give the overdraft for more than ₹25,000. Q altered the amount from ₹30,000 to ₹25,000 and submitted the document to the bank. State whether P is discharged from his liability by the act of the Q.

Solution

The given problem is based on the section 133 of the Indian Contract Act,1872.According to which when any variance in the terms of the contract between the principal debtor and the creditor is made without the surety's consent, the surety is discharged as to transactions, subsequent to the variance.

But, if the variation is unsubstantial and not disadvantageous to the surety, there the surety is not discharged from his liability [*M.S. Anirudhan* v *Tomco's Bank*].

Accordingly in the problem, surety i.e., Mr. P is not discharged from his liability because the alteration of amount from ₹ 30,000 to ₹ 25,000 is unsubstantial and advantageous to the surety.

Quest --9

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?

Solution

The problem is relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.

PRACTICAL QUESTION	
	2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131). Based upon the above provisions, A is discharged from all the liabilities to C for any subsequent loan. In next case 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.
Quest --10	*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 moths Ravi withdraws his guarantee. Upto the time of revocation of guarantee, Nalin had given 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?*
Solution	As per section 130 of the India Contract Act, a specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into. Thus— (i) Ravi is discharged from all the subsequent loan because it's a case of continuing guarantee. (ii) Ravi is liable for payment of ₹20,000 Nalin because the transaction has already completed
Quest --11	*Explaining the provisions of the Indian Contract Act, 1872, answer the following:* *(i) A contract 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?*
Solution	(i) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B 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.

PRACTICAL QUESTION	
Quest -12	*Mr. X, is employed as a cashier on a monthly salary of ₹ 2,000 by ABC bank for a period of three years. Y gave surety for X's good conduct. After nine months, the financial position of the bank deteriorates. Then X agrees to accept a lower salary of ₹ 1,500/- per month from Bank. Two months later, it was found that X has misappropriated cash since the time of his appointment. What is the liability of Y?*
Solution	If the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X during the first nine months but not for misappropriations committed after the reduction in salary. [Section 133, Indian Contract Act, 1872].
Quest -13	*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.*
Solution	The problem is based on the provisions of Section 137 of the IndianContract 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.
Quest -14	*Star gives to Sun a continuing guarantee to the extent of ₹ 15000 for the groceries to be supplied by Sun to Moon from time to time on credit. Afterwards, Moon became embarrassed, and without the knowledge of Star, Moon and Sun contract that Sun shall continue to supply Moon with groceries for ready money, and that the payments shall be applied to the then existing debts between Moon and Sun.* *Examining the provision of the Indian Contract Act, 1872, decide whether Star is liable on his guarantee given to Sun.*
Solution	**Given problem is based on provisions of the Indian Contract Act, 1872 as contained in Section 133.** *The section provides that any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.* In the given problem all the above requirements are fulfilled. **Conclusion: -**Therefore, Star is not liable on his guarantee for the vegetable supplied after this new arrangement. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there, and he is not liable on the altered contract because it is different from the contract made by him.
Quest-15	*Shambhu becomes guarantor for Aman for the amount which may be given to him by Naveen within 6 months. The maximum limit of the said amount is ₹ 1 lakh. After two months Shambhu withdraws his guarantee. Up to the time of revocation of guarantee, Naveen had given to Aman ₹ 20,000.* (i) *Whether Shambhu is discharged from his liabilities to Naveen for any subsequent loan.* (ii) *Whether Shambhu is liable if Aman fails to pay the amount of ₹ 20,000 to Naveen?*

PRACTICAL QUESTION	
Solution	As per section 130 of the India Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into. Thus, a specific guarantee cannot be revoked by the surety if the liability has already accrued. (i) In the given situation, Shambhu is discharged from all the subsequent loans because it's a case of continuing guarantee. (ii) Shambhu is liable for payment of ₹ 20,000 to Naveen because the transaction has already completed.
Quest-16	*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, Nalin had given 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?*
Solution	As per section 130 of the India Contract Act,1872 a specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into. As per the above provisions, the answer is Yes. Ravi is discharged from all the subsequent loans because it's a case of continuing guarantee. Where as in second case (ii) Ravi is liable for payment of ₹ 20,000 to Nalin because the transaction has already completed.
Quest-17	*Mr. Dwasin urgent need of money amounting ₹5,00,000. He asked Mr. K for the money. K lent the money on the sureties of A, Band 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?*
Solution	As per the provisions of the Indian Contract act, 1872 "when two or more persons are co-sureties for the same debt and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor". Thus, we may conclude that on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.
Quest -18	*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?*

PRACTICAL QUESTION	
	(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?
Solution	(i) As per the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability. (ii) As per 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.

CHAPTER 17

Contract of Agency

PRACTICAL QUESTION	
Quest-1	State whether following ratification are valid or in valid: (a) RAM sells goods which were purchased by RAM's agent without RAM's instruction. **Answer**: - *Valid Ratification* (b) RAM ratifies the acquisition *of* goods by *JAI, i.e.* his agent who acquired those goods in his own name without RAM's authority. **Answer**: - *Invalid, since act done in personal name cannot be ratified* (c) RAM a minor, on attaining majority ratifies the agreement made on his behalf during his minority. **Answer**: - *Invalid, since Principal must have the age of majority when the contract was entered* (d) RAM ratifies 60% *of* the purchase *of* goods by *JAI,* his agent who acquired those goods on behalf of RAM without his authority. **Answer**: - *valid, any partial ratification would amount to ratification of whole amount* (e) RAM ratifies the act of *JAI* who withdrew money after forging RAM's signature. **Answer**: - *Invalid, since an invalid act cannot be ratified* (f) A company ratifies the contracts entered into by the promoters. **Answer**: - *Invalid, since principal must be in existence at the time when the contract was entered* (g) A company ratifies the act done by a director on behalf *of* a company which is *ultra-vires the* company. **Answer**: - *Invalid, since an ultra vires act cannot be ratified*
Quest-2	*Define the term irrevocable agency*
Solution	The principal can revoke authority of an agent at any time, before the authority has been exercised so as to bind the principal. Such revocation may be either express or implied by the conduct of the parties. **However, the principal is not empowered to revoke agent's authority under the following situation and such agency is known as 'Irrevocable Agency'.** *Agency coupled with interest:* [*section 202*]- "Where the agent has himself an interest in the property which forms the subject matter of agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

PRACTICAL QUESTION	
	<u>*Where agent has incurred personal liability-*</u> No agency can be terminated, where the agent has incurred his personal liability <u>*Where the agent has partly exercised his authority-*</u> it becomes irrevocable, as far as acts which has already done in the agency. [section 204] <u>*where agency was for a fixed period-*</u> In circumstances where agency was for a fixed period, principal must make adequate compensation to agent, for pre mature revocation of agency relationship
Quest-3	*Define the difference between agency by Estoppel and Agency by Holding out*
Solution	<u>Agency by estoppels-</u> If some person, either by the words of mouth or in writing or by his conduct induces another person to believe that someone is working as his agent, in reality he is not his agent. Such transaction will be binding on the person so representing and he will be liable as principal. Such agency is known as agency by estoppel. <u>Agency by holding out-</u> *This agency comes into existence when* principal himself holds out that someone is his agent.
Quest-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. (4 marks)*
Solution	***As per the Indian Contract Act 1872, Duties of Agent shall be as follow: -*** **1. Reasonable care-**An agent must carry his act with a reasonable care, and diligence. In case of any loss to principal due to negligence, agent would be personally liable to him. **2. Directions of Principal-**An agent is required to perform his task according to directions of principal. **3. Use of Diligence-**It's a duty of agent to use all reasonable diligence in communicating with his principal and in obtaining his instructions. **4. Not to act at his own-**An agent must not act at his own, while dealing with third party. **5. Secret Profit-**An agent is not expected to earn any secret profit in any transaction made by him with third party. **6. Account for Personal gain-**The agent is bound to pay all sums received by him on behalf of his principal. Even though deduction of money in respect of advances made or expenses-incurred by him in performing his duty is permissible. Where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may: - 1. Repudiate the transaction 2. Claim from the agent any benefit which may have resulted to him from the transaction. Thus Mr. Ahuja is entitled to recover ₹6 Lakhs from Mr. Singh.

PRACTICAL QUESTION	
Quest-5	*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?*
Solution	***As per the Indian Contract Act 1872, Duties of Agent shall be as follow: -*** **1. Reasonable care**-An agent must carry his act with a reasonable care, and diligence. In case of any loss to principal due to negligence, agent would be personally liable to him. **2. Directions of Principal**-An agent is required to perform his task according to directions of principal. **3. Use of Diligence**-It's a duty of agent to use all reasonable diligence in communicating with his principal and in obtaining his instructions. **4. Not to act at his own**- An agent must not become a principal party to the transaction as against his principal. Except where he obtains the consent of his principal and after disclosing to the principal all the material facts in respect of the transaction. **5. Secret Profit**-An agent is not expected to earn any secret profit in any transaction made by him with third party. **6. Account for Personal gain**-The agent is bound to pay all sums received by him on behalf of his principal. Even though deduction of money in respect of advances made or expenses-incurred by him in performing his duty is permissible. *In given case, P appoints A as his agent to sell his estate. A, wishes to buy the estate for himself but conceals the existence of Granite-Mine.* **Conclusion:-**We may conclude that A is liable to compensate principal any gain which he has made out of such transaction **<u>Situation Where A had informed P</u>** If A had informed 'P' about the existence of mine before he purchased the estate, the act of the agent would have been valid.
Quest-6	*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?*
Solution	The given problem is based on the provision related to 'agency coupled with interest'. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest. In the instant case the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

PRACTICAL QUESTION	
	Thus, when Sunil appointed Rajendra 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 favor of Rajendra and the said agency is not revocable. The revocation of agency by Sunil is not lawful.
Quest-7	*Aditya holds a lease from Birla which is terminable on three months' notice. C, an unauthorized person gives notice of termination to Aditya. Examine with reference to the provisions of the Indian Contract Act, 1872, whether Aditya is bound by termination of Lease.*
Solution	The given problem is based on section 200 of the Indian Contract Act, 1872 whichdeals with the provisions related to the ratification of unauthorized act cannot injure third person. Provisions says that an act done by one person on behalf of another, without such other person's authority, which if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person cannot, by ratification, be made to have such effect. According to the given situation, Aditya holds a lease from Birla which is terminable on three months' notice. C, an unauthorized person gives notice of termination of lease to Aditya. Accordingly, the notice given by C (unauthorized person) if, ratified, would terminate Aditya's right or interest in the lease property. So, such an unauthorized act of C, cannot be ratified by Birla, to binding on Aditya.
Quest-8	*A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. Discuss in the light of the provisions of the Indian Contract Act, 1872, whether B is authorised to conduct the business in the name of A.*
Solution	According to the section 187 of the Indian Contract Act, 1872, an authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case. In the given instance, the shop of A was managed by B and the conduct of business as to the ordering of goods from C and transaction related to that was made from the A's fund and with A's knowledge. This reflects according to the above provision that B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.
Quest-9	*K is the wife of A. She Purchased a saree on Credit from B. B Demanded the amount from A. A refused to make the payment. B filed a suit against A for the same amount. Decide in light of Indian Contract Act, whether B would succeed.*
Solution	According to Indian Contract Act, 1872, Where any husband and wife are living together, the wife is presumed to be an agent of her Husband. Thus, the husband is bound to pay the bills for household credit purchased by her wife provided the following conditions are satisfied:- 1. Husband and wife must be living together

PRACTICAL QUESTION	
	2. They are living in a Domestic establishment of their own and wife should be in charge of domestic establishment. 3. Wife must purchase the Article suited to the style in which they are living Thus if all above conditions are satisfied wife shall be assumed as an agent and husband is liable In given case, K is the wife of A. She Purchased a saree on Credit from B. B Demanded the amount from A. A refused to make the payment. B filed a suit against A for the same amount. **Conclusion**-Based upon the assumption that all above conditions are satisfied we may conclude that A is liable to bear the cost of sarees as purchased by his wife K.
Quest-10	***Provide the amount of Interest in following agency which are coupled with interest*** *Case-1 Ravi lends 1,00,000 to Namit. At the time of Recovery, Namit refused to pay, however agreed to transfer his Car to Ravi and authorized him to sell it off to recover his dues.* ***Answer:-Amount of interest shall be ₹1,00,000*** *Case-2 Suppose in above case, Ravi was a Car dealer and he also demanded a commission which he normally charged as Dealer in addition to his dues.* ***Answer:-Amount of interest shall be ₹1,00,000***
Quest-11	*Mr. Yadav of Delhi engaged Mr. Shekhawat as his agent to buy a house in West Extension area. Mr. Shekhawat bought a house for ₹ 50 lakhs in the name of a nominee and then purchased it himself for ₹ 60 lakhs. He then sold the same house to Mr. Yadav for ₹ 62 lakhs. Mr. Yadav later comes to know the mischief of Mr. Shekhawat and tries to recover the excess amount paid to Mr. Shekhawat. Is he entitled to recover any amount from Mr. Shekhawat? If so, how much? Explain.*
Solution	Drishti Ltd. Finalized its books of accounts as per the applicable provisions of the companies Act,2013. It also filed the Income tax return for the assessment year 2016-2017 within the due date. The Income Tax Authorities found some irregularities in the said accounts and want the company to revise the accounts. Referring to the provisions of the Companies Act,2013 advise whether and how the accounts of the company can be re-opened and revised. Drishti Ltd. Finalized its books of accounts as per the applicable provisions of the companies Act,2013. It also filed the Income tax return for the assessment year 2016-2017 within the due date. The Income Tax Authorities found some irregularities in the said accounts and want the company to revise the accounts. Referring to the provisions of the Companies Act,2013 advise whether and how the accounts of the company can be re-opened and revised. transaction.
Quest-12	*Ashish appoints Megha, a minor, as his agent to sell his watch for cash at a price not less than ₹ 1700. Megha sells it to Diwan for ₹ 1200. Is the sale valid? Explain the legal position of Megha and Diwan, referring to the provisions of the Indian Contract Act, 1872.*
Solution	As per the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal.

PRACTICAL QUESTION	
	A person in order to be an agent must have authority to contract. So, minor has no capacity to contract but may have authority to act as agent. An agent brings about a contractual relationship between the principal and third persons and therefore his contractual capacity is immaterial Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. **Conclusion:-** Since in the given case, Diwan gets a good title to the watch, thus we may conclude that Megha is not liable to Ashish for her negligence in the performance of her duties.
Quest-13	*Star gives to Sun a continuing guarantee to the extent of ₹ 15000 for the groceries to be supplied by Sun to Moon from time to time on credit. Afterwards, Moon became embarrassed, and without the knowledge of Star, Moon and Sun contract that Sun shall continue to supply Moon with groceries for ready money, and that the payments shall be applied to the then existing debts between Moon and Sun.* *Examining the provision of the Indian Contract Act, 1872, decide whether Star is liable on his guarantee given to Sun.*
Solution	**Given problem is based on provisions of the Indian Contract Act, 1872 as contained in Section 133.** The section provides that any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance. In the given problem all the above requirements are fulfilled. **Conclusion: -**Therefore, Star is not liable on his guarantee for the vegetable supplied after this new arrangement. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there, and he is not liable on the altered contract because it is different from the contract made by him.
Quest-14	*Shambhu becomes guarantor for Aman for the amount which may be given to him by Naveen within 6 months. The maximum limit of the said amount is ₹ 1 lakh. After two months Shambhu withdraws his guarantee. Up to the time of revocation of guarantee, Naveen had given to Aman ₹ 20,000.* (i) *Whether Shambhu is discharged from his liabilities to Naveen for any subsequent loan.* (ii) *Whether Shambhu is liable if Aman fails to pay the amount of ₹ 20,000 to Naveen?.*
Solution	As per section 130 of the India Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into. Thus, a specific guarantee cannot be revoked by the surety if the liability has already accrued. (i) In the given situation, Shambhu is discharged from all the subsequent loans because it's a case of continuing guarantee. (ii) Shambhu is liable for payment of ₹ 20,000 to Naveen because the transaction has already completed.

PRACTICAL QUESTION	
Quest-15	*ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim?*
Solution	**As per the Indian Contract Act, 1872** An agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it. In the given case, Mr. Pintu, one of the agents, sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) and company was insolvent while such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit. Hence, Mr. Pintu must make compensation for loss to ABC Ltd.
Quest-16	*Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority?*
Solution	As per the provisions of the Indian Contract Act, 1872 An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. In the given case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses. Thus, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

MULTIPLE CHOICE QUESTIONS

1. Debentures

1. Term Debentures is defined as per

(a) Section 2(18)

(b) Section 2(30)

(c) Section 2(19)

(d) Section 2(29)

Sol-(b)

2. Which out of the following statement in incorrect

(a) No company shall issue any debentures carrying any voting rights.

(b) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption

(c) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue

(d) the company shall appoint the debenture trustee after the issue of prospectus for purpose of security creation

Sol-(d)

3. Which out of the following statement is incorrect in relation to issue of debentures

(a) Companies engaged in setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding 20 years

(b) Debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon

(c) In case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge under this sub-rule shall not apply."

(d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee

Sol-(a)

4. A person shall not be appointed as a debenture trustee, if he

(a) Beneficially holds shares in the company

(b) Promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company

(c) Beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee

(d) All of above

Sol-(d)

5. A person shall not be appointed as a debenture trustee, if he

(a) is not indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company

(b) has not furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon

(c) Does not have any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year

(d) Relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel

Sol-(d)

6. Which out of the following is not a duty of Debenture trustee

(a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed

(b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders

(c) Discussing the performance in Board Meeting

(d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor

Sol-(c)

7. Debenture Trustee shall be entitled to appoint Nominee Director on board of company, if

(a) Event of default in payment of interest to the debenture holders

(b) Delay in creation of security for debentures

(c) Default in redemption of debentures

(d) Non-sharing of information by management as required

Sol-(c)

8. which out of following shall not be the duty of every debenture trustee-

(a) call for reports on the utilization of funds raised by the issue of debentures

(b) take steps to convene a meeting of members as and when such meeting is required to be held

(c) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures

(d) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed

Sol-(b)

9 Meeting of all the debenture holders shall be convened by the debenture trustee on

(a) Requisition in writing signed by debenture holders holding at least $1/5^{th}$ in value of the debentures for the time being outstanding

(b) Requisition in writing signed by debenture holders holding at least $1/20^{th}$ in value of the debentures for the time being outstanding

(c) Requisition in writing signed by debenture holders holding at least $1/10^{th}$ in value of the debentures for the time being outstanding

(d) Requisition in writing signed by debenture holders holding at least 50% in value of the debentures for the time being outstanding

Sol-(c)

10 Meeting of all the debenture holders shall be convened by the debenture trustee on

(a) happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders

(b) Non-sharing of information by management as required

(c) Delay in creation of security for debentures

(d) None of above

Sol-(a)

11. Debenture Trust Deed shall be executed as per

(a) Form SH-12

(b) Form SH-11

(c) Form SH-10

(d) Form SH-9

Sol-(a)

12. Debenture Trust Deed shall be executed by the company issuing debentures in favour of the debenture trustees

(a) within 2 months of closure of the issue or offer

(b) within 3 months of closure of the issue or offer

(c) within 5 months of closure of the issue or offer

(d) within 6 months of closure of the issue or offer

Sol-(b)

13. Which out of the following is correct in relation to Debenture Redemption Reserve, where a company intends to redeem its debentures prematurely

(a) Company may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures

(b) Company may provide for transfer of atleast 50% of amount in Debenture Redemption Reserve

(c) Company may provide for transfer of atleast 75% of amount in Debenture Redemption Reserve

(d) None of above

Sol-(a)

14. Any money transferred to the Unpaid Dividend Account of a company which remains unpaid or unclaimed for a period of seven years shall be transferred by the company to

(a) Investor Education and Protection Fund

(b) Investor Protection and Education Fund

(c) Investor Protection Fund

(d) Fund established by Company for this purpose

Sol-(a)

15. Which out of the following statement is incorrect in relation to Debenture Redemption Reserve

(a) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debenture

(b) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997, and for housing finance companies registered with the national housing bank 'the adequacy' of DRR will be 25% of the value of outstanding debentures issued through public issue

(c) For other companies including manufacturing companies, the adequacy of DRR will be 25% of the value of outstanding debentures

(d) For companies engaged in infrastructure, the adequacy of DRR will be 50% of the value of outstanding debentures

Sol-(d)

16. Every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less

(a) 15% of the amount of its debentures maturing during the year ending on the 31st day of March of the next year

(b) 25% of the amount of its debentures maturing during the year ending on the 31st day of March of the next year

(c) 15% of the amount of its debentures maturing during the year ending on the 31st day of March of the next year and also the following year

(d) 25% of the amount of its debentures maturing during the year ending on the 31st day of March of the next year and also the following year

Sol-(a)

17. Every company required to create Debenture Redemption Reserve shall in vest in 1 or more of the following securities

(a) Deposits with any scheduled bank, free from any charge or lien

(b) Unencumbered securities of the Central Government or of any State Government

(c) Unencumbered securities mentioned in section 20 of the Indian Trusts Act, 1882

(d) Unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882

(e) All of above

Sol-(e)

18. In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of

(a) Entire Debenture Amount

(b) non-convertible portion of debenture only

(c) 100% for non-convertible Debentures and 50% for convertible portion

(d) 100% for non-convertible Debentures and 25% for convertible portion

Sol-(b)

19 A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company

(a) This statement is correct

(b) Only for inspection of Debenture holder, but not for members

(c) Only for Debenture holders and those member who are debenture holder as well

(d) For both member and debenture holders in the same manner, as if it were the register of members of the company

Sol-(d)

20A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within

(a) 7 Days of such request

(b) 10 Days of such request

(c) 15 Days of such request

(d) 30 Days of such request

Sol-(a)

21. Any vacancy in office of Debenture Trustee shall be filled by

(a) Board of Directors

(b) Meeting of Debenture Holders

(c) Board subject to approval by Debenture holders

(d) Central Government

Sol-(a)

22. Any vacancy in office of Debenture Trustee caused due to his resignation shall be filled by

(a) Meeting of Debenture Holders

(b) Written consent of the majority of the debenture holders.

(c) Board of Directors

(d) Central Government

Sol-(b)

23. Any Debenture Trustee can be removed from his office provided

(a) it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting

(b) it is approved by Board subject to consent of majority of Debenture holders

(c) it is approved by the holders of not less than 2/3rd in value of the debentures outstanding, at their meeting

(d) it is approved by Central government

Sol-(a)

24. Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, he may

(a) File a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

(b) Call the immediate meeting of Debenture holders on urgent basis

(c) Take such step as may be directed by holder of atleast 75% in value of debentures

(d) opt for sale of security

Sol-(a)

25. Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company

(a) to redeem the debentures within next 60 days

(b) to redeem the debentures within next 30 days

(c) to redeem the debentures within next 90 days

(d) to redeem the debentures forthwith on payment of principal and interest due thereon.

Sol-(d)

2. Prospectus

1. A public company may issue securities

(a) to public through prospectus

(b) through private placement

(c) through a rights issue or a bonus issue

(d) All of above

Sol-(d)

2. A private company may issue securities

(a) by way of rights issue

(b) by way of bonus issue

(c) through private placement

(d) any of above

Sol-(d)

3. Term public offer includes

(a) initial public offer

(b) further public offer of securities to the public by a company

(c) an offer for sale of securities to the public by an existing shareholder

(d) all of above

Sol-(d)

4. As per Section 25, it shall be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it

(c) either a or b

(d) both a and b

Sol-(c)

5. Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be treated as

(a) Prospectus

(b) Deemed Prospectus

(c) Shelf Prospectus

(d) Red Herring Prospectus

Sol-(b)

6. No prospectus shall be valid if it is issued …….after the date on which a copy thereof is delivered to the Registrar

(a) More than 30 days

(b) More than 60 days

(c) More than 90 days

(d) More than 120 days

Sol-(c)

7. No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless

(a) It has been delivered to Registrar for registration

(b) a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney

(c) both a and b

(d) either a or b

Sol-(c)

8. A prospectus issued under sub-section (1) of Section 26 shall not include a statement purporting to be made by an expert unless

(a) expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company

(b) expert has given his written consent to the issue of the prospectus

(c) expert has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus

(d) all of above

Sol-(d)

9. Every prospectus issued shall, on the face of it

(a) state that a copy has been delivered for registration to the Registrar

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents

(c) either a or b

(d) both a and b

Sol-(d)

10. A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, unless

(a) Approval through members by Special Resolution has been obtained

(b) Approval through members by Ordinary Resolution has been obtained

(c) Approval through Tribunal has been obtained

(d) Approval through Central Government has been obtained

Sol-(a)

11. Those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders, shall be termed as

(a) Dissenting shareholders

(b) Requisitionist

(c) Exiting shareholders

(d) Revolutionary Shareholders

Sol-(a)

12. Where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued except by passing a special resolution through postal ballot and the notice of the proposed special resolution shall contain certain particulars, which shall not include the following particular

(a) the original purpose or object of the Issue

(b) the total money raised

(c) the money utilised for the objects of the company stated in the prospectus

(d) the extent of achievement of proposed objects(that is fifty percent, sixty percent, etc

(e) None of above

Sol-(e)

13. Where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued except by passing a special resolution through postal ballot and the notice of the proposed special resolution shall contain certain particulars, which shall not include the following particular

(a) the unutilised amount out of the money so raised through prospectus

(b) the particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued

(c) the reason and justification for seeking variation

(d) the fact that approval for SEBI for exit price has been achieved

Sol-(d)

14. The advertisement of the notice for getting the resolution passed for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued, shall be in

(a) Form PAS-1

(b) Form PAS-3

(c) Form PAS-2

(d) Form PAS-4

Sol-(a)

15. Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed as per

(a) Section 28 read with Rule 6 of Companies (Prospectus and Allotment of Securities) Rules, 2014

(b) Section 28 read with Rule 7 of Companies (Prospectus and Allotment of Securities) Rules, 2014

(c) Section 28 read with Rule 8 of Companies (Prospectus and Allotment of Securities) Rules, 2014

(d) Section 27 read with Rule 8 of Companies (Prospectus and Allotment of Securities) Rules, 2014

Sol-(c)

16. As per Section 28, Any document by which the offer of sale to the public is made shall be

(a) Deemed Prospectus issued by concerned shareholder

(b) Deemed prospectus as stated u/s 25

(c) Deemed to be a prospectus issued by the company

(d) None of above

Sol-(c)

17. The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall

(a) collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale

(b) No need to reimburse the company all expenses incurred by it

(c) Ensure publication by company on their behalf

(d) State that for any frau in prospectus, they shall be collectively liable to aggrieved parties

Sol-(a)

18. Which out of the following companies shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996

(a) every company making public offer

(b) every company issuing securities to Qualified Institutional buyers

(c) every company issuing securities as private placement

(d) all of above

Sol-(a)

19 As per Section 30, Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein

(a) the contents of its memorandum as regards the objects

(b) the liability of members

(c) the amount of share capital of the company

(d) the names of the signatories to the memorandum and the number of shares subscribed for by them

(e) All of above

Sol-(e)

20. Any class or classes of companies, as the Securities and Exchange Board may provide, may file a ……with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus

(a) Statement in lieu of prospectus

(b) Offer letter for private placement

(c) Shelf Prospectus

(d) Deemed Prospectus

Sol-(c)

21. A company filing a shelf prospectus shall be required to file a document containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities, such document is termed as

(a) Information Memorandum

(b) Memorandum

(c) Statement in Lieu of prospectus

(d) deemed prospectus

Sol-(a)

22. Extra Ordinary General Meeting may be convened by giving shorter notice provided consent has been obtained from

(a) Atleast 95% of the members entitled to vote

(b) Majority in numbers having 95% of the paid up share capital having voting power

(c) Majority in numbers having 95% of the paid up share capital

(d) Consent of 100% of members

Sol-(b)

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

(a) Statement in lieu of prospectus

(b) Offer letter for private placement

(c) Shelf Prospectus

(d) Deemed Prospectus

Sol-(c)

24. The notice of the general meeting of the company shall be simultaneously

(a) Dispatched to ROC for its records

(b) Dispatched to Central Government for its records

(c) Placed on website of company on the website as may be notified by the Central Government.

(d) Placed on website, if any of company on the website as may be notified by the Central Government.

Sol-(d)

25. Form used for preparation of Information Memorandum shall be

(a) Form PAS-1

(b) Form PAS-2

(c) Form PAS-3

(d) Form PAS-4

Sol-(b)

26. The information memorandum shall be filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within …….prior to the issue of a second or subsequent offer of securities under the shelf prospectus

(a) 1 month

(b) 2month

(c) 3month

(d) 4month

Sol-(a)

27. A company proposing to issue a red herring prospectus shall file it with the Registrar

(a) at least 3 days prior to the opening of the subscription list and the offer

(b) at least 7 days prior to the opening of the subscription list and the offer

(c) at least 5 days prior to the opening of the subscription list and the offer

(d) at least 10 days prior to the opening of the subscription list and the offer

Sol-(a)

28. A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be

(a) highlighted as variations in the prospectus

(b) Intimated as variation to Registrar

(c) highlighted as variations in copy to be published to public

(d) None of above

Sol-(a)

29 A prospectus which does not include complete particulars of the quantum or price of the securities included therein

(a) Statement in lieu of prospectus

(b) Red Herring Prospectus

(c) Shelf Prospectus

(d) Deemed Prospectus

Sol-(b)

30 As per Sec 33, No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by

(a) Abridged prospectus

(b) Shelf Prospectus

(c) Statement in lieu of prospectus

(d) Information memorandum

Sol-(a)

31. As per Section 2(1), a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board, shall be termed as

(a) Abridged prospectus

(b) Shelf Prospectus

(c) Statement in lieu of prospectus

(d) Information memorandum

Sol-(a)

32. Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into, any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution, shall be liable for

(a) Penalty of minimum ₹ 1,00,000

(b) Penalty of minimum ₹ 50,000

(c) Action u/s 447

(d) Imprisonment upto 6 months

Sol-(c)

33. A person shall be liable u/s 447 as pre the provisions of Sec 38, if any person

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

(b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name

(d) All of above

Sol-(d)

34. Where a person has been convicted under section 38, the Court may order

(a) Attachment of assets

(b) Forfeiture of security

(c) disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person

(d) Imprisonment upto 1 year

Sol-(c)

35. The amount received through disgorgement or disposal of securities u/s 38 shall be

(a) Credited to the Investor Education and Protection Fund

(b) Credited to Fund established by Central Government for benefit of investors

(c) Central Government benevolent fund

(d) None of above

Sol-(a)

36. While computing the number of investors to whom private placement can be made, following shall be excluded

(a) Qualified Institutional Buyers

(b) Employees

(c) Promoters

Sol-(c)

37. Any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) shall be termed as

(a) Private Placement

(b) Qualified Institutional Placement

(c) Public Offering

(d) Promoters contributions

Sol-(a)

38. If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an

(a) Private placement offer letter

(b) Offer to public

(c) Letter inviting offer from public

(d) None of above

Sol-(a)

39. As per Sec 42, A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within …… from the date of the allotment

(a) 15 Days

(b) 30 Days

(c) 45 Days

(d) 60 Days

Sol-(a)

40. Which out of the following is incorrect in relation to issue of capital through GDR u/s 41

(a) The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so

(b) The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting

(c) The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts

(d) Committee of the Board of directors shall have $1/3^{rd}$ of directors as independent director in case the company is required to have independent directors

Sol-(d)

3. Shares

1. As per Sec 2(84) Shares means

(a) share in the share capital of a company, and exclude stock

(b) share in the share capital of a company, and includes stock

(c) share in the share capital of a company, and includes preference share capital

(d) share in the share capital of a company

Sol-(b)

2. A company having a share capital may, if so authorised by its articles, issue preference shares subject to the following conditions

(a) the issue of such shares has been authorized by passing a special resolution in the general meeting of the company

(b) the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares

(c) at the time of such issue of preference shares, company has no subsisting default in the redemption of preference shares/Debentures

(d) both a and b

Sol-(d)

3. As per Sec 47, Every member holding a preference share has a right to vote only on resolutions

(a) which directly affect the rights attached to his preference shares

(b) which may affect their voting right

(c) Which may affect dividend to which they are entitled

(d) On every resolution proposed for reduction of capital

Sol-(a)

4. Preference Shareholder has Right to Vote on Every Resolution

(a) If the dividend has remained unpaid for period of 2 consecutive years or more prior to the date of the commencement of the meeting

(b) If the dividend has remained unpaid for period of 2 immediate preceding financial year

(c) If the dividend has remained unpaid for period of 2 years or more prior to the date of the commencement of the meeting

(d) If the dividend has remained unpaid for period of any 2 years or more prior to the date of the commencement of the meeting

Sol-(c)

5. As per Sec 47, The proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion

(a) As the preference share bears to the Equity shares

(b) As the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares

(c) As the capital, which has been subscribed in respect of the equity shares bears to the capital subscribed in respect of the preference shares

(d) As the Authorised capital in respect of the equity shares bears to the Authorised capital in respect of the preference shares

Sol-(b)

6. Every company limited by shares may issue equity shares with differential rights as to voting or dividend to the extent of

(a) 26 per cent of the total share capital issued

(b) 26 per cent of total post-issue paid up equity share capital including equity shares with differential rights

(c) 25 per cent of the total share capital issued

(d) 26 per cent of the total paid up capital

Sol-(b)

7. Which out of the following is not a pre-condition before issue of equity shares with differential rights

(a) Company must have distributable profits for three financial years preceding such issue

(b) No default in Repayment of matured Deposits

(c) No default in payment of interest on debentures

(d) No default in compliance of RBI Act, 1934

Sol-(c)

8. Which out of the following is not a pre-condition before issue of equity shares with differential rights

(a) Approval of shareholders must be obtained in general meeting by passing an ordinary resolution

(b) Company has not defaulted in filling of financial statements or annual returns for 3 FYs preceding the relevant FY

(c) The Articles of Association must authorize the issue of such equity shares

(d) No default in compliance of SECRA provisions

Sol-(b)

9 Which out of the following is not a pre-condition before issue of equity shares with differential rights

(a) No default in Payment of dividend on preference shares

(b) No default in Statutory payments relating to its employees or to any authority

(c) No default in Crediting the amount in Investor Education and Protection Fund to the Central Government

(d) No default in compliance of Foreign Trade Regulation Act

Sol-(d)

10 Which out of the following is incorrect in relation to issue of share certificate

(a) It shall be issued under the common seal of company, if any

(b) It shall be conclusive evidence of the title of the person to such shares

(c) A duplicate certificate of shares may be issued, if such certificate is proved to have been lost or destroyed

(d) A duplicate certificate of shares may be issued, if such certificate is defaced, mutilated or torn and is surrendered to the company

Sol-(b)

11. Every share certificate shall be issued as per

(a) Form SH-1

(b) Form SH-4

(c) Form SH-5

(d) Form SH-6

Sol-(a)

12. Which out of following section authorise Payment of dividend in proportion to amount paid up

(a) Section 49

(b) Section 50

(c) Section 51

(d) Section 52

Sol-(c)

13. Which out of following is incorrect in relation to issue of security at premium

(a) No prior authorization is required as per AOA

(b) Ordinary resolution shall be required for issue of securities at premium irrespective of amount of premium

(c) Amount of premium can be used for issue of fully paid bonus shares

(d) Amount of premium can be used for the purchase of its own shares or other securities under section 68

Sol-(b)

14. As per Sec 53, A company may issue shares at a discount to its creditors when

(a) its debt is converted into shares in pursuance of any statutory resolution plan

(b) debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949

(c) both a and b

(d) either a or b

Sol-(d)

15. Incase of any non-compliance of Sec 53, such company and every officer who is in default shall be liable to a penalty which may extend to

(a) an amount equal to the amount raised through the issue of shares at a discount or 25 Lak rupees, whichever is less

(b) an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is more

(c) an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less

(d) an amount equal to the amount raised through the issue of shares at a discount or 2 lakh rupees, whichever is less

Sol-(c)

16. Shares which are issued to the employees or directors for providing know-how to the company or for making available to the company the rights in the nature of intellectual property rights or value additions shall be termed as

(a) Employees Stock Option

(b) Warrant issued to employees

(c) Sweet Equity Shares

(d) Sweat Equity Shares

Sol-(d)

17. Which out of the following is incorrect in relation to issue of sweat equity shares u/s 54

(a) Sweat equity shares to be issued by the company should pertain to the class of shares which the company has already issued.

(b) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business

(c) Regulation framed by SEBI shall be duly complied with in case shares of a company are listed on a recognized stock exchange

(d) Authorized by a special resolution in GM is required

Sol-(b), such condition has been removed now

18. Which out of the following is incorrect in relation to issue of sweat equity shares u/s 54

(a) The company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher:

(b) issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time

(c) startup company may issue sweat equity shares not exceeding fifty percent of its paid up capital upto five years from the date of its incorporation or registration

(d) The sweat equity shares issued to directors or employees shall be locked in/non transferable for a period of 1 year from the date of allotment

Sol-(d), lock in shall be for 1 year only

19 Which out of the following is incorrect in relation to issue of sweat equity shares u/s 54

(a) It means the shares issued by the company to its employees or directors at a discount or for consideration other than cash.

(b) These shares are issued to the employees or directors for providing know-how to the company or for making available to the company the rights in the nature of intellectual property rights or value additions

(c) These shares to be issued to any employee of the company who has been working in India

(d) These shares to be issued to a director of the company, whether a whole time director or not

Sol-(c), since a permanent employee of the company who has been working in India or outside India, for at least last one year

20Any issue of Bonus issue shall be as per the provisions of

(a) Section 60

(b) Section 61

(c) Section 62

(d) Section 63

Sol-(d)

21. Which out of the following is correct in relation to issue of bonus shares by company

(a) No need to have an authorisation from Article

(b) Board Resolution shall be passed for any such bonus issue

(c) Bonus may be issued out of Capital Redemption reserve or any other capital reserve

(d) Company has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it

Sol-(d)

22. Which out of the following is not correct in relation to making of call by company

(a) The call must be made by a resolution Passed by members

(b) Calls shall be made on a uniform basis, on all shares, falling under the same class.

(c) Shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the same class

(d) The call must be made strictly in accordance with the provisions of the articles of the company

Sol-(a), since board resolution only shall be required

23. Which out of following shall be true in relation to calls in advance

(a) Company may accept calls in advance only if it is authorised by Article of company

(b) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up

(c) The amount received in advance of calls is refundable.

(d) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.

Sol-(c)

24. Company engaged in infrastructure projects may issue Preference shares for a period

(a) period exceeding 20 years

(b) period exceeding 20 years and upto 30 years

(c) period exceeding 20 years and upto50 years

(d) period exceeding 20 years and upto40 years

Sol-(b)

25. Where a company is not in a position to redeem any preference shares issue further redeemable preference shares equal to the amount duein respect of the unredeemed preference shares provided

(a) Consent has been obtained from holders of **three-fourths in value of such preference shares**

(b) with the approval of the Tribunal on a petition made by it in this behalf

(c) Approval of members in general meeting

(d) Both a and b

Sol-(d)

26. Which out of following is correct in relation to Redemption of Preference share capital

(a) Any such redemption shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company

(b) Tribunal shall, while giving approval for issue of further preference shares for redemption under this section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares

(c) where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account,

(d) All of above

Sol-(d)

27. If any person deceitfully personates as an owner of any security and thereby obtains any such security, he shall be punishable with

(a) imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(b) Penalty as prescribed u/s 447

(c) imprisonment for a term which shall not be less than 6 months and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees

(d) imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Sol-(a)

28. Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain

(a) a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been paid-up.

(b) a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed.

(c) a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up

(d) a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been called up

Sol-(c)

29. As per the provisions of Sec 44

(a) The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

(b) The shares or debentures or other interest of any member in a company shall be freely transferable

(c) The shares or debentures shall be backed by share certificate or debenture certificate

(d) None of above

Sol-(a)

30. Every share in a company having a share capital shall be distinguished by its

(a) Share certificate number

(b) Registered folio number

(c) Distinctive number

(d) Serial number

Sol-(c)

31. As per Sec 48, Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied

(a) with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class

(b) if provision with respect to such variation is contained in the memorandum or articles of the company

(c) if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained

(d) All of above

Sol-(d)

32. Holder of ……. Shares may apply against the decision of variation of right as passed u/s 48

(a) Not less than 10% of the issued shares of a class who did not consent to such variation or vote in favour of the special resolution for the variation

(b) Not less than 15% of the issued shares of a class who did not consent to such variation or vote in favour of the special resolution for the variation

(c) Not less than 5% of the issued shares of a class who did not consent to such variation or vote in favour of the special resolution for the variation

(d) Not less than 10% of the issued shares

Sol-(a)

33. Any appeal against the decision passed u/s 48 shall be filed with tribunal within

(a) 15 days after the date on which the consent was given or the resolution was passed

(b) 21 days after the date on which the consent was given or the resolution was passed

(c) 30 days after the date on which the consent was given or the resolution was passed

(d) 7 days after the date on which the consent was given or the resolution was passed

Sol-(b)

34. Provisions of Sec 52 are applicable to certain class of companies which does not cover

(a) all unlisted public companies;

(b) all private companies; and

(c) listed companies so far as they do not contradict or conflict with any other regulation framed in this regard by the Securities and Exchange Board of India

(d) listed companies

Sol-(d)

35. Where a company engaged in infrastructure project issued preference share for 30 years, which out of the following statement is correct

(a) Redemption of a minimum 15% of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders

(b) Redemption of a minimum 20% of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders

(c) Redemption of a minimum 10% of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders

(d) Redemption of a minimum 5% of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders

Sol-(c)

36. Incase of One person company, share certificate shall be signed by

(a) a director

(b) Atleast 2 directors

(c) Company secretary

(d) Both a and b or person authorised by Board

Sol-(d)

37. **Issue of Renewed or Duplicate Share Certificate shall be issued only if**

(a) Shares have been sub-divided or Shares have been consolidated

(b) In replacement of those which are defaced, mutilated, torn or old, decrepit, worn out

(c) where the pages on the reverse for recording transfers have been duly utilised

(d) All of above

Sol-(d)

38. Out of following in which scenario company need to obtain approval of Board before issue of Duplicate share certificate

(a) Shares have been sub-divided

(b) In replacement of those which are defaced, mutilated, torn or old, decrepit, worn out

(c) Shares have been consolidated

(d) No such approval shall be required

Sol-(b)

39. No surrender of existing share certificate shall be required, where a duplicate share certificate is required in relation to

(a) Shares have been sub-divided

(b) In replacement of those which are defaced, mutilated, torn or old, decrepit, worn out

(c) Shares have been consolidated

(d) Both a and c

Sol-(d)

40. **Duplicate share certificate shall be issued within……..incase of unlisted company**

(a) 3 months from the date of submission of complete documents with the company

(b) 1 months from the date of submission of complete documents with the company

(c) 2 months from the date of submission of complete documents with the company

(d) 30 Days from the date of submission of complete documents with the company

Sol-(c)

41. **Duplicate share certificate shall be issued within……..incase of listed company**

(a) 3 months from the date of submission of complete documents with the company

(b) 1 months from the date of submission of complete documents with the company

(c) 2 months from the date of submission of complete documents with the company

(d) 45 Days from the date of submission of complete documents with the company

Sol-(d)

42. The particulars of every duplicate share certificate issued shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in

(a) Form SH-2

(b) Form SH-3

(c) Form SH-5

(d) Form SH-6

Sol-(a)

43. Period during which Register for duplicate share certificate shall be issued shall not exceed

(a) Immediate preceding 8 years

(b) Immediate preceding 5 years

(c) Immediate preceding 3 years

(d) It shall be maintained permanently

Sol-(d)

44. All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by

(a) Atleast 2 directors of company

(b) Atleast 2 directors of company, where 1 shall be the managing director

(c) Atleast 2 directors of company along with company secretary

(d) company secretary

Sol-(d)

45. Right of pre-emptive is available to existing shareholders through provisions of

(a) Section 60

(b) Section 61

(c) Section 62

(d) Section 63

Sol-(d)

46. Right offer shall be given through a notice, whereby period of ……days shall be given to members to decide

(a) Minimum 15 days and max 30 days

(b) Minimum 10 days and max 15 days

(c) Minimum 7 days and max 30 days

(d) Minimum 30 days and max 45 days

Sol-(a)

47. Notice as specified in Sec 62 shall not be dispatched through

(a) Registered Post

(b) Speed Post

(c) Electronic mode

(d) Post

Sol-(d)

48. Period of notice as specified in Sec 62 may be reduced incase of private limited company provided

(a) Atleast 90% of the members of a private company have given their consent in writing or in electronic mode

(b) Atleast 75% of the members of a private company have given their consent in writing or in electronic mode

(c) Atleast 100% of the members of a private company have given their consent in writing or in electronic mode

(d) Article of company so provide

Sol-(a)

49. Which out of the following shall not be the content of notice as dispatched u/s 62

(a) It must specify the number of shares offered, and the time within which the offer is to be accepted.

(b) It must inform the shareholders that if the offer is not accepted within the specified time, it shall be deemed to be declined

(c) It must inform the shareholders that they have the right to renounce all or any of the shares, offered to them, in favour of their nominees

(d) It must also inform that shareholders may request company for extension of time, if shareholder need certain more time for making payment

Sol-(d)

50. Out of the following, in which of the situation, company may issue its new shares to new shareholders.

(a) If the existing shareholders to whom the shares are offered decline to accept the shares.

(b) Conversion of Debentures or loans into shares

(c) Conversion of Debentures or loan into shares based upon the directions issued by Central Government

(d) Any Re-issue of forfeited shares also can be issued without being offered to the existing shareholder.

(e) All of above

Sol-(e)

51. While issuing any order for conversion of loan into shares u/s 62(4), central government shall consider the following

(a) Financial position of the company

(b) Rate of interest payable on the debentures or the loans

(c) Current market price of the shares in the company

(d) All of above

Sol-(d)

52. Against the decision of central government to convert loan into shares, appeal can be lodged to Tribunal within

(a) 30 days from the date of communication of such order

(b) 45 days from the date of communication of such order

(c) 60 days from the date of communication of such order

(d) 90 days from the date of communication of such order

Sol-(b)

53. Central government can issue order for conversion of debenture or loan into share

(a) Even if term of issue of such loan or debentures does not contain a term of conversion thereof

(b) Only if these debentures or loan was issued with a term containing for such conversion

(c) Only if prior approval of tribunal has been obtained

(d) Only if prior approval of Ministry has been obtained

Sol-(a)

54. Company can issue debentures or loan which is convertible into shares if

(a) Special resolution shall be passed at the time of conversion

(b) Special resolution shall be passed at the time of issue

(c) ordinary resolution shall be passed at the time of conversion

(d) ordinary resolution shall be passed at the time of issue

Sol-(b)

55. Which out of the following is incorrect in relation to underwriting commission

(a) Company must be authorized through its AOA to pay such commission

(b) In case of shares, rate of commission shall not exceed 5% of the price at which the shares are issued or Rate mentioned under articles, whichever is lower

(c) In case of Debentures, rate of commission shall not exceed 2.5% of the price at which the Debentures are issued or Rate mentioned under articles, whichever is lower

(d) Company having a Paid-Up share capital of `20 Cr or more shall not pay underwriting commission of more than 1% except with prior approval by members through Special Resolution

Sol-(d)

56. Unique Builders Limited decides to pay 2:% percent underwriting commission on debentures. The, company further decides to pay the underwriting commission in the form of flats. Decide

(a) Decision on part of company is valid, as commission rate is within law, moreover commission can be paid in form of flat

(b) Decision on part of commission is not valid, since there is no provision for commission through flat

(c) Company can not pay commission over 1% without special resolution at all, thus decision is not valid

(d) Both b and c

Sol-(a)

57. Where a company alters its share capital in any manner specified in sub-section (1) of section 61, or an order is passed by the Government increasing the authorized capital of the company in pursuance of sub-section (4) of section 62 or a company redeems any redeemable preference shares, the notice of such alteration shall be filed by the company with the Registrar in

(a) Form No. SH.5

(b) Form No. SH.6

(c) Form No. SH.7

(d) Form No. SH.8

Sol-(c)

58. Suppose a company having liability of members as unlimited want to convert such liability as limited, then it shall ensure the following

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up

(c) either a or b

(d) a and b

(e) bother c and d

Sol-(e)

59. Which out of the following is not a pre condition for reduction of share capital

(a) Any such reduction shall require prior approval of tribunal

(b) Special resolution shall be passed for said alteration

(c) no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it

(d) Company shall not be in default in repayment of debentures

Sol-(d)

60. Which out of the following in not a valid manner for reduction of share capital by company

(a) company may extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up

(b) company may either with or without extinguishing or reducing liability on any of its shares cancel any paid-up share capital which is lost or is unrepresented by available assets

(c) company may either with or without extinguishing or reducing liability on any of its shares pay off any paid-up share capital which is in excess of the wants of the company,

(d) company may pay off any paid-up share capital which is in excess of the wants of the company,

Sol-(d)

61. Upon any application to tribunal for its approval u/s 66

(a) Every endeavour shall be made to dispose off the application within 90 days

(b) Tribunal shall dispose off the application within 45 days

(c) Tribunal shall give notice of every application made to it to the Central Government, Registrar and to the Securities and Exchange Board

(d) Tribunal to hear both parties and pass appropriate judgement

Sol-(c)

62. Central Government, Registrar and to the Securities and Exchange Board shall provide their representation to tribunal within

(a) 3 months from the date of receipt of the notice

(b) 1 months from the date of receipt of the notice

(c) 30 days from the date of receipt of the notice

(d) 90 days from the date of receipt of the notice

Sol-(a)

63. where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period

(a) it shall be presumed that they have objection to the reduction

(b) it shall be presumed that they have no objection to the reduction

(c) Extension of further 3 months shall be allowed to them for making their representation

(d) Extension of further 30 days shall be allowed to them for making their representation

Sol-(b)

64. Which out of the following is incorrect in relation to Sec 66

(a) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit

(b) no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal

(c) order of confirmation of the reduction of share capital by the Tribunal shall be published by the company

(d) company shall deliver a certified copy of the order of the Tribunal to ROC within 60 days

Sol-(d)

65. Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim, then

(a) Every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date

(b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(c) Both a and b

(d) Either a and b

Sol-(c)

66. Which out of the following statement is true in relation to reduction of share capital

(a) Company need to pass Ordinary Resolution

(b) It will not have any impact on Paid up share capital

(c) It will alter the Capital clause of MOA

(d) It may or may not result in alteration under Capital clause of MOA

Sol-(c)

67. In which out of the following circumstances, company can purchase its own shares:

(a) Loan given by a banking company in the ordinary course of its business.

(b) Where the loan is given by the company to its employees (other than the directors or manager or KMP) provided amount of said loan cannot exceed the employees' salary for a period of six months.

(c) Where some scheme is draft according to which some provision of money is made to enable the trustees to acquire fully paid shares in the company or its holding company to be held for benefit of the employees of the company

(d) Any of above

Sol-(d)

68. Section 67 shall not apply to private companies if,

(a) in whose share capital no other body corporate has invested any money

(b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower

(c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section

(d) All of above

(e) Either of above

Sol-(d)

69. Which out of the following is incorrect in relation to provisions of sec 67

(a) Generally, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

(b) Nothing in this section shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

(c) In case of Nidhi company - Sub-section (1) of Section 67 shall not apply , when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013

(d) No need for any disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates in the Board's report

Sol-(d)

70. A company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of certain sources, which shall not include the following

(a) its free reserves

(b) the securities premium account

(c) the proceeds of the issue of any shares or other specified securities

(d) out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities

Sol-(d)

71. No company shall purchase its own shares or other specified securities under section 68, unless:-

(a) the buy-back is authorised by its articles

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back

(c) shares or other specified securities for buy-back may be fully paid-up

(d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves

Sol-(c)

72. Which out of the following is incorrect in relation to buy back by members

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back:

(c) buy-back shall not exceed twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company

(d) in respect of the buy-back of equity shares in any financial year, the reference to 20% shall be construed with respect to its total paid-up equity capital in that financial year

Sol-(d)

73. Once a buy back has been announced, company shall not proceed to announce any further buy back

(a) within a period of one year reckoned from the date of the closure of the preceding offer of buy-back

(b) within a period of 12 months reckoned from the date of the closure of the preceding offer of buy-back

(c) within a period of 6 months reckoned from the date of the closure of the preceding offer of buy-back

(d) within a period of 2 year reckoned from the date of the closure of the preceding offer of buy-back

Sol-(a)

74. Period of completion of buy back shall be

(a) within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board

(b) within a period of one year from the date of passing of the resolution

(c) within a period of one year from the date of notice of general meeting

(d) within a period of one year from the date when first offer of security under buy back is made

Sol-(a)

75. Which out of following is incorrect in relation to buy back of securities

(a) Free reserves" includes securities premium account

(b) Where a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed

(c) The buy-back may be either from the existing shareholders or security holders on a proportionate basis or from the open market

(d) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director

Sol-(d)

76. Period of Buy Back shall remains open for

(a) period of not less than 10 days and not exceeding 30 days from the date of dispatch of the letter of offer

(b) period of not less than 15 days and not exceeding 30 days from the date of dispatch of the letter of offer

(c) period of not less than 7 days and not exceeding 15 days from the date of dispatch of the letter of offer

(d) period of not less than 10 days and not exceeding 45 days from the date of dispatch of the letter of offer

Sol-(b)

77. The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in

(a) Form No. SH.6

(b) Form No. SH.7

(c) Form No. SH.8

(d) Form No. SH.9

Sol-(c)

78. The offer for buy-back may remain open for a period less than fifteen days, provided consent has been obtained from

(a) All members of a company

(b) 90% of members of company

(c) Atleast 75% of members of company

(d) Atleast 60% of members of company

Sol-(a)

79. Incase of Buy Back of securities, company shall ensure payment within ……..days to those shareholders or security holders whose securities have been accepted

(a) 7 Days

(b) 10 Days

(c) 30 Days

(d) 15 Days

Sol-(a)

80. The company, shall maintain a register of shares or other securities which have been bought-back in

(a) Form No. SH.6

(b) Form No. SH.7

(c) Form No. SH.8

(d) Form No. SH.10

Sol-(d)

81. The company, after the completion of the buy-back under these rules, shall file with the Registrar, and in case of a listed company with the Registrar and the Securities and Exchange Board of India, a return in

(a) Form No. SH.6

(b) Form No. SH.7

(c) Form No. SH.11

(d) Form No. SH.10

Sol-(c)

82. Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within …….days of the last date of completion of buy-back.

(a) 7 Days

(b) 10 Days

(c) 30 Days

(d) 15 Days

Sol-(a)

83. As per Sec 69, Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the

(a) Free Reserve account

(b) Profit & loss Account

(c) capital redemption reserve account

(d) Capital Reserve account

Sol-(c)

84. As per Sec 70, No company shall directly or indirectly purchase its own shares or other specified securities through

(a) Any subsidiary company including its own subsidiary companies

(b) Any investment company or group of investment companies

(c) Any of its group company including its own associate company

(d) a and b above

Sol-(d)

85. Even if a default is committed in repayment of debentures, still company remains eligible for Buy Back

(a) Statement is true

(b) Statement is false

(c) Statement is true if the default is remedied and a period of three years has lapsed after such default ceased to subsist

(d) Statement is true if the default is remedied and a period of 1 year has lapsed after such default ceased to subsist

Sol-(c)

86. No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of

(a) Section 92 i.e. Annual Return

(b) Section 123 and 127 i.e. Dividend

(c) Section 129 i.e. Financial Statement

(d) All of above

Sol-(d)

87. Incase of Subscriber to Memorandum, Share certificate shall be issued

(a) Within 2 months from incorporation of company

(b) Within 2 months from Allotment of shares to them

(c) Within 2 months from submission of Memorandum

(d) Within 1 months from Allotment of shares to them

Sol-(a)

88. Incase of **transfer or transmission of shares**, Share certificate shall be issued

(a) Within 2 months from incorporation of company

(b) Within 2 months from Allotment of shares to them

(c) Within 2 months from submission of Memorandum

(d) Within one months after the application for registration of the transfer of such shares.

Sol-(d)

89. **Incase of any allotment of Debentures**, Debentures certificate shall be issued

(a) Within 2 months from incorporation of company

(b) Within 6 months from Allotment

(c) Within 2 months from submission of Memorandum

(d) Within 2 months from allotment

Sol-(b)

90. If a private company refuses, to register the transfer of, or the transmission of any securities , based upon some unreasonable conditions, then the company shall send notice of the refusal to the

(a) Transferor

(b) Transferee

(c) Both transferor and transferee

(d) No Such notice required

Sol-(c)

91. Intimation of rejection shall be served by company within

(a) A period of 30 days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company

(b) A period of 15 days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company

(c) A period of 45 days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company

(d) A period of 60 days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company

Sol-(a)

92. Incase of private limited company, transferee being aggrieved due to rejection by company in transfer of shares, may lodge a complaint within

(a) 30 Days from receipt of notice of rejection

(b) 60 days, where no notice of rejection could be served

(c) 90 days where no notice of rejection could be served

(d) Both a and b

Sol-(d)

93. As per Sec 59, Appeal to Tribunal may be submitted by aggrieved party if the name of any person is, without sufficient cause,

(a) entered in the register of members of a company

(b) after having been entered in the register, is, omitted there from

(c) if a default is made, or unnecessary delay takes place in entering in the register

(d) Any of above

Sol-(d)

94. Which out of the following is not a power of tribunal as prescribed u/s 59.

(a) dismiss the appeal or

(b) direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order, or

(c) direct rectification of the records of the depository or the register and direct the company to pay damages, if any, sustained by the party aggrieved.

(d) Direct penalty of 50000 rupee plus continuing penalty of 5,000 rupee on continuing default

Sol-(d)

95. The instrument of transfer is said to be forged when

(a) transferor's signatures bearing on it are forged

(b) transferee's signatures bearing on it are forged.

(c) Signatures of both transferor and transferee are forged

(d) Stamp of Registrar of company bearing on it was forged

Sol-(a)

96. If the company had issued a share certificate to the transferee on a forged transfer and he further sold them to another buyer who has acted in good faith, then, which out of following statement is true.

(a) the purchaser will have no right to be registered as shareholder

(b) Purchaser can claim damages from the company on the ground since he has acted on the faith of the share certificate issued by the company

(c) Company can claim damages from the person who has submitted said forged transfer deed to it

(d) All of above

Sol-(d)

97. An instrument of transfer in which only the name and signature of the transferor are filled in, shall be termed as

(a) Invalid Transfer

(b) Blank Transfer

(c) Void Transfer

(d) Forged Transfer

Sol-(b)

4. Charge

1. As per the provisions of Sec 77, who shall be liable to register the particulars of charge with ROC

(a) every company creating a charge within India

(b) every company creating a charge within or outside India

(c) Charge Holder

(d) Either company creating a charge or charge holder

Sol-(b)

2. Form to be submitted for creation/ modification of charge (Excluding charge on Debentures) shall be

(a) Form CHG-1

(b) Form CHG-2

(c) Form CHG-3

(d) Form CHG-4

Sol-(a)

3. Form to be submitted for creation/modification of charge on Debentures) shall be

(a) Form CHG-1

(b) Form CHG-2

(c) Form CHG-9

(d) Form CHG-4

Sol-(c)

4. As per Sec 77, Form CHG-1 or CHG-9 shall be submitted to ROC within

(a) 60 days from creation of charge/modification of charge

(b) 30 days from creation of charge/modification of charge

(c) 300 days from creation of charge/modification of charge

(d) 120 days from creation of charge/modification of charge

Sol-(b)

5. As per Rule-3 of Companies (Registration of Charges) Rules, 2014. If the company fails to register the particulars of the charge with the Registrar within the period of thirty days of its creation or modification,

(a) the particulars of the charge together with a copy of the instrument, if any, creating or modifying such charge may be filed by the charge-holder

(b) the particulars of the charge together with a copy of the instrument, if any, creating or modifying such charge may be filed by the company subject to approval of Central Government

(c) the particulars of the charge together with a copy of the instrument, if any, creating or modifying such charge may be filed by the charge-holder subject to penalty as prescribed

(d) the particulars of the charge together with a copy of the instrument, if any, creating or modifying such charge may be filed by the charge-holder subject to approval of tribunal

Sol-(a)

6. A copy of every instrument evidencing any creation or modification of charge (where the instrument or deed relates solely to the property situated outside India) and required to be filed with the Registrar in pursuance of section 77, 78 or 79 shall be verified by a certificate issued either

(a) under the seal, if any, of the company

(b) under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge

(c) both a and b

(d) either a or b

Sol-(d)

7. A copy of every instrument evidencing any creation or modification of charge (where the instrument or deed relates solely to the property situated in India) and required to be filed with the Registrar in pursuance of section 77, 78 or 79 shall be verified by a certificate issued under the hand of

(a) any director

(b) company secretary of the company

(c) an authorised officer of the charge holder

(d) Any of above

Sol-(d)

8. As per Sec 77, Registrar may allow registration of charge

(a) within a period of 300 days of such creation

(b) within a period of 270 days of such creation

(c) within a period of 60 days of such creation

(d) within a period of 90 days of such creation

Sol-(a)

9 Where a charge is registered with the Registrar under sub-section (1) of section 77 or section 78, he shall issue a certificate of registration of such charge in

(a) Form CHG-3

(b) Form CHG-2

(c) Form CHG-1

(d) Form CHG-9

Sol-(b)

10 Where the particulars of modification of charge is registered under section 79, the Registrar shall issue a certificate of modification of charge in

(a) Form CHG-3

(b) Form CHG-2

(c) Form CHG-1

(d) Form CHG-9

Sol-(a)

11. As per Sec 78, Where a company fails to register the charge within the period of thirty days referred to in sub-section (1) of section 77, the person in whose favor the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within

(a) a period of 14 days after giving notice to the company

(b) a period of 21 days after giving notice to the company

(c) a period of 15 days after giving notice to the company

(d) a period of 7 days after giving notice to the company

Sol-(a)

12. Ram want to acquire a property from company on which charge was created, however at the time of its sale, company failed to intimate about such charge to Ram. Discuss the consequences

(a) Company has committed a fraud and every officer who is liable shall be proceeded u/s 447

(b) As per Sec 78, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration

(c) either a or b

(d) both a and b

Sol-(b)

13. Registrar shall, in respect of every company, keep a register containing particulars of the charges registered in Form

(a) CHG-7

(b) CHG-5

(c) CHG-6

(d) Particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges

Sol-(d)

14. as per Sec 82, Intimation about satisfaction of charge shall be made to Registrar within

(a) within a period of 300 days from the date of such payment or satisfaction

(b) within a period of 30 days from the date of such payment or satisfaction

(c) within a period of 45 days from the date of such payment or satisfaction

(d) within a period of 60 days from the date of such payment or satisfaction

Sol-(b)

15. On an application by company or the charge holder, Registrar may allow such intimation of payment or satisfaction to be made within a period of

(a) 60 Days of such payment or satisfaction

(b) 300 Days of such payment or satisfaction

(c) 100 Days of such payment or satisfaction

(d) 90 Days of such payment or satisfaction

Sol-(b)

16. Upon receipt of intimation about satisfaction of charge, Registrar shall

(a) cause a notice to be sent to the holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar

(b) record the same in his register as memorandum of satisfaction immediately

(c) both a and b

(d) Neither a nor b

Sol-(a)

17. If a promissory note or bill of exchange is made payable a stated number of months after date, it becomes payable

(a) corresponding date of month after the stated number of months

(b) three days after the corresponding date of month after the stated number of months

(c) Immediately preceding date from corresponding date of month after the stated number of months

(d) Five days after the corresponding date of month after the stated number of months

Sol-(b)

18. Certificate of registration of satisfaction of charge shall be issued by Registrar in

(a) Form CHG-5

(b) Form CHG-2

(c) Form CHG-4

(d) Form CHG-1

Sol-(a)

19 Which section authorize the Registrar to enter the entry regarding Memorandum of Satisfaction of charge Suo Motto

(a) Section 82

(b) Section 83

(c) Section 84

(d) Section 85

Sol-(b)

20. Where Entry of satisfaction is entered suo motto by Registrar, he shall

(a) inform the affected parties within 30 days of making the entry

(b) inform the affected parties within 15 days of making the entry

(c) inform the affected parties within 7 days of making the entry

(d) inform the affected parties within 10 days of making the entry

Sol-(a)

21. Register containing a particular of charge shall be maintained by every company in Form

(a) Form CHG-5

(b) Form CHG-6

(c) Form CHG-7

(d) Form CHG-8

Sol-(c)

22. The entries in the register of charges maintained by the company shall be made

(a) Within 7 days

(b) Within 14 days

(c) Within 21 days

(d) Forthwith

Sol-(d)

23. Every entry in register as maintained by company shall be authenticated by

(a) A Director

(b) secretary of the company

(c) any other person authorised by the Board for the purpose

(d) Any of above

Sol-(d)

24. The register of charges shall be preserved

(a) For atleast 8 years

(b) For 8 years or period of incorporation of company, whichever is shorter

(c) Permanently

(d) No such obligation

Sol-(c)

25. instrument creating a charge or modification thereon shall be preserved for a period

(a) for a period of eight years from the date of satisfaction of charge by the company

(b) For 8 years or period of incorporation of company, whichever is shorter

(c) Permanently

(d) No such obligation

Sol-(a)

5. General Meeting

1. ROC can provide an extension in conducting meeting up to

(a) AGM upto 3 months

(b) Subsequent AGM for 3 months

(c) Subsequent AGM upto 3 months

(d) First AGM upto 3 months

Sol-(c)

2. Incase of Government company, AGM shall be held at:-

(a) 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

(b) Registered office of the company or such other place as the Central Government may approve in this behalf

(c) Head office of company

(d) Registered office of the company or such other place as the Tribunal may approve in this behalf

Sol-(b)

3. Where a default is occurred in convening AGM,

(a) Member may requisition for convening such meeting

(b) Tribunal may convene such meeting

(c) Tribunal may direct calling of AGM

(d) Member may request CG to intervene

Sol-(c)

4. Where AGM is held upon direction of Tribunal u/s 97. then

(a) Any such meeting shall be deemed to be a General Meeting

(b) Any such meeting shall be deemed to be a Annual General Meeting

(c) Any such meeting shall be deemed to be a General Meeting by Tribunal

(d) None of above

Sol-(b)

5. If the default is made by the company in holding Annual General Meeting in accordance with Section 96 or In complying in any direction given by Tribunal under Section 97

(a) Company and its every officer who are at default shall be punishable with fine upto ₹50,000 and in case of the continuing default with a further fine upto ₹ 5,000 for every day during continuation of default

(b) Company and its every officer who are at default shall be punishable with fine upto ₹50,000 and in case of the continuing default with a further fine upto ₹ 2,500 for every day during continuation of default

(c) Company and its every officer who are at default shall be punishable with fine upto ₹1,00,000 and in case of the continuing default with a further fine upto ₹ 5,000 for every day during continuation of default

(d) Company and its every officer who are at default shall be punishable with fine upto ₹5,00,000 and in case of the continuing default with a further fine upto ₹ 5,000 for every day during continuation of default

Sol-(c)

6. Extra ordinary General Meeting may be called by

(a) Board of Directors

(b) Members

(c) Tribunal

(d) All of them

Sol-(d)

7. For company having share capital, requisitionist shall means

(a) Members holding at least 10% of the paid up share capital of the company

(b) Members having at least 1/10 of the total voting power

(c) Members holding at least 10% of the paid up share capital of the company or paid up share capital of 5,00,000

(d) Members holding at least 5% of the paid up share capital of the company

Sol-(a)

8. Where any member want to convene requisition, he shall deposit the requisition

(a) At head office of company

(b) At registered office of company

(c) At any office of company

(d) Submission through electronic mode to company

Sol-(b)

9. Upon submission of requisition be members, Board of directors shall

(a) Proceed within 7 days of the deposit of the requisition to convene a meeting which must be held within 90 days of such deposit of the requisition with the company

(b) Proceed within 21 days of the deposit of the requisition to convene a meeting which must be held within 90 days of such deposit of the requisition with the company

(c) Proceed within 21 days of the deposit of the requisition to convene a meeting which must be held within 45 days of such deposit of the requisition with the company

(d) Proceed within 21 days of the deposit of the requisition to convene a meeting which must be held within 3 months of such deposit of the requisition with the company

Sol-(c)

10 If quorum remains absent in a meeting called u/s 100(4), the meeting

(a) Meeting stand cancelled

(b) Meeting stand adjourned to next week same time same location

(c) Meeting to be convened by Tribunal now

(d) Meeting to be convened by CG

Sol-(a)

11. Incase of failure on part of Board to convene EGM

(a) Members may requisition convening of an extraordinary general meeting

(b) Requisitionist may requisition convening of an extraordinary general meeting

(c) Tribunal may requisition convening of an extraordinary general meeting

(d) Central Government may requisition convening of an extraordinary general meeting

Sol-(a)

12. Requistionists should convene meeting at

(a) Registered office or in the same city or town where Registered office is situated

(b) Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day

(c) Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day at business hours

(d) Registered office or in the same city or town where Registered office is situated and such meeting should be convened on any day other than national holiday

Sol-(b)

13. Where Board proceed to requisition EGM upon an application by members, notice of any such meeting shall be given to

(a) Members whose names appear in the Register of members of the company within 21 days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting

(b) Members whose names appear in the Register of members of the company within 7 days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting

(c) Members whose names appear in the Register of members of the company within 45 days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting

(d) Members whose names appear in the Register of members of the company within 3 days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting

Sol-(d)

14. Where meeting is convened u/s 100(4), Notice shall be given through

(a) Normal post

(b) Registered Post

(c) Speed Post

(d) Electronic Mode

(e) All of above

(f) B, c and d only

Sol-(f)

15. As per Sec 121, which company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder

(a) All companies

(b) All public limited companies

(c) Listed companies only

(d) Private company only

Sol-(c)

16. Service on the joint holder may made by serving it on

(a) All joint holders together

(b) In name of any of them

(c) the one whose name appears first in the register of members.

(d) None of above

Sol-(c)

17. Incase of Sec 8 companies, notice of 21 days as specified in Sec 101 shall be considered as

(a) 14 Days

(b) 21 Days

(c) 28 Days

(d) 7 Days

Sol-(a)

18. Any omission to serve notice of meeting on a member on the mistaken ground that he is not a shareholder cannot be said to be an accidental omission, this view was taken by court in the case of

(a) Musselwhite v *C.H. Musselwhite & Sons Ltd*

(b) Meenakshi Cotton Mills Limited

(c) Howard v*Patent Ivory Manufacturing limited*

(d) *Kelner* v *Baxter*

Sol-(a)

19 Who out of following shall not be entitled to have notice of EGM

(a) Preference share holder

(b) Non Executive Director

(c) Auditor

(d) Company Secretary

Sol-(d)

20. Which out of the following need be required to be placed in notice of AGM, wherein Ordinary business are proposed

(a) Name of company

(b) Proposed Agenda

(c) Explanatory Statement

(d) Proxy form

Sol-(c)

21. AGM may be convened by giving shorter notice provided consent has been obtained from

(a) Atleast 95% of the members entitled to vote

(b) Majority in numbers having 95% of the paid up share capital

(c) Members having paid up share capital of ₹ 5,00,000 or voting power of atleast 1%

(d) Consent of 100% of members

Sol-(a)

22. Extra Ordinary General Meeting may be convened by giving shorter notice provided consent has been obtained from

(a) Atleast 95% of the members entitled to vote

(b) Majority in numbers having 95% of the paid up share capital having voting power

(c) Majority in numbers having 95% of the paid up share capital

(d) Consent of 100% of members

Sol-(b)

23. A notice may be sent through e-mail

(a) as a text or

(b) as an attachment to e-mail or

(c) as a notification providing electronic link or

(d) Any of above

Sol-(d)

24. The notice of the general meeting of the company shall be simultaneously

(a) Dispatched to ROC for its records

(b) Dispatched to Central Government for its records

(c) Placed on website of company on the website as may be notified by the Central Government.

(d) Placed on website, if any of company on the website as may be notified by the Central Government.

Sol-(d)

25. Which out of the following is not an ordinary business u/s 102

(a) Consideration of financial statements and the reports of the Board of Directors and auditors

(b) Declaration of Dividend

(c) Appointment of Directors in the place of those retiring

(d) Rectification of name of company

Sol-(d)

26. Out of the following who shall not be considered as member personally present

(a) A member of the company

(b) Authorized representative of a body corporate. By Company Liquidator within 30 days

(c) Representative of President/Governor of the state

(d) Person appearing on behalf of representative of body corporate

Sol-(d)

27. Proxy can become part of quorum in following circumstances

(a) In case of the Annual general meeting convened, conducted and held by the Tribunal.

(b) In case of the General meeting other than Annual General Meeting convened, conducted and held by the Tribunal.

(c) Extra ordinary General meeting convened at requisition of Member

(d) A or b only

Sol-(d)

28. If all the members are present, it is immaterial that the quorum required is more than the total number of members , this view was upheld in the case of

(a) *Musselwhite* v *C.H. Musselwhite & Sons Ltd*

(b) *Re Express Engineering Works Ltd*

(c) *Howard* v *Patent Ivory Manufacturing limited*

(d) *Kelner* v *Baxter*

Sol-(b)

29 Suppose a poll is demanded in relation to election of chair, then what would be the legal position in this regard

(a) It shall be ensured by chairperson of last meeting within 48 hrs of its demand

(b) It shall be ensured by chairperson elected as a result of show of hand within 48 hrs of its demand

(c) It shall be ensured by chairperson elected as a result of show of hand forthwith

(d) It shall be ensured by chairperson elected as a result of show of hand within 24 hrs of its demand

Sol-(c)

30. Which out of the following is true about appointment of proxy by Sec 8 company

(a) A member of a company registered under section 8 shall not be entitled to appoint any other person

(b) A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

(c) A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless article provide so

(d) None of above

Sol-(b)

31. As per Sec 105, a proxy can max. represent

(a) members not exceeding 10 and holding in the aggregate not more than 50% of the total share capital of the company carrying voting rights

(b) members not exceeding 50 and holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights

(c) members not exceeding 50 and holding in the aggregate not more than 20% of the total share capital of the company carrying voting rights

(d) members not exceeding 10 and holding in the aggregate not more than 20% of the total share capital of the company carrying voting rights

Sol-(b)

32. Which one of the following required ordinary resolution?

(a) to change the name of the company

(b) to alter the articles of association

(c) to reduce the share capital

(d) to declare dividends.

Sol-(d)

33. Form for appointing a proxy shall be

(a) MGT-14

(b) MGT-11

(c) INC-11

(d) INC-14

Sol-(b)

34. Member shall be entitled to inspect proxy form during

(a) the period beginning 2 hours before the time fixed for the commencement of the meeting and ending with the commencement of the meeting

(b) the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the commencement of the meeting

(c) the period beginning 2 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting

(d) the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting

Sol-(d)

35. Where a member want to inspect proxy form, notice of ……days shall be served

(a) Atleast 3 days

(b) Max 3 days

(c) Atleast 5 days

(d) Max 5 days

Sol-(a)

36. Where a company is a member of another company, it may attend the meeting of any other company through a person called as

(a) Proxy

(b) Authorised Representative

(c) Representative

(d) Proxy of Body Corporate

Sol-(c)

37. **In case company not having any share capital, right to demand poll shall remain with**

(a) Any member or members present in person or by proxy and having at least **1/5th** of total voting power

(b) Any member or members present in person or by proxy and having at least **1/10th** of total voting power or Paid up capital of 5,00,000

(c) Any member or members present in person or by proxy and having at least **1/5th** of total voting power or Paid up capital of 5,00,000

(d) Any member or members present in person or by proxy and having at least **1/10th** of total voting power

Sol-(d)

38. Out of the following, in which of the scenario no restriction on voting power may be imposed

(a) In case of non payment of Calls due on shares

(b) In case of non payment of other dues against the members

(c) Where right of lien is exercised by the company in respect of shares

(d) Where a member has not yet completed 2 months as member

Sol-(d)

39. Facility of casting votes by a member using an electronic voting system from a place other than venue of a general meeting shall be termed as:-

(a) Voting by Electronic Means

(b) Voting by Electronic Mode

(c) Remote E-Voting

(d) None of above

Sol-(c)

40. As per Sec 108, the facility for remote e-voting shall remain open for

(a) not less than 7 days and shall close at immediate preceding business day

(b) not less than 3 days and shall close at 5.00 p.m. on the date preceding the date of the general meeting

(c) not less than 2 days and shall close at 5.00 p.m. on the date preceding the date of the general meeting

(d) not less than 5 days and shall close at 5.00 p.m. on the date preceding the date of the general meeting

Sol-(b)

41. After the conclusion of voting at the general meeting, the scrutiniser shall, immediately first count the votes cast

(a) At General Meeting

(b) Through Remote E Voting

(c) Both together

(d) Depend upon decision of chairperson

Sol-(a)

42. A company's own articles may prescribe for

(a) special resolution where under the Act only an ordinary resolution is necessary

(b) ordinary resolution where under the Act only special resolution is necessary

(c) Both a and b are allowed

(d) None of a and b shall be allowed

Sol-(a)

43. **According to section 116 of the Companies Act, 2013,** where a resolution is passed at an adjourned meeting of a company, then, the resolution shall, for all purposes, be treated as having been passed on the date on

(a) Meeting was originally convened

(b) which notice of general meeting was dispatched

(c) which it was in fact passed, and shall not be deemed to have been passed on any earlier date

(d) None of above

Sol-(c)

44. As per Sec 115, A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding

(a) Atleast 1 % of total voting power or holding shares on which an aggregate sum upto 5,00,000 has been paid up on the date of the notice

(b) Atleast 1 % of total voting power or holding shares on which an aggregate sum upto 2,00,000 has been paid up on the date of the notice

(c) Atleast 5 % of total voting power or holding shares on which an aggregate sum upto 5,00,000 has been paid up on the date of the notice

(d) Atleast 10 % of total voting power or holding shares on which an aggregate sum upto 5,00,000 has been paid up on the date of the notice

Sol-(a)

45. Out of the following, no special notice shall be required for following resolution

(a) To provide that a retiring auditor shall not be re-appointed.

(b) To appoint an auditor other than retiring one.

(c) To appoint a director other than retiring one.

(d) To change the business of company

Sol-(d)

46. Where a member wishes to move requisition to proposes a resolution, he shall submit his requisition

(a) At least 2 weeks before the meeting

(b) At least 4 weeks before the meeting

(c) At least 6 weeks before the meeting

(d) At least 14 days before the meeting

Sol-(c)

47. Process of keeping of a record of proceedings at a meeting including decision arrived at such meeting, is termed as

(a) Minutes

(b) Record Keeping

(c) Evidence

(d) Books for general meeting

Sol-(a)

48. Every company shall maintain minutes of all proceedings of general meetings. Entries of the proceedings must be made in the books kept for that purpose within

(a) 30 days of conclusion of meeting

(b) 30 days of start of meeting

(c) Before commencement of next meeting

(d) Before commencement of subsequent board meeting

Sol-(a)

49. As per Sec 120, which out of the following company shall maintain its records in electronic form

(a) Every listed company or a company having not less than 10,000 shareholders, debenture holders and other security holders

(b) Every company having not less than one thousand shareholders, debenture holders and other security holders

(c) Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders

(d) Every listed public company or a company having not less than one thousand shareholders, debenture holders and other security holders

Sol-(c)

50. Which out of the following shall be incorrect in relation to records to be maintained u/s 120

(a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;

(b) the records must be capable of being readable, retrievable and reproducible in printed form;

(c) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;

(d) the records, once dated and signed digitally, shall be capable of being edited or altered;

Sol-(d)

6. Dividend

1. As per Sec 123, company may declare dividend out of certain profit as prescribed, now decide which out of following is incorrect

(a) out of the profits of the company for that year arrived at after providing for depreciation

(b) out of the profits of the company for any previous financial year arrived at after providing for depreciation

(c) out of **money provided by the Central Government or a State Government** for the payment of dividend by the company in pursuance of a guarantee given by that Government

(d) out of the profits of the company for that year arrived at after providing for depreciation but before taxation

Sol-(d)

2. While computing profit for purpose of dividend, following shall be excluded

(a) amount representing unrealised gains

(b) revaluation of assets

(c) change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value

(d) All of above

Sol-(d)

3. Which out of the following statement is correct

(a) A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits as it may consider appropriate to the reserves of the company.

(b) A company shall, before the declaration of any dividend in any financial year, transfer such percentage of its profits as it may consider appropriate to the reserves of the company.

(c) Any transfer to reserve is not mandatory and the percentage to be transferred to reserves is to be decided at the discretion of the company

(d) Any transfer to reserve is mandatory and it shall be as per Rule 3

Sol-(a)

4. Before declaring dividend, depreciation shall be charges as per rate prescribed in Schedule II. Decide, which out of following is incorrect.

(a) Rate as per Schedule-II shall be minimum and therefore there is no bar in providing a higher rate of depreciation

(b) Rate as per Schedule-II shall be maximum

(c) Depreciation shall be as per Schedule-II only

(d) No restriction, company may exercise its own discretion

Sol-(a)

5. In terms of section 123(4), the amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account

(a) within 5 days from the date of declaration of such dividend

(b) within 7 days from the date of declaration of such dividend

(c) within 30 days from the date of declaration of such dividend

(d) within 1 month from the date of declaration of such dividend

Sol-(b)

6. Provisions of Sec 123(4), are not applicable to

(a) Government Company in which the entire paid up share capital is held by the Central Government, or by any Stale Government or Governments

(b) Government Company

(c) Private limited company

(d) All above

Sol-(a)

7. No company shall declare dividend, which has committed a default in

(a) Repayment of Debentures

(b) Repayment of Term Loan

(c) Repayment of Deposit

(d) Payment of dividend to Preference share holders

Sol-(c)

8. As per rule-3, rate of dividend declared shall not exceed the average rates at which dividend was declared by it in the 3 years immediately preceding that year, however, this rule will not apply if

(a) Rate of Dividend proposed is atleast 25%

(b) company has not declared any dividend in each of the three preceding financial year

(c) company has not declared any dividend in each of the immediately preceding financial year

(d) None of above

Sol-(b)

9 As per Sec 123(3), in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend

(a) such interim dividend shall not be declared at a rate lower than the average dividends declared by the company during the immediately preceding three financial years

(b) 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

(c) such interim dividend shall be declared at a rate equal to average dividends declared by the company during the immediately preceding three financial years

(d) None of above

Sol-(b)

10 As per Sec 124, Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall

(a) within 7 days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account

(b) within 5 days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account

(c) transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf to Investor Education and Protection Fund

(d) Company may transfer this amount to its general reserve

Sol-(a)

11. Within how many days, a company making any transfer to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company

(a) Within 90 days of declaration of dividend

(b) Within 60 days of declaration of dividend

(c) Within 90 days of making any transfer to the Unpaid Dividend Account

(d) Within 7 days of declaration of dividend

Sol-(c)

12. If any default is made in transferring the total amount to the Unpaid Dividend Account of the company, it shall pay, interest on so much of the amount as has not been transferred to the said account at the rate of

(a) 12% from date of such default

(b) 15% from date of such default

(c) 18% from date of such default

(d) 24% from date of such default

Sol-(a)

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

(a) Central Government

(b) Investor Education and Protection Fund Authority

(c) Company

(d) Tribunal

Sol-(c)

14. Any money transferred to the Unpaid Dividend Account of a company which remains unpaid or unclaimed for a period of seven years shall be transferred by the company to

(a) Investor Education and Protection Fund

(b) Investor Protection and Education Fund

(c) Investor Protection Fund

(d) Fund established by Company for this purpose

Sol-(a)

15. As per Sec 124, if any dividend is paid or claimed for any year during the period of seven consecutive years

(a) Neither Dividend nor Shares shall be transferred to Investor Education and Protection Fund

(b) Dividend shall not be transferred to Investor Education and Protection Fund

(c) Share shall not be transferred to Investor Education and Protection Fund

(d) No restriction on any transfer

Sol-(c)

16. Any person whose shares has been transferred to the Fund, may claim the shares to the Authority by submitting an online application in

(a) Form IEPF-6

(b) Form IEPF-5

(c) Form DIV-5

(d) Form DIV-6

Sol-(b)

17. The claimant shall after making an application for refund of dividend unpaid or shares which have been transferred to fund shall send the same duly signed by him to the

(a) Authority

(b) Central Government for its record

(c) Company for verification

(d) ROC for its record

Sol-(c)

18. The company shall send a verification report to the Authority in the format specified by the Authority along with all the documents submitted by the claimant.

(a) within 15 days from the date of receipt of claim

(b) within 45 days from the date of receipt of claim

(c) within 30 days from the date of receipt of claim

(d) within 60 days from the date of receipt of claim

Sol-(a)

19. An application received for refund of any claim shall be disposed off by the Authority within

(a) 30 days from the date of receipt of Application

(b) 60 days from the date of receipt of Application

(c) 60 days from the date of receipt of the verification report from the company

(d) 30 days from the date of receipt of the verification report from the company

Sol-(c)

20. Which out of the following need not be attached to a report of Board of Directors of company

(a) the amounts, if any, which it proposes to carry to its capital reserves

(b) the amount, if any, which it recommends should be paid by way of dividend

(c) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report

(d) the conservation of energy, technology absorption, foreign exchange earnings and outgo

Sol-(a)

21. As per Sec 125, certain amount shall be credited to the fund, which shall not include

(a) the amount received **by way of grants** from companies

(b) **donations given to the Fund by the Central Government, State Governments, compa**nies or any other institution for the purposes of the Fund

(c) the **amount in the Unpaid Dividend Account of companies** transferred to the Fund under sub-section (5) of section 124

(d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956

Sol-(a)

22. As per Sec 125, Fund shall be utilised for certain purpose, which shall not include the following purpose

(a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon

(b) promotion of investors' education, awareness and protection

(c) distribution of any disgorged amount towards betterment of economy

(d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal

Sol-(c)

23. As per Sec 127, where a dividend has been declared by a company but has not been paid to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with

(a) imprisonment which may extend to two years.

(b) fine which shall not be less than 1,000 rupees for every day during which such default continues

(c) company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues

(d) All of above

(e) Any of above

Sol-(d)

24. There are certain scenario as specified as exception to Sec 127, where no penalty shall be levied, any such scenario shall not include the following

(a) where the dividend could not be paid by reason of the operation of any law

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him

(c) where there is a dispute regarding the right to receive the dividend

(d) none of above

Sol-(d)

7. Accounts of Company

1. Every company shall prepare and keep at its registered office the following for every financial year

(a) books of account

(b) other relevant books and papers

(c) financial statement

(d) All of above

Sol-(d)

2. Which out of following is incorrect in relation to books to be maintained by company u/s 128

(a) Books shall present a true and fair view of the state of the affairs of the company

(b) Books shall be maintained either on accrual basis or on cash basis

(c) Books shall be maintained on Double entry system

(d) The company may also keep all or any of the books of accounts at any other place in India as the Board of directors may decide

Sol-(b)

3. The company may also keep all or any of the books of accounts at any other place in India, provided

(a) Any such decision has been approved in general meeting and a notice in writing giving the full address of that place within 7 days shall be submitted

(b) company should file with the Registrar of Companies, a notice in writing giving the full address of that place within 7 days of the decision by Managing Director of company

(c) company should file with the Registrar of Companies, a notice in writing giving the full address of that place within 7 days of the Boards' decision

(d) None of above

Sol-(c)

4. The company may also keep all or any of the books of accounts at any other place in India as the Board of directors may decide, provided any such decision shall be communicated to ROC in

(a) Form AOC-1

(b) Form AOC-2

(c) Form AOC-4

(d) Form AOC-5

Sol-(d)

5. Inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a

(a) Resolution of the Members

(b) Resolution of the Board of Directors

(c) Regional Director

(d) Resolution of the Board of Directors, subject to approval of board of directors

Sol-(b)

6. As per Rule-4, The summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office

(a) At reasonable interval

(b) At quarterly intervals

(c) No such period prescribed

(d) At six monthly basis

Sol-(b)

7. Where any other financial information maintained outside the country is required by a director, the director shall

(a) Submit a request to the company within prescribed period

(b) Submit a request to the company with no such period prescribed

(c) Submit a request to the company within 15 days of end of financial year

(d) Submit a request to the company within 15 days of conclusion of AGM

Sol-(c)

8. The company shall produce such financial information to the director within

(a) 7 days of the date of receipt of the written request

(b) 10 days of the date of receipt of the written request

(c) 15 days of the date of receipt of the written request

(d) 30 days of the date of receipt of the written request

Sol-(c)

9 Which out of the following is incorrect as per the Rule-4

(a) Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company

(b) The summarized returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals

(c) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours.

(d) The financial information shall be sought for by the director himself or by or through his power of attorney holder or agent or representative

Sol-(d)

10 The books of account of every company together with the vouchers relevant to any entry in such books of accounts shall be kept in order by the company for a minimum period of

(a) 8 financial years immediately preceding a financial year

(b) 8 financial years

(c) 6 financial years immediately preceding a financial year

(d) 5 financial years

Sol-(a)

11. As per Sec 129, which out of the following statement is incorrect

(a) Financial Statement shall give a true and fair view of the state of affairs of the company

(b) Financial Statement shall comply with the accounting standards notified under section 133

(c) Financial Statement shall be in the form or forms as may be provided for different class or classes of companies in Schedule III

(d) Financial Statement shall be based on double entry system of accounting

Sol-(d)

12. As per Sec 129, provisions relating to nature and content of financial statement shall not apply to certain companies, which shall not include the following company

(a) Insurance Companies

(b) Banking companies

(c) Company engaged in the generation or supply of electricity

(d) Company engaged in Infrastructure business

Sol-(d)

13. Preparation of consolidated financial statements by a company shall not be required, if it meets the following conditions:-

(a) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements

(b) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India

(c) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards

(d) All of above

Sol-(d)

14. If the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements the following namely

(a) the deviation from the accounting standards

(b) the reasons for such deviation

(c) the financial effects, if any, arising out of such deviation

(d) All of above

Sol-(d)

15. Tribunal may direct opening of books of accounts provided an application in this regard is made by

(a) Central Government

(b) Income-tax authorities

(c) Securities and Exchange Board

(d) Any of above

Sol-(d)

16. Tribunal may order opening of books as per Sec 130 only if

(a) Relevant accounts were prepared in a fraudulent manner

(b) Affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements

(c) Either a or b

(d) Both a and b

Sol-(c)

17. No order shall be made under section 130(1) in respect of re-opening of books of account relating to a period

(a) earlier than 8 financial years immediately preceding the current financial year

(b) earlier than 6 financial years immediately preceding the current financial year

(c) earlier than 4 financial years immediately preceding the current financial year

(d) earlier than 3 financial years immediately preceding the current financial year

Sol-(a)

18. Which out of the following shall not form part of Directors Responsibility Statement

(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures

(b) 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

(c) 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

(d) the directors had prepared the annual accounts on a double entry system of accounting

Sol-(d)

19. Which out of the following need not be attached to a report of Board of Directors of company

(a) a statement on declaration given by independent directors under sub-section (6) of section 149

(b) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178

(c) particulars of loans made to Directors under section 185

(d) the amounts, if any, which it proposes to carry to any reserves

Sol-(c)

20. Which out of the following need not be attached to a report of Board of Directors of company

(a) the amounts, if any, which it proposes to carry to its capital reserves

(b) the amount, if any, which it recommends should be paid by way of dividend

(c) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report

(d) the conservation of energy, technology absorption, foreign exchange earnings and outgo

Sol-(a)

21. In case of a One Person Company, the report of the Board of Directors to be attached to the financial statement under section 134 shall, mean

(a) A report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report

(b) A report by Board on its performance

(c) A report by board on transaction with sole member of company

(d) All of above

Sol-(a)

22. In absence of Chairperson, the Board's report and any annexure thereto shall be signed by

(a) At least two directors, one of whom shall be a managing director

(b) At least two directors, one of whom shall be a managing director, or by the director where there is one director

(c) Any two directors,

(d) By Managing Director of company

Sol-(b)

23. As per Sec 135, Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during the immediately preceding financial year shall

(a) Contribute atleast 2% of their Net profit for CSR

(b) Contribute atleast 2% of their average profit for past 3 years for CSR

(c) Contribute up to 2% of their average profit for past 3 years for CSR

(d) Constitute a Corporate Social Responsibility Committee

Sol-(d)

24. CSR committee shall consist of atleast

(a) 3 or more directors, out of which majority shall be an independent director

(b) 3 or more directors, out of which at least one director shall be an independent director

(c) 5or more directors, out of which at least 2 directors shall be an independent director

(d) 5or more directors, out of which at least one director shall be an independent director

Sol-(b)

25. Where a company is not required to appoint an independent director under sub-section (4) of section 149, then

(a) it shall have in its Corporate Social Responsibility Committee two or more directors.

(b) it shall have in its Corporate Social Responsibility Committee 3 or more directors.

(c) No need to have CSR committee

(d) it shall have in its Corporate Social Responsibility Committee any number of directors

Sol-(a)

26. Out of the following who shall not be considered as member personally present

(a) A member of the company

(b) Authorized representative of a body corporate. By Company Liquidator within 30 days

(c) Representative of President/Governor of the state

(d) Person appearing on behalf of representative of body corporate

Sol-(d)

27. Which out of the following is not a task to be performed by CSR committee

(a) Formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII

(b) Recommend the amount of expenditure to be incurred on the activities referred to in Schedule VII

(c) Monitor the CSR Policy of the company from time to time.

(d) Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

Sol-(d)

28. If the company fails to spend such amount

(a) Board shall, in its report made under sub-section (3) of section 134, specify the reasons for not spending the amount

(b) Company shall be liable to pay penalty as prescribed u/s 135

(c) Member become entitled to submit an application to tribunal for directing the company to ensure the compliance with Sec 135

(d) None of above

Sol-(a)

29. As per Sec 136, incase of EGM of A Limited i.e. company having share capital, if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall be deemed to have been duly sent if it is so agreed by members—

(a) Holding majority in number entitled to vote and who represent not less than ninety-five per cent of paid-up share capital of the company as gives a right to vote at the meeting

(b) Holding not less than ninety-five per cent of paid-up share capital of the company as gives a right to vote at the meeting

(c) Holding majority in number entitled to vote and who represent not less than ninety per cent of paid-up share capital of the company as gives a right to vote at the meeting

(d) Holding majority in number

Sol-(a)

30. Which out of the following is true about appointment of proxy by Sec 8 company

(a) A member of a company registered under section 8 shall not be entitled to appoint any other person

(b) A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

(c) A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless article provide so

(d) None of above

Sol-(b)

31. Provision of Sec 136 shall be deemed to have been complied, if the copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting incase of

(a) Public Listed company

(b) All Listed company

(c) All Public limited companies

(d) All companies as prescribed u/s 135

Sol-(b)

32. Incase of Listed company, a statement containing the salient features of Financial statement and other documents as prescribed u/s 136, shall be send through form no……to every member of the company and to every trustee for the holders of any debentures issued by the company

(a) AOC-3

(b) AOC-1

(c) AOC-2

(d) AOC-4

Sol-(a)

33. Every listed company having a subsidiary or subsidiaries shall

(a) place separate audited accounts in respect of each of subsidiary on its website, if any

(b) place separate audited accounts in respect of each of subsidiary on its website

(c) place consolidated audited accounts only in respect of each of subsidiary on its website, if any

(d) place separate audited accounts in respect of each of subsidiary in newspapers

Sol-(a)

34. Section 136(2), provides the right of …….. to members or trustees of debentures

(a) Inspection of documents as specified u/s 136(1)

(b) Inspection of books of accounts

(c) Inspection of Secret documents which are not otherwise available for inspection

(d) None of above

Sol-(a)

35. As per Sec 137, copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act shall be

(a) Filed with the Registrar within 30 days of the date of annual general meeting after they have been adopted

(b) Filed with the Registrar within 30 days of the date of general meeting after they have been adopted

(c) Filed with the Registrar within 30 days of the date of annual general meeting even if they are not yet audited

(d) None of above

Sol-(a)

36. Where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, then

(a) such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting

(b) No need for submission to ROC unless the same has been adopted

(c) such unadopted or unaudited financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting

(d) such unaudited financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting

Sol-(a)

37. A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements,

(a) within 180 days from the closure of the financial year to ROC

(b) within 30 days from General Meeting

(c) within 6 months from the closure of the financial year to ROC

(d) within 180 days from the closure of the financial year to Tribunal

Sol-(a)

38. As per Sec 137, A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of

(a) All its subsidiary or subsidiaries

(b) its subsidiary or subsidiaries including associate company

(c) its subsidiary or subsidiaries which have been incorporated outside India and established their place of business in India.

(d) its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Sol-(d)

39. Where the annual general meeting of a company for any year has not been held,

(a) the financial statements along with the documents required to be attached shall be filed with the Registrar within 60 days of the last date before which the annual general meeting should have been held

(b) the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held

(c) the financial statements along with the documents required to be attached, duly signed along with the statement of facts shall be filed with the Registrar within 30 days of the last date before which the annual general meeting should have been held

(d) the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within 60 days of the last date before which the annual general meeting should have been held

Sol-(b)

40. As per Section 138, which out of the following company shall not be required to appoint an Internal Auditor

(a) Listed Company

(b) Every unlisted public company having paid up share capital of 50 crore rupees or more during the preceding financial year

(c) Every unlisted public company having turnover of 200 crore rupees or more during the preceding financial year

(d) Every private limited company having turnover of 100 crore rupees or more during the preceding financial year

Sol-(d)

41. Rule-3-of Companies (Accounts) Rules, 2014.is in relation to

(a) Manner of Books of Account to be Kept in Electronic Mode

(b) Notice of Address at Which Books of Account are to be Maintained

(c) Conditions Regarding Maintenance and Inspection of Certain Financial Information by Director

(d) None of above

Sol-(a)

42. Rule-4A-of Companies (Accounts) Rules, 2014.is in relation to

(a) Forms and Items Contained in Financial Statements

(b) Conditions Regarding Maintenance and Inspection of Certain Financial Information by Directors

(c) Form of Statement Containing Salient Features of Financial Statements of Subsidiaries

(d) None of above

Sol-(a)

43. **The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures under the first proviso to sub-section (3) of section 129 shall be in**

(a) Form AOC-1

(b) Form AOC-2

(c) Form AOC-3

(d) Form AOC-4

Sol-(a)

44. Rule-6-of Companies (Accounts) Rules, 2014.is in relation to

(a) Manner of Consolidation of Accounts

(b) Transitional Provisions with Respect to Accounting Standards

(c) Matters to be Included in Board's Report

(d) Form of Statement Containing Salient Features of Financial Statements of Subsidiaries

Sol-(a)

45. The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the

(a) Form AOC-1

(b) Form AOC-2

(c) Form AOC-3

(d) Form AOC-4

Sol-(b)

46. Rule-8A-of Companies (Accounts) Rules, 2014.is in relation to

(a) Matters to be included in Board's Report for One Person Company and Small Company.

(b) Matters to be Included in Board's Report

(c) Form of Statement Containing Salient Features of Financial Statements of Subsidiaries

(d) Manner of Consolidation of Accounts

Sol-(a)

47. Rule-9-of Companies (Accounts) Rules, 2014.is in relation to

(a) Matters to be included in Board's Report for One Person Company and Small Company.

(b) Matters to be Included in Board's Report

(c) Disclosures About CSR Policy

(d) Manner of Consolidation of Accounts

Sol-(c)

48. Companies which are required to comply with Companies (Indian Accounting standards) Rules, 2015 shall forward their statement in form

(a) Form AOC-1

(b) Form AOC-2

(c) Form AOC-3A

(d) Form AOC-3

Sol-(c)

49. A standardised language for communication in electronic form to express, report or file financial information by companies, as provided in Rule 12 shall be termed as

(a) Extensible Business Reporting Language

(b) Financial statement in electronic mode

(c) Electronic records

(d) Record in Electronic mode

Sol-(a)

50. Rule-13-of Companies (Accounts) Rules, 2014.is in relation to

(a) Companies Required to Appoint Internal Auditor

(b) Manner of Circulation of Financial Statements in Certain Cases

(c) Statement Containing Salient Features of Financial Statements

(d) Format of Extensible Business Reporting Language

Sol-(a)

8. Audit & Auditor

1. As per Sec 139(1), Auditor shall be appointed for a period of

(a) 5 Years

(b) Up to 5 Years

(c) Minimum 5 Years

(d) Up to 10 Years

Sol-(a)

2. Rule-4, the auditor appointed under rule 3 shall submit a certificate that -

(a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act

(b) the proposed appointment is as per the term provided under the Act

(c) the proposed appointment is within the limits laid down by or under the authority of the Act

(d) All of above

Sol-(d)

3. As per Rule-4, The notice to Registrar about appointment of auditor shall be in

(a) Form ADT-1

(b) Form ADT-2

(c) Form ADT-3

(d) Form ADT-4

Sol-(a)

4. As per Rule-4, company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment (ADT-1) with the Registrar

(a) within 15 days of the meeting in which the auditor is appointed

(b) within 30 days of the meeting in which the auditor is appointed

(c) within 45 days of the meeting in which the auditor is appointed

(d) within 60 days of the meeting in which the auditor is appointed

Sol-(a)

5. Rule-3-Companies (Audit and Auditors) Rules, 2014 is about

(a) Manner and Procedure of Selection and Appointment of Auditors

(b) Conditions for Appointment and Notice to Registrar

(c) Class of Companies covered u/s 139(2)

(d) Manner of Rotation of Auditors by the Companies on Expiry of Their Term

Sol-(a)

6. Incase of Public Companies having paid up share capital of 15 Cr Rupee, Appointment of Auditor shall be recommended by

(a) Members

(b) Board of Directors

(c) Audit Committee

(d) None of above

Sol-(c)

7. Incase of private limited company, Appointment of Auditor shall be recommended by

(a) Members

(b) Board of Directors

(c) Audit Committee

(d) None of above

Sol-(b)

8. If the Board disagrees with the recommendation of the Audit Committee

(a) Still Board shall propose the name of Auditor so recommended by Audit Committee

(b) it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement

(c) Both name shall be proposed and member shall take a final decision

(d) Board shall propose the name of person so recommended by it to members

Sol-(b)

9 In case of Listed company, Auditor shall be appointed for

(a) Not more than one term of 5 consecutive years

(b) Not more than one term of 10 consecutive years

(c) For 5 years

(d) Minimum tenure of 5 years

Sol-(b)

10 As per Sec 139(2), an audit firm which has completed its term, shall not be eligible for re-appointment as auditor in the same company for

(a) 5 years from the completion of such term

(b) 2 years from the completion of such term

(c) 10 years from the completion of such term

(d) 3 years from the completion of such term

Sol-(a)

11. The Companies (Audit and Auditors) Rules, 2014 has prescribed certain classes of companies for the purposes of section 139(2), which shall not include the following companies

(a) All listed companies

(b) all unlisted public companies having paid up share capital of rupees 10 crore or more;

(c) all private limited companies having paid up share capital of rupees 50 crore or more;

(d) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more

Sol-(a)

12. If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants

(a) Such other firm shall also be ineligible to be appointed for a period of five years, if such partner join as in charge of audit firm there also

(b) Such other firm shall also be ineligible to be appointed for a period of five years

(c) Such other firm shall be ineligible to be appointed forever

(d) No such disqualification

Sol-(b)

13. First Auditor of Non-Government company shall be appointed by

(a) Board of directors within 30 days of the date of registration of the company

(b) Members within 30 days of the date of registration of the company

(c) Audit Committee within 30 days of the date of registration of the company

(d) Board of directors within 60 days of the date of registration of the company

Sol-(a)

14. In case of failure on part of auditor to appoint first auditor by non-government company

(a) company in general meeting may appoint the first auditor within 90 days

(b) company in annual general meeting may appoint the first auditor within 90 days

(c) tribunal may issue director for such appointment

(d) ROC may call meeting of members to appoint Auditor

Sol-(a)

15. Incase of death of Existing auditor, any such casual vacancy shall be filled by

(a) Board within 30 days

(b) members within 90 days

(c) Board within 60 days

(d) ROC within 30 days

Sol-(a)

16. Situation of casual vacancy is governed by provision of

(a) Sec 139(5)

(b) Sec 139(6)

(c) Sec 139(7)

(d) Sec 139(8)

Sol-(d)

17. Where any vacancy is caused by the resignation of an auditor

(a) It shall be filled by Board Only

(b) Any such vacancy shall be filled by company at a general meeting convened within three months of the recommendation of the Board

(c) Company shall wait for upcoming general meeting for filling such vacancy

(d) Existing auditor shall continue the office

Sol-(b)

18. Incase of Government company, the first auditor shall be appointed by the Comptroller and Auditor-General of India within

(a) 60 days from the date of registration of the company

(b) 30 days from the date of registration of the company

(c) 45 days from the date of registration of the company

(d) 15 days from the date of registration of the company

Sol-(a)

19 In case the Comptroller and Auditor-General of India does not appoint first auditor, then such auditor shall be appointed by

(a) Board of Directors of the company shall appoint such auditor within the next 60 days.

(b) Board of Directors of the company shall appoint such auditor within the next 30 days.

(c) Members of the company shall appoint such auditor within the next 30 days

(d) Members of the company shall appoint such auditor within the next 60 days

Sol-(b)

20. In the case of failure of the Board to appoint first auditor within the next 30 days, it shall inform the members of the company and then such members shall appoint

(a) such auditor within the 30 days at an extraordinary general meeting

(b) such auditor within the 60 days at an extraordinary general meeting

(c) such auditor within the 45 days at an extraordinary general meeting

(d) such auditor within 1 month at an extraordinary general meeting

Sol-(b)

21. As per Sec 139(9), at any annual general meeting, a retiring auditor may be re-appointed at an AGM, if

(a) he is not disqualified for re-appointment

(b) he has not given the company a notice in writing of his unwillingness to be re- appointed

(c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed

(d) All of above

Sol-(d)

22. As per Sec 139(10), Where at any annual general meeting, no auditor is appointed or re-appointed

(a) Existing auditor shall continue to be the auditor of the company

(b) EGM shall be called to appoint new auditor immediately

(c) Company may approach Tribunal, which shall recommend a new auditor

(d) ROC may recommend a person as auditor

Sol-(a)

23. As per Sec 140(1), The auditor appointed under section 139 may be removed from his office before the expiry of his term

(a) by a special resolution of the company

(b) after obtaining the previous approval of the Central Government by making an application in Form ADT-2

(c) either a or b

(d) both a and b

Sol-(d)

24. As per Sec 140(1), once an approval of CG has been obtained, company shall

(a) hold the general meeting within 30 days

(b) hold the general meeting within 60 days

(c) hold the general meeting within 90 days

(d) Auditor stand vacated immediately

Sol-(b)

25. If the Auditor has resigned from the company, he shall file within a period of 30 days from the date of resignation, a statement in

(a) Form ADT-3

(b) Form ADT-2

(c) Form ADT-1

(d) Form ADT-4

Sol-(a)

26. Where a firm including a Limited Liability Partnership is appointed as an auditor of a company

(a) only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm

(b) Any partner shall be entitled to act on behalf of said firm

(c) Majority of partners shall be professionally qualified

(d) None of above

Sol-(a)

27. As per Sec 141(3), The following persons shall not be qualified for appointment as auditor of a company-

(a) A body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008

(b) an officer or employee of the company

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company

(d) All of above

Sol-(d)

28. Who among the following may be appointed as Auditor of company

(a) A person whose relative is holding security interest in company of ₹ 2,50,000 in terms of face value

(b) A person whose relative is indebted to company for a sum of ₹ 3,00,000

(c) A person who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company in of `2 Lac

(d) a person or a firm who has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company

Sol-(b)

29. While computing the maximum number of Audit, following companies shall be considered

(a) One person company

(b) Dormant company

(c) Small company

(d) Private companies having paid-up share capital of ₹ 150 Cr

Sol-(d)

30. Who among the following may be appointed as Auditor of company

(a) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company

(b) a person who has been convicted by a court of an offence involving fraud and a period of ten years has elapsed from the date of such conviction

(c) a person whose relative is a director or is in the employment of the company as director or key managerial personnel

(d) an officer or employee of the company

Sol-(b)

31. As per Sec 143(1), Auditor shall have the power to inquire into certain matters, which shall not include the following

(a) whether loans and advances made by the company on the basis of security have been properly secured

(b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

(c) whether assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(d) 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

Sol-(d), since it shall not form part of inquiry u/s 143(1)

32. As per Sec 143, the Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report have a right to

(a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf

(b) comment upon or supplement such audit report

(c) test audit to be conducted

(d) any of above

Sol-(d)

33. Who among the following shall not be entitled to audit the branch office of company, which is located outside India

(a) company's auditor

(b) by an accountant

(c) by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country

(d) Such other professional as authorised by ICAI for conducting the audit

Sol-(d)

34. If an auditor of a company, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government in

(a) Form ADT-3

(b) Form ADT-4

(c) Form ADT-5

(d) Form ADT-6

Sol-(b)

35. In case of a fraud involving amount of ₹ 10,00,000, the auditor shall report the matter to

(a) Audit Committee constituted under section 177

(b) Board of Director

(c) Audit committee or Board

(d) Members directly

Sol-(c)

36. Sec 144 prescribed certain services which shall not be rendered by Auditor, however, it shall include the following

(a) actuarial services

(b) investment advisory services

(c) Preparation of CMA data

(d) rendering of outsourced financial services

Sol-(c)

37. For the purposes of sub-section (3) of section 143, the report of the auditor shall state about existence of internal financial controls with reference to financial statemen and its operating effectiveness, this is as per

(a) Rule 10A of Companies (Audit and Auditors) Rules, 2014

(b) Rule 10 of Companies (Audit and Auditors) Rules, 2014

(c) Rule 11A of Companies (Audit and Auditors) Rules, 2014

(d) Rule 11 of Companies (Audit and Auditors) Rules, 2014

Sol-(a)

38. As per Rule-13 Reporting of Frauds by Auditor and Other Matters, auditor shall report the matter to the Board or the Audit Committee

(a) Immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days

(b) Immediately but not later than forty-five days

(c) Immediately but not later than 62 days

(d) Immediately within a reasonable time

Sol-(a)

39. Any reporting to Central Government shall be in name of

(a) Secretary, Ministry of Legal Affairs

(b) Joint Secretary, Ministry of Corporate Affairs

(c) Joint Secretary, Ministry of Home affairs

(d) Secretary, Ministry of Corporate Affairs

Sol-(d)

40. Which out of the following is incorrect in relation to reporting of fraud by Auditor

(a) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations

(b) the auditor shall report the matter to the Board immediately seeking their reply or observations within forty-five days

(c) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number

(d) The report shall be in the form of a statement as specified in Form ADT-4

Sol-(b)

41.While reporting frau to central government, Auditor shall report the matter specifying the following:

(a) Nature of Fraud with description;

(b) Approximate amount involved

(c) Parties involved

(d) All of above

Sol-(d)

42. In relation to reporting of Fraud, Board report shall also place certain detail in its board report, which shall not include details in relation to

(a) Nature of Fraud with description

(b) Approximate Amount involved

(c) Copy of reply submitted to Auditor

(d) Remedial actions taken

Sol-(c)

9. Interpretation of Statute

1. Which out of the following is not an element of Document
(a) Matter
(b) Substance
(c) Minutes
(d) Record

Sol-(c)

2. A formal legal document which creates or confirms a right or records a fact, shall be termed as
(a) Instrument
(b) Document
(c) Deed
(d) Statute

Sol-(a)

3. Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. It means we are discussing
(a) **Rule of Literal Construction**
(b) **Rule of Reasonable Construction**
(c) **Rule of Harmonious Construction**
(d) **Rule of Beneficial Construction**

Sol-(a)

4. Which rule is also known as 'purposive construction' or mischieve rule
(a) **Rule of Literal Construction**
(b) **Rule of Reasonable Construction**
(c) **Rule of Harmonious Construction**
(d) **Rule of Beneficial Construction**

Sol-(d)

5. 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.
(a) **Rule of Literal Construction**
(b) **Rule of Reasonable Construction**
(c) **Rule of Harmonious Construction**
(d) **Rule of Beneficial Construction**

Sol-(c)

6. If the Court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief, it means we are discussing
(a) **Rule of Literal Construction**
(b) **Rule of Reasonable Construction**
(c) **Rule of Harmonious Construction**
(d) **Rule of Beneficial Construction**

Sol-(b)

7. Statute must be construed so as to lead to a sensible meaning, which means we are dealing with

(a) **Rule of Literal Construction**

(b) **Rule of Reasonable Construction**

(c) **Rule of Harmonious Construction**

(d) **Rule of Beneficial Construction**

Sol-(b)

8. Although full effect must be given to every word, however if no sensible meaning can be fixed to a word or phrase, or if it would defeat the real object of the enactment, it should be eliminated. This statement is as per

(a) **Rule of Literal Construction**

(b) The Common Sense Rule

(c) **Rule of Harmonious Construction**

(d) **Rule of Beneficial Construction**

Sol-(b)

9. Term **'utres magis valeat quampereat' shall means**

(a) the custom is the best interpreter of the law exclusive supply agreement

(b) it is better for a thing to have effect than to be made void

(c) where specific words are used and after those specific words, some general words are used, the general words would take their colour from the specific words used earlier

(d) the best way to interpret a document is to read it as it would have been read when made

Sol-(b)

10. **Ejusdem Generis** means

(a) same kind or species

(b) it is better for a thing to have effect than to be made void

(c) the custom is the best interpreter of the law exclusive supply agreement

(d) the best way to interpret a document is to read it as it would have been read when made

Sol-(a)

11. where specific words are used and after those specific words, some general words are used, the general words would take their colour from the specific words used earlier, now this statement shall means that we are discussing

(a) Rule of Literal Construction

(b) The Common Sense Rule

(c) **Rule of Ejusdem Generis**

(d) Rule of Beneficial Construction

Sol-(c)

12. Term "*Optima Legum interpresest consuetudo' shall means*

(a) same kind or species

(b) it is better for a thing to have effect than to be made void

(c) the custom is the best interpreter of the law exclusive supply agreement

(d) the best way to interpret a document is to read it as it would have been read when made

Sol-(c)

13. the term *'Contempranea expositoest optima et fortissima in lege' shall means*

(a) same kind or species

(b) it is better for a thing to have effect than to be made void

(c) the custom is the best interpreter of the law exclusive supply agreement

(d) the best way to interpret a document is to read it as it would have been read when made

Sol-(d)

14. Term **Noscitur A Sociis' shall means**

(a) it is better for a thing to have effect than to be made void

(b) the custom is the best interpreter of the law exclusive supply agreement

(c) the best way to interpret a document is to read it as it would have been read when made

(d) meaning of a word is to be judged by the company it keeps

Sol-(d)

15. An Internal Aid, which **describes** the enactment and does not merely identify it, shall be termed as

(a) Short Title

(b) Long Title

(c) Heading

(d) Definitional Section

Sol-(b)

16. An Internal Aid, which expresses the scope, object and purpose of the Act more comprehensively than the Long Title

(a) Short Title

(b) Long Title

(c) **Preamble**

(d) Definitional Section

Sol-(c)

17. An internal Aid, which used in an enactment to qualify or create an exception to what is in the enactment

(a) Short Title

(b) **Proviso**

(c) Preamble

(d) Definitional Section

Sol-(b)

18. An internal Aid, which used to include something within the section or to exclude something from it.

(a) Short Title

(b) Proviso

(c) Preamble

(d) Explanation

Sol-(d)

19 Which out of the following is not an External Aid to Interpretation

(a) Historical Setting

(b) Consolidating Statutes & Previous Law

(c) Usage

(d) Read the Statute as a Whole

Sol-(d)

20. Which out of the following is an External Aid to Interpretation

(a) Heading and Title of a Chapter

(b) Marginal Notes

(c) Illustrations

(d) Use of Foreign Decisions

Sol-(d)

10. Negotiable Instruments Act, 1881

1. A promissory note, bill of exchange or cheque payable either to order or to bearer shall be termed as
(a) Instruments
(b) Negotiable Instruments
(c) Negotiating Instruments
(d) Inchoate Instruments

Sol-(b)

2. Which out of the following is not a valid presumption as under Negotiable Instruments Act, 1881
(a) Presumption of time
(b) Presumption of Consideration
(c) Presumption of Stamp
(d) Presumption of Order of endorsement

Sol-(a)

3. Which out of the following is not a valid presumption as under Negotiable Instruments Act, 1881
(a) Presumption of Stamp
(b) Presumption of Order of endorsement
(c) Presumption of transfer
(d) Presumption of Holder

Sol-(d)

4. Which out of the following is not a character of valid promissory note
(a) In writing
(b) Unconditional undertaking to pay
(c) Must be signed by the maker and payee
(d) Amount must be certain

Sol-(c)

5. Which out of the following is not a party to Negotiable Instruments Act
(a) Drawer
(b) Drawee
(c) Payer
(d) Payee

Sol-(c)

6. Section 20 of Negotiable Instruments deals with
(a) Blank Instruments
(b) Instrument without consideration
(c) Inchoate Instruments
(d) Instrument having consideration in part only

Sol-(c)

7. As per Sec 20, The person, signing the inchoate instruments shall be liable towards holder in due course

(a) To the extent of actual liability

(b) For the amount mentioned on instruments

(c) in the capacity he signed the same

(d) for the amount covered by stamp

Sol-(c)

8. As per Sec 20, The person, signing the inchoate instruments shall provide…..authority to holder

(a) Prima Facie

(b) Conclusive

(c) Absolute

(d) Real

Sol-(a)

9 Which out of the following is not a valid feature of Payment in due course

(a) Perceived tenor of the instrument

(b) Payment to the holder

(c) Payment in good faith

(d) Payment under circumstances which do not afford a reasonable ground for believing that person getting payment is not entitled to receive payment of the amount mentioned therein

Sol-(a)

10 Bill shall be treated as Inland Bill, if

(a) If it is drawn or made payable in India

(b) Drawn in India upon any person who may be resident of India

(c) If it is drawn and made payable in India

(d) Drawn outside India

Sol-(c)

11. Ram being a holder for consideration obtained the instrument from Jai i.e. another Holder for consideration, now as per Sec 43, Ram can recover the amount from

(a) All Prior Parties

(b) Transferor for consideration or any prior party thereto

(c) Transferee for consideration or any prior party thereto

(d) From all holders who obtained the instrument for consideration

Sol-(b)

12. A draws a bill of exchange on B, payable to C or order. C endorsed it to D without consideration. On maturity bill is dishonoured. Whether D can sue C for the payment?

(a) Yes, as D can sue all prior parties

(b) No, since consideration is missing between both of them

(c) D can only recover the amount from Drawee

(d) None of above

Sol-(b)

13. A draws a bill on B and B accepts it without consideration. A endorses that bill to C without consideration. C endorses it to D for value consideration. TO whom D can sue as per Sec 43

(a) In absence of consideration, he can not sue any party

(b) D being a Holder for consideration can sue all prior parties

(c) D can sue Drawer only

(d) D can only sue a party to whom he has paid consideration

Sol-(b)

14. A bill which is drawn, accepted without consideration shall be termed as

(a) Accommodation Bill

(b) Bill Without consideration

(c) Fictitious Bill

(d) Bills in set

Sol-(a)

15. Where in case of a bill name of any person is given in addition to drawee, to be resorted, in case of need, such a person is called as

(a) Drawee

(b) Drawee in good faith

(c) Drawee in case of need

(d) Fictitious drawee

Sol-(c)

16. As per Sc 22, Every promissory note, or bill of exchange which is not expressed to be payable on demand, is at maturity on

(a) on 3rddayafter the day on which it is expressed to be payable

(b) on the day/month after which it is payable

(c) on the day on which event took place

(d) Not possible to compute maturity

Sol-(a)

17. If a promissory note or bill of exchange is made payable a stated number of months after date , it becomes payable

(a) corresponding date of month after the stated number of months

(b) three days after the corresponding date of month after the stated number of months

(c) Immediately preceding date from corresponding date of month after the stated number of months

(d) Five days after the corresponding date of month after the stated number of months

Sol-(b)

18. If the month in which the period would terminate has no corresponding day, the period shall be terminating on the

(a) 1st day of next month

(b) In the month in which same corresponding date appear

(c) last day of such month.

(d) None of above

Sol-(c)

19 When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument is deemed to be due on

(a) Same day even if it is a public holiday

(b) preceding business day

(c) Succeeding Business day

(d) 48 hours before such public holiday

Sol-(b)

20If an instrument is payable by installments, three days of grace are to be allowed on

(a) Last installement only

(b) First installement only

(c) On Each installement

(d) No such grace days shall be allowed in such a situation

Sol-(c)

21. Any person, entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the party liable thereto shall be termed as

(a) Holder for consideration

(b) Possessor

(c) Holder

(d) Bearer

Sol-(c)

22. Which out of the following is not a feature of Holder in Due course

(a) He obtained the instrument for consideration

(b) He obtained the instrument in good faith

(c) He obtained the instrument before its maturity

(d) He obtained the instrument from Holder for consideration

Sol-(d)

23. Which out of the following statement is correct

(a) A person who obtains the instrument even after maturity will have all rights of Holder in due course

(b) An Inland bill include a bill drawn in India and payable outside India

(c) Holder for consideration can not recover from party who deal in such instrument without consideration

(d) An accommodation bill can be negotiated even after the date of maturity with all the benefits of a HDC to the transferee

Sol-(d)

24. Which out of the following is incorrect in relation to rights of Holder in due course

(a) Once a NI passes through the hands of a holder in due course it become free from all defects.

(b) Holder in due course can sue all prior parties even if an instrument involved forgery

(c) Incase of an inchoate instruments, Holder in due course can recover full amount as mentioned in that instrument subject to the amount covered by stamp

(d) Holder of a negotiable instrument who derives a title from a holder in due course has the right thereon of that holder in due course

Sol-(b), as no right available incase of forgery

25. Where a negotiable instrument has been endorsed and delivered conditionally or for a special purpose i.e. as collateral security and not with the intention of transferring property, any such delivery shall be termed as

(a) Collateral Delivery

(b) Delivery by Attornment

(c) Conditional Delivery

(d) Constructive Delivery

Sol-(c)

26. Following are the difference between holder and holder in due course, however one of the difference is not valid. Decide

(a) A holder of an instrument will get same title as the transferor had but the holder in due course gets title better than that of transferor

(b) A holder does not enjoy special position or right, while as, the position of a holder in due course is privileged and he gets special rights

(c) A holder may acquire an instrument even after the date of maturity, but holder in due course must get it after maturity for value only

(d) For a holder it is not necessary that he must have given consideration for the instrument, but to be holder in due course consideration must have been given by him for acquiring an instrument

Sol-(c)

27. when a promissory note a bill of exchange or a cheque is transferred to any person so as to constitute that person as the holder thereof, the instrument is said to be

(a) Assignment

(b) Negotiation

(c) Endorsement

(d) Both a and b

Sol-(b)

28. Negotiable instrument which is payable to bearer can be transferred only by

(a) Delivery only

(b) Endorsement and Delivery

(c) Endorsement only

(d) Execution of separate document

Sol-(a)

29. Transfer of ownership of negotiable instrument through a written and registered document under the provisions of the Transfer of Property Act, 1882 shall be termed as

(a) Negotiation

(b) Assignment

(c) Endorsement

(d) Execution

Sol-(b)

30. Which out of the following is incorrect in case of Assignment

(a) Consideration needs to be proved

(b) Assignment is always done by mean of a Written and Registered Docs under the Provisions of Transfer of Property Right, 1882.

(c) Title of assignee is subject to all equities in the title of assignor. In Other words, assignee gets the right of assignor only

(d) Assignment can be done in respect of negotiable instruments only

Sol-(d)

31. Which out of the following is incorrect in case of Negotiation

(a) consideration has to be proved

(b) Title of HDC is better than that of transferor

(c) Instrument payable to bearer are negotiated by delivery only, whereas instrument payable to order are negotiated by endorsement and delivery

(d) Negotiation can be done only in respect of negotiable instruments

Sol-(a)

32. Which out of the following is not a valid mode of negotiation

(a) Negotiation by mere delivery

(b) Negotiation by endorsement and delivery

(c) Negotiation by Assignment

(d) Negotiation by Endorsement

(e) Both c and d

Sol-(e)

33. When' the maker or holder of a negotiable instrument signs the same, Otherwise than as such maker, for the purpose of negotiation, he is said to have

(a) Negotiated the same

(b) Endorsed the same

(c) Assigned the same

(d) Transferred the same

Sol-(b)

34. Endorsement can not be put on

(a) Face of instrument

(b) Back of instrument

(c) Slip of paper annexed thereto

(d) Slip of paper attached thereto

Sol-(d)

35. Which out of the following is invalid endorsement as a general rule

(a) Restrictive endorsement

(b) Conditional Endorsement involving a condition occurrence of which is impossible

(c) Sans Recourse Endorsement

(d) Partial Endorsement

Sol-(d)

36. Endorsement where endorser exclude some of his rights

(a) Sans Recourse

(b) Sans Francis

(c) Conditional

(d) Facultative

Sol-(d)

37. In case company not having any share capital, right to demand poll shall remain with

(a) Any member or members present in person or by proxy and having at least $1/5^{th}$ of total voting power

(b) Any member or members present in person or by proxy and having at least $1/10^{th}$ of total voting power or Paid up capital of 5,00,000

(c) Any member or members present in person or by proxy and having at least $1/5^{th}$ of total voting power or Paid up capital of 5,00,000

(d) Any member or members present in person or by proxy and having at least $1/10^{th}$ of total voting power

Sol-(d)

38. Out of the following, in which of the scenario no restriction on voting power may be imposed

(a) In case of non payment of Calls due on shares

(b) In case of non payment of other dues against the members

(c) Where right of lien is exercised by the company in respect of shares

(d) Where a member has not yet completed 2 months as member

Sol-(d)

39. Facility of casting votes by a member using an electronic voting system from a place other than venue of a general meeting shall be termed as:-

(a) Voting by Electronic Means

(b) Voting by Electronic Mode

(c) Remote E-Voting

(d) None of above

Sol-(c)

40. As per Sec 108, the facility for remote e-voting shall remain open for

(a) not less than 7 days and shall close at immediate preceding business day

(b) not less than 3 days and shall close at 5.00 p.m. on the date preceding the date of the general meeting

(c) not less than 2 days and shall close at 5.00 p.m. on the date preceding the date of the general meeting

(d) not less than 5 days and shall close at 5.00 p.m. on the date preceding the date of the general meeting

Sol-(b)

41. After the conclusion of voting at the general meeting, the scrutiniser shall, immediately first count the votes cast

(a) At General Meeting

(b) Through Remote E Voting

(c) Both together

(d) Depend upon decision of chairperson

Sol-(a)

42. A company's own articles may prescribe for

(a) special resolution where under the Act only an ordinary resolution is necessary

(b) ordinary resolution where under the Act only special resolution is necessary

(c) Both a and b are allowed

(d) None of a and b shall be allowed

Sol-(a)

43. According to section 116 of the Companies Act, 2013, where a resolution is passed at an adjourned meeting of a company, then, the resolution shall, for all purposes, be treated as having been passed on the date on

(a) Meeting was originally convened

(b) which notice of general meeting was dispatched

(c) which it was in fact passed, and shall not be deemed to have been passed on any earlier date

(d) None of above

Sol-(c)

44. As per Sec 115, A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding

(a) Atleast 1 % of total voting power or holding shares on which an aggregate sum upto 5,00,000 has been paid up on the date of the notice

(b) Atleast 1 % of total voting power or holding shares on which an aggregate sum upto 2,00,000 has been paid up on the date of the notice

(c) Atleast 5 % of total voting power or holding shares on which an aggregate sum upto 5,00,000 has been paid up on the date of the notice

(d) Atleast 10 % of total voting power or holding shares on which an aggregate sum upto 5,00,000 has been paid up on the date of the notice

Sol-(a)

45. Out of the following, no special notice shall be required for following resolution

(a) To provide that a retiring auditor shall not be re-appointed.

(b) To appoint an auditor other than retiring one.

(c) To appoint a director other than retiring one.

(d) To change the business of company

Sol-(d)

46. Where a member wishes to move requisition to proposes a resolution, he shall submit his requisition

(a) At least 2 weeks before the meeting

(b) At least 4 weeks before the meeting

(c) At least 6 weeks before the meeting

(d) At least 14 days before the meeting

Sol-(c)

47. Process of keeping of a record of proceedings at a meeting including decision arrived at such meeting, is termed as

(a) Minutes

(b) Record Keeping

(c) Evidence

(d) Books for general meeting

Sol-(a)

48. Every company shall maintain minutes of all proceedings of general meetings. Entries of the proceedings must be made in the books kept for that purpose within

(a) 30 days of conclusion of meeting

(b) 30 days of start of meeting

(c) Before commencement of next meeting

(d) Before commencement of subsequent board meeting

Sol-(a)

49. As per Sec 120, which out of the following company shall maintain its records in electronic form

(a) Every listed company or a company having not less than 10,000 shareholders, debenture holders and other security holders

(b) Every company having not less than one thousand shareholders, debenture holders and other security holders

(c) Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders

(d) Every listed public company or a company having not less than one thousand shareholders, debenture holders and other security holders

Sol-(c)

50. Which out of the following shall be incorrect in relation to records to be maintained u/s 120

(a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;

(b) the records must be capable of being readable, retrievable and reproducible in printed form;

(c) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;

(d) the records, once dated and signed digitally, shall be capable of being edited or altered;

Sol-(d)

11. Contract of Bailment

1. Delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them is called

(a) Bailment

(b) Pledge

(c) Hypothecation

(d) Charge

Sol-(a)

2. Incase of bailment, which out of the following shall not change

(a) Custody

(b) Possession

(c) Ownership

(d) None of above

Sol-(c)

3. Deposit of money in a bank is not bailment since

(a) Possession still remains with depositor

(b) Bank has no authority over such money

(c) money returned by the bank would not be identical currency notes

(d) None of above

Sol-(c)

4. Depositing ornaments in a bank locker is not bailment since

(a) Since it involve transfer of title as well

(b) Ornaments are not goods

(c) The ornaments are in possession of the owner though kept in a locker at the bank

(d) None of above

Sol-(c)

5. Which out of the following is not a form of bailment

(a) Delivery of goods by one person to another to be held for the bailor's use.

(b) Goods given to a friend for his own use without any charge.

(c) Hiring of goods.

(d) Parking of car

Sol-(d)

6. A bails a barrel of Cape flour worth ₹ 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only ₹ 25 a barrel.

(a) B must compensate A for expenses involved on separation

(b) B must compensate A for the loss of his flour

(c) Both a and b

(d) Neither a nor b

Sol-(b)

7. Termination of bailment may take place in which of the following circumstances

(a) Act done inconsistent with the condition of bailment

(b) Period of bailment expires

(c) Death of bailee

(d) All of above

Sol-(d)

8. If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot

(a) 'Y' will not be responsible for the loss to 'X'

(b) Y will be responsible for loss to X

(c) Y will be responsible for loss to X infact X is liable to Y for locker rent

(d) None of above

Sol-(b)

9 Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, aright to retain such goods until he receives due remuneration for the services he has rendered in respect of them. This right is known as

(a) Particular lien

(b) General Lien

(c) Right to have possession

(d) Right to have custody

Sol-(a)

10 Right to retain goods as a security for a general balance of account is known as

(a) Particular lien

(b) General Lien

(c) Right to have possession

(d) Right to have custody

Sol-(b)

11. Which out of the following is not true about general lien

(a) It is a right to detain/retain any goods of the bailor for general balance of account outstanding

(b) It can be exercised against goods even without involvement of labour or skill

(c) A general lien is not automatic but is recognized through on agreement. It is exercised by the bailee only by name

(d) It comes into play only when some labour or skill is involved

Sol-(d)

12. Which out of the following is not true about particular lien

(a) It is a right exercisable only on such goods in respect of which charges are due

(b) It is automatic

(c) It can be exercised against goods even without involvement of labour or skill

(d) Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc are entitled to particular lien

Sol-(c)

13. The bailment of goods as security for payment of a debt or performance of a promise is called

(a) Hypothecation

(b) Pledge

(c) Charge

(d) Mortgage

Sol-(b)

14. Which out of the following is not an essential of pledge

(a) There must be bailment for security for payment of debt/ performance of a promise

(b) Goods must be the subject matter of the contract of pledge.

(c) The goods pledged may be in existence or future goods

(d) There must be a delivery of goods from pawnor to pawnee

Sol-(c)

15. Which out of the following is not a right of pawnee

(a) Right of retainer

(b) Right to retention of subsequent debts

(c) right as to extraordinary expenses Incurred

(d) Right to retain surplus incase of realisation of goods in event of default

Sol-(d)

16. A bailee has

(a) a right of particular lien over the goods bailed

(b) a right of generation

(c) a right of both particular and general lien

(d) no lien at all over the goods bailed

Sol-(c)

17. The position of a finder of lost goods is that of a

(a) bailor

(b) bailee

(c) surety

(d) principal debtor

Sol-(b)

18. The delivery of goods by one person to another for some specific purpose and time is known as:

(a) Mortgage

(b) Pledge

(c) Bailment

(d) Charge

Sol-(c)

19 Seizure of goods by customs authorities can be treated as bailment. Discuss

(a) No, since there is no delivery

(b) No, since there is no voluntary transfer of possession

(c) no, since it involve transfer of right forever

(d) Yes, the possession of the goods is transferred to the custom authorities

Sol-(d)

20. A hires 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

(a) B is not liable as he was unaware

(b) 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

(c) B is liable only to the 50% of total damages

(d) None of above

Sol-(b)

12. Contract of Indemnity

1. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a

(a) Contract of Indemnity

(b) Contract of Guarantee

(c) Contract of Surety

(d) Contract of Warrantee

Sol-(a)

2. The party who promises to indemnity/save the other party from loss is known as

(a) Promisor

(b) Surety

(c) Indemnity Holder

(d) Indemnifier

Sol-(d)

3. B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. Will this be a valid contract of guarantee?

(a) No, since there is no consideration

(b) Yes, there is sufficient consideration for C's promise.

(c) C Shall not be liable due to doctrine of privity of contract

(d) None of above

Sol-(b)

4. A sell and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. Will this be a valid contract of guarantee?

(a) No, since there is no consideration

(b) Yes, there is sufficient consideration for C's promise.

(c) C Shall not be liable due to doctrine of privity of contract

(d) None of above

Sol-(b)

5. A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. Will this be a valid contract of guarantee?

(a) No, since there is no consideration

(b) Yes, there is sufficient consideration for C's promise.

(c) C Shall not be liable due to doctrine of privity of contract

(d) None of above

Sol-(a)

6. Incase of contract of indemnity, The liability of the indemnifier is

(a) Prime

(b) Primary and Independent

(c) Secondary

(d) Secondary and collateral

Sol-(b)

7. How many contract are entered incase of contract of guarantee

(a) 1 only

(b) 2

(c) 3

(d) 4

Sol-(c)

8. The liability of the surety is

(a) co-extensive with that of the principal debtor

(b) Independent of Principal Debtor

(c) Mutual and Concurrent with Principal Debtor

(d) None of above

Sol-(a)

9 A guarantee which extends to a series of transactions is called a

(a) Consistent guarantee

(b) Continuing Guarantee

(c) Regular Guarantee

(d) Series of guarantee

Sol-(b)

10. A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of Rs. 5,000 rupees, for due collection and payment by C of those rents. Here the nature of guarantee is

(a) Particular

(b) Continuing

(c) Consistent guarantee

(d) Special

Sol-(b)

11. A surety is discharged from liability on a guarantee under the following circumstances

(a) Revocation of continuing guarantee

(b) Revocation of continuing guarantee by surety's death

(c) By variance in terms of contract

(d) All of above

Sol-(d)

12. C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B.

(a) A is not discharged

(b) A Shall stand discharged

(c) A was not liable at all

(d) None of above

Sol-(a)

13. B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. Discuss the consequences

(a) A is not discharged from his suretyship.

(b) A is discharged from his suretyship.

(c) A is discharged from his suretyship to some extent

(d) None of above

Sol-(a)

14. B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments.

(a) Liability of A is not affected

(b) A shall continue to remain liable

(c) A is discharged by this prepayment

(d) None of above

Sol-(c)

15. Where, a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. This right is known as

(a) Right of Indemnification

(b) Right of subrogation

(c) Right of Tort

(d) Right of Pleading

Sol-(b)

16. A contract of indemnity is a

(a) Contingent Contract

(b) Wagering contract

(c) Quasi Contract

(d) Void agreement

Sol-(a)

17. A contracts to save B against the consequences of any proceedings, which C may take against B in respect of a certain sum of 500 rupees. This is a:

(a) Contract of guarantee

(b) Quasi contract

(c) Contract of indemnity

(d) Void contract

Sol-(c)

18. S and P go into a shop. S says to the shopkeeper, C, "Let P have the goods, and if he does not pay you, I will. "This is a

(a) Contract of Guarantee

(b) Contract of Indemnity

(c) Wagering agreement

(d) Quasi-contract

Sol-(a)

19 An agent cannot lawfully employ another to perform acts

(a) which he has expressly or impliedly undertaken to perform personally

(b) Which cannot be delegated

(c) Which can only be done personally

(d) no such restriction

Sol-(a)

20. A guarantee obtained by a creditor by keeping silence as to material circumstances is:

(a) valid

(b) voidable

(c) unenforceable

(d) invalid

Sol-(d)

13. Contract of Agency

1. A person employed to do any act for another or to represent another in dealings with third persons is known as

(a) Proxy

(b) Mercantile Agent

(c) Authorised Representative

(d) Agent

Sol-(d)

2. Which out of the following is a true test of agency

(a) Whether the person has the capacity to bind the principal and make him answerable to the third party

(b) Whether he can establish Privity of Contract between the principal and third parties

(c) Either a or b

(d) Both a and b

Sol-(d)

3. Which out of the following is not a valid presumption as under Negotiable Instruments Act, 1881

(a) Presumption of Stamp

(b) Presumption of Order of endorsement

(c) Presumption of transfer

(d) Presumption of Holder

Sol-(d)

4. Which out of the following is not a character of valid promissory note

(a) In writing

(b) Unconditional undertaking to pay

(c) Must be signed by the maker and payee

(d) Amount must be certain

Sol-(c)

5. The Rule of Agency is based on the maxim

(a) *Quit facit per alium, facit per se*

(b) Quid Pro Quo

(c) Ubbermai Fidei

(d) Nudum Pactum

Sol-(a)

6. maxim *"Quit facit per alium, facit per se" shall means*

(a) Agent is liable to third party

(b) he who acts through an agent is himself acting

(c) Principal is liable for acts of agent

(d) Agent can bind principal through his acts

Sol-(b)

7. According to Section 183, "any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may

(a) Become an Agent

(b) Become a Principal

(c) employ an agent

(d) None of above

Sol-(c)

8. Minor or a person of unsound mind can become

(a) Principal

(b) Agent

(c) Both Principal and Agent

(d) Neither Principal nor agent

Sol-(b)

9 P appoints Q, a minor, to sell his car for not less than ₹ 2,50,000. Q sells it for ₹ 2,00,000. Discuss the consequences

(a) P will be held bound by the transaction and further shall have no right against Q

(b) Q shall be liable to P for breach of trust even is he is a minor

(c) Q shall be liable to P as he has committed fraud, where the liability of minor shall continue

(d) Both a and c

Sol-(a)

10 Bill shall be treated as Inland Bill, if

(a) If it is drawn or made payable in India

(b) Drawn in India upon any person who may be resident of India

(c) If it is drawn and made payable in India

(d) Drawn outside India

Sol-(c)

11. According to Section 185

(a) No consideration is necessary to create an agency

(b) Consideration in agency may be in present or past or even in future

(c) Principal is liable to 3rd party for acts of agent

(d) Minor shall have no liability at all towards 3rd person

Sol-(a)

12. A is residing in Delhi and he has a house in Kolkata. A appoints B by a deed called the power of attorney, as a caretaker of his house. Agency is created by

(a) express agreement

(b) implied agreement

(c) Quasi agreement

(d) unilateral agreement

Sol-(a)

13.Authority given to agent, which is inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing ,shall be termed as

(a) Express Authority

(b) Agency by Estoppel

(c) Agency by Holding out

(d) Implied authority

Sol-(d)

14. The extent of an agent's authority, whether expressed or implied is determined by

(a) the nature of the act or the business he is appointed to do

(b) things which are incidental to the business or are usually done in the course of such business

(c) the usage of trade or business

(d) All of above

Sol-(d)

15. Whatever be the nature or extent of the agent's authority, it will always include the authority to do:

(a) Every lawful thing necessary for the purpose of carrying it out,

(b) Every lawful thing justified by various customs of trades,

(c) In an emergency, all such acts for the purpose of protecting the principal from loss as will be done by a person of ordinary prudence in his own case under similar circumstances

(d) All of above

Sol-(d)

16. The agent's authority is governed by principles called,

(a) Authority in normal circumstances

(b) Authority in emergency

(c) Principle of privity of contract

(d) Both a and b

Sol-(d)

17. As per Section 189, 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……, in his own case, under similar circumstances

(a) Normal prudence

(b) ordinary prudence

(c) ordinary diligence

(d) normal diligence

Sol-(b)

18. Which out of the following condition shall be satisfied in order to constitute a valid agency in an emergency

(a) Agent should not be a in a position or have any opportunity to communicate with his principal within the time available

(b) There should have been actual and definite commercial necessity for the agent to act promptly

(c) the agent should have acted bona fide and for the benefit of the principal

(d) the agent should have adopted the most reasonable and practicable course under the circumstances

(e) All of above

Sol-(e)

19 An agent cannot lawfully employ another to perform acts

(a) which he has expressly or impliedly undertaken to perform personally

(b) Which cannot be delegated

(c) Which can only be done personally

(d) no such restriction

Sol-(a)

20……is a person employed by, and acting under the control of, the original agent in the business of the agency

(a) Sub-Agent

(b) Substitute Agent

(c) Mercantile Agent

(d) Business Agent

Sol-(a)

21. The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate. This is based on the Latin principle

(a) delegatus non potest delegare

(b) Nemo dat quod non habet

(c) Quantum Meruit

(d) Consensus ad idem

Sol-(a)

22. Circumstances where **an agent can appoint Sub-agent**

(a) The appointment of a sub agent would be valid if the terms of appointment originally contemplated it

(b) Sometimes customs of the trade may provide for appointment of sub agents. In both these cases the sub agent would be treated as the agent of the principal

(c) Where in the course of the agent's employment, unforeseen emergency arise which make it necessary for him to delegate authority

(d) All of above

Sol-(d)

23. A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. A asked B, another carrier, to carry the goods. The goods were damaged in transit

(a) B Shall be liable for such loss

(b) A shall be liable for such loss, as agent is held liable for acts of sub agent

(c) Neither A nor B shall be liable as it was just a normal loss

(d) Both A and B shall be liable equally

Sol-(b)

24. person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal

(a) Substituted Agent

(b) Supplementary Agent

(c) Proxy of main agent

(d) Sub Agent

Sol-(a)

25. Substituted Agent are

(a) Agent of main agent

(b) Agent of principle

(c) Sub Agent

(d) All of above

Sol-(a)

26. A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. Now in this case, C shall be

(a) Sub Agent

(b) Substituted Agent

(c) Normal Agent

(d) Specific Agent

Sol-(b)

27. In selecting Substituted Agent for his principal, an agent is bound to exercise the same amount of discretion as a man of …….would exercise in his own case

(a) Ordinary Diligence

(b) Ordinary Prudence

(c) Ordinary Care

(d) Normal Prudence

Sol-(b)

28. A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Discuss who shall be liable to A

(a) B Shall be liable

(b) surveyor shall be liable

(c) Neither party shall be liable

(d) Only A shall be liable, as it is just a normal loss

Sol-(b)

29 A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. In this case discuss whether authority so delegated can be terminated by A

(a) A cannot revoke this authority

(b) Authority cannot be terminated even by insanity or death of A

(c) A can revoke his authority

(d) Both a and b

Sol-(d)

30 The principal may revoke the authority given to his agent

(a) at any time

(b) at any time before the authority has been exercised so as to bind the principal

(c) at any time by providing a reasonable notice to agent

(d) both b and c

Sol-(b)

31 A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price

(a) A can revoke B's authority to pay for the cotton

(b) A cannot revoke B's authority to pay for the cotton

(c) A cannot revoke B's authority to pay for the cotton as B has exercised his authority in part

(d) Neither of above

Sol-(a)

32. A person who represents himself to be an agent of another, when infact he has no authority from him is termed as

(a) Pretended Agent

(b) Sub Agent

(c) Agent through Ratification

(d) Agent in emergency

Sol-(a)

33. A is residing in Delhi and has a house in Mumbai. A appoints B by a power of attorney to take care of his house. State the nature of agency created between A and B

(a) Implied agency

(b) Agency by ratification

(c) Agency by necessity

(d) Express agency

Sol-(d)

34. L made an offer to MD of a company. MD accepted the offer though he had no authority to do so. Subsequently L withdrew the offer but the company ratified the MD's acceptance. State which of the statement given hereunder is correct :

(a) L was bound with the offer

(b) An offer once accepted cannot be withdrawn

(c) Both option (a) & (b) is correct

(d) L is not bound to an offer.

Sol-(c)

35. When an authority of agent is said to be implied:

(a) given by words

(b) spoken

(c) inferred from the circumstances of the case

(d) written

Sol-(c)

PERSONAL NOTES

PERSONAL NOTES