

National Test Series – 2

Test Paper 3 – Solution

Subject:- Corporate Laws & Other Laws

Marks: 100 Marks

Duration: 3 Hrs.

Part I

Multiple choice Questions.

(30 Marks)

Case Study Based MCQs

Case Study 1

Mr. B R Mohanty, around two-decade back; along with two of his elder brothers and few friends, who are pharma and chemical engineers by profession promoted two companies; first being Well-Mount Limited (WML) dealing in wellness products and pharmaceuticals; whereas other is Tex-Mount Limited (TML) dealing in textile products. During these two decades, both WML and TML has grown magnificently as both the sectors expanded beyond imagination. Both companies went public and stock of same listed on leading stock exchanges of countries.

TML did well in the past and emerged as a major export unit but in recent years the textile sector witness stiff competition due to new entrants. The increased cost of the workforce and other input materials is also made sector unprofitable and recent lockdown hit the sector further adversely. TML's bottom line for the current financial year is red. TML was declaring dividends since the very first year of operation and willing to continue the tradition considering dividend as signaling effect to an investor for valuation purpose. Rate of dividend for the recent five years was 9%, 10%, 8%, 5% and 2% (9% being five years ago and 2% being the previous year) respectively. The management at TML decided to declare dividends out of the profit of previous years. TML deals in export hence came under the scanner of enforcement authority, who seek financial statements and books of accounts of TML for scrutiny for the last 10 preceding financial years. In response to notice, TML furnish financial statements and books of accounts for last 8 immediately preceding financial years only, stating as per its Article of Association; TML is required to maintain and keep the books of accounts for 8 immediately preceding financial years only and that too without any record of vouchers pertaining to such accounts.

WML is doing well, it seizes outbreak of COVID-19 as a business opportunity and registers significant growth in both top and bottom line. For the past many years, WML declare a dividend at a constant rate of 20%. During the financial year 2019-20, WML earns a profit of 580 Crores. Board of directors of WML declares 25% dividend without transferring any % to reserve on 15th June, 2020. On 14th July, 2020 some of the amount remaining unpaid, due to operation of law; has been transferred to unpaid dividend account on 20th July, 2020. CA. Dev was appointed as auditor under section 139 of Companies Act, 2013 of WML in individual capacity during 17th AGM for against the financial year 2018-19.

(5 x 1 Mark = 5 Marks)

1. In case of TML, which of the following statements are correct regarding the declaration of dividend?
- a) TML can't declare the dividend because it earns a loss in the current financial year.
 - b) TML can declare the dividend but only up to 9%
 - c) TML can declare the dividend but only up to 5%
 - d) TML can declare the dividend but only up to 6.8%

Solution:- c)

2. CA. Dev, who is the auditor of WML have to vacate the office of the auditor in and can be reappointed again only in
- a) 22nd AGM and 27th AGM
 - b) 27th AGM and 32nd AGM
 - c) 22nd AGM and 23rd AGM
 - d) 22nd AGM and can't be re-appointed again.

Solution:- a)

3. In case of WML, which of the following statements is correct regarding the declaration of dividend?
- a) WML can't declare the dividend at a rate more than 20%
 - b) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 20% to reserve first.
 - c) WML can declare the dividend out current year's profit but it needs to transfer sum equal to 10% of paid-up share capital to reserve first.
 - d) WML can declare the dividend out of current years' profit without transferring any % to reserve

Solution:- d)

4. In case of TML, regarding maintenance and keeping the books of account; which of the following statements hold truth?
- a) TML needs to maintain and keep the books of account for 10 preceding financial years, hence TML violate the law.
 - b) TML doesn't violate the provision of law because it keeps the books of account for 8 immediate preceding financial years.
 - c) TML violate the provision of law because it keeps the books of account for 8 immediately preceding financial years without keeping relevant vouchers in the record pertaining to such books of account.
 - d) TML doesn't violate the provision of law because it is complying to its Article of Association.

Solution:- c)

5. Regarding declaration and distribution of dividend by WML, which of the following statements is correct from the view of the timeline?
- a) WML violates the law, because some of the dividend remain unpaid; irrespective of reason for non-payment
 - b) WML violates the law, because unpaid dividend need to transfer to unpaid dividend account by 19th July 2020
 - c) WML doesn't violate the law, because an unpaid dividend transferred to unpaid dividend account prior to 21st July 2020.
 - d) WML doesn't violate the law, because an unpaid dividend can be transferred to unpaid dividend account at any time within 90 days from the date of declaration

Solution:- c)

Case Study 2

Vishal Crockery Limited was incorporated on 24th September, 2010 under the jurisdiction of Registrar of Companies, Rajasthan with its registered office located in Jaipur and its manufacturing units spread out in Mumbai, Kanpur, Delhi and Ludhiana. Under the dynamic leadership of Hans Rajpal, the Chairman and Managing Director (CMD) of the company, it could easily be ascertained that the company had reached the new heights of success. The directors of the company numbered eight including CMD of which two were the independent directors.

The turnover of the company for the Financial Year 2018-2019 was Rs.750.00 crores – a whopping rise of more than 20% from the previous year and net profit stood at a prestigious figure of Rs.6.60 crores – also increased by Rs. 1.80crores as compared to the net profit of previous year. The company had a net worth of Rs.250.00 crores; and it was noticed that the net worth had also registered a northern trend by more than 15%. The authorised and paid-up share capital of the company was Rs.8.00 crores. Keeping in view the applicability of forming a CSR Committee for the current financial year 2019-20, a CSR Committee was formed with four directors as members of which one was the independent member. The Committee was, among others, given the responsibility to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII.

The company plans to diversify its business by adding another segment to manufacture steel utensils and therefore, is desirous to shift its registered office to Mumbai from the present one at Jaipur which will help the company in easing out the new business. Another strategically important segment which the company tapped earlier and now wishes to engage itself on a large scale relates to manufacturing of stationery items.

The company hopes that with the shifting of registered office to Mumbai, it shall be able to target international markets to export its quality products. As on date, the export turnover of the company is not that much significant. The directors, Janardan Mittal (Finance) and Ratish Jain (Marketing), however, have in-depth knowledge of export markets, particularly those existing in UK and Singapore, where they can place their products successfully and achieve laurels for the company in terms of wealth maximisation.

During the current Financial Year 2019-20, the company under the CSR activities provided ample support for improvement of infrastructure in schools established at Mumbai, Kanpur, Delhi and Ludhiana. Not only this, the company contributed towards establishment of Digital Smart Classroom, Libraries and computer labs in these cities. The company also deployed mobile medical units equipped with medical facilities and qualified doctors. In addition to this, a large number of public health and sanitation activities had been initiated under Swachh Bharat Abhiyan. The total amount spent on these activities was, till date, almost equal to the minimum spendable amount and it is hoped that as the current Financial Year 2019-20 approaches its end, the total spending on CSR activities will certainly exceed the budgeted figure.

(3 x 2 Marks = 6 Marks)

1. Which of the following criterion prompted Vishal Crockery Limited to mandatorily form a Corporate Social Responsibility (CSR) Committee for the current financial year?
 - a) The net profit had increased to Rs.6.60 crores and it was more by Rs.1.80 crores in comparison to previous year's net profit
 - b) The turnover was Rs.750.00 crores which was increased by more than 20% as compared to the previous year.
 - c) The net worth was Rs.250.00 crores which when compared to the previous year had registered an increase by more than 15%.
 - d) The paid-up share capital was Rs.8.00 crores.

Solution:- a)

2. What is the minimum amount (in percentage form) that Vishal Crockery Limited is required to spend during the Financial Year 2019-20 on the CSR activities after it formed a Corporate Social Responsibility Committee.
- a) Minimum 2% of the average net profits made during the two immediately preceding financial years.
 - b) Minimum 2% of the average net profits made during the three immediately preceding financial years.
 - c) Minimum 2.5% of the average net profits made during the two immediately preceding financial years
 - d) Minimum 2.5% of the average net profits made during the three immediately preceding financial years.

Solution:- b)

3. In the given case scenario, Vishal Crockery Limited decided to undertake CSR activities at its own. In case, it had decided to engage an external Section 8 company for undertaking its CSR activities and such charitable company is not established by Vishal nor it is established by the Central/State Government or by any entity established under an Act of Parliament or a State Legislature, then what should be the established track which this Section 8 company should have in undertaking similar programs or projects which Vishal Crockery Limited wants it to accomplish?
- a) Track record of minimum one year
 - b) Track record of minimum two years
 - c) Track record of minimum three years
 - d) None of the above

Solution:- c)

Case Study 3

Vivek Shah is the Chief Finance Officer (CFO) and Sachin Bhatt is the Company Secretary of Jitendra Iron Works Private Ltd (JIWPL), in Manipal, Karnataka. JIWPL is an integrated set up of foundries and machine shops that add value by machining more than 75% of the castings manufactured to fully finished condition. JIWPL is one of the largest jobbing foundries producing grey iron castings required for automobile, farm equipment sector and diesel engines industry. JIWPL serves customers globally. The turnover of JIWPL is about Rs.600 Crores, including export turnover of about Rs.250 Crores.

During the year 2019, JIWPL planned expansion to enhance its production capacity to meet the increasing demand from its customers, by importing fully automatic plant and equipment from Germany for the unit at Manipal. The means of finance of the expansion project:-

- (a) JIWPL received an amount of Rs.25 Crores from Malini Shetty, wife of one of the promoter director of JIWPL, Mahesh Shetty. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of Deposits.
- (b) The Board and the CFO also approached the main banker of the company viz., Bank of Baroda. The Bank after proper credit analysis, sanctioned an amount of Rs.50 Crores for meeting the working capital needs of the expansion project, which included interchangeable limits of cash credit, foreign and inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, inventory and other current assets of the expansion project in Manipal of JIWPL.

The CFO and the CS together coordinated with the legal department of the Bank on procedures relating to creation of security and registration of charges.

The registered office of JIWPL is located in Manipal. Out of the company's 180 members, 20 members, who are entered in the Register of Members reside in Mangaluru, a nearby city, requested the company for some reasons to maintain the Register of Members in the company's liaison office in Mangaluru, instead of Manipal henceforth.

(3 x 2 Marks = 6 Marks)

1. JIWPL received an amount of Rs.25 Crores from Malini Shetty, wife of one of the promoter directors Mahesh Shetty of JIWPL. Mahesh Shetty wanted to know from Sachin Bhatt any compliance needed from the perspective of acceptance of deposits. The CS has to ensure :-
 - a) That the particulars of amount received are immediately entered in the register of deposits maintained in such manner and in such format as prescribed;
 - b) To issue immediately a circular to the members of the company with a statement of deposits accepted as on date with the names of each depositor, amount(s) received as on date, the due date(s) and the liability(ies) on the due date(s) in respect of each depositor
 - c) That a declaration is to be obtained to the effect that the amount given is not sourced from borrowed funds or accepting loans or deposits from others and disclose the details in the Board's Report;
 - d) To file the particulars of deposits received within 30 days from the date of its receipt with the Registrar.

Solution:- c)

2. JIWPL was also sanctioned an additional amount of Rs.50 Crores for meeting the working capital needs of the expansion project., which included interchangeable limits of cash credit, foreign and Inland bills for negotiation and acceptance. The security cover was floating charge on the book debts, Inventory and other current assets of the expansion project of JIWPL. A floating Charge, in general is created by way of :
 - a) Passing a board resolution
 - b) Signing and acknowledging the Credit Sanction letter
 - c) Mortgage
 - d) Hypothecation or lien.

Solution:- d)

3. The registered office of JIWPL is located in Manipal. Out of the company's 180 Members, 20 members, who are entered in the register of members (ROM) reside in Mangaluru, a nearby city. These members requested the company for some reasons to maintain the Register of members (ROM) in the company's liaison office in Mangaluru, instead of Manipal henceforth.
 - a) The ROM shall be maintained only at the registered office in Manipal and maintaining in a place other than the registered office is not permitted under the Companies Act 2013 and the relevant Rules there under.
 - b) By passing a Special Resolution in a General Meeting, the ROM can be maintained in Mangaluru.
 - c) The Board of Directors by passing a Board Resolution in one of its meetings, may direct the Company Secretary to maintain the ROM in Mangaluru.
 - d) If more than 1/3rd of the members, whose names are entered in the ROM request for the change, then only the ROM can be maintained at Mangaluru after passing a Special Resolution in a General Meeting.

Solution:- b)

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MCQs other than Case Study

1. As per the Negotiable Instruments Act, 1881, when the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the..... .
- said public holiday
 - 5 days succeeding public holiday
 - next succeeding business day
 - next preceding business day

(1 Mark)

Solution:- d)

2. Rule of Beneficial construction is also known as—
- Purposive construction
 - Mischieve Rule
 - Heydons's Rule
 - All of the Above

(1 Mark)

Solution:- d)

3. Formal legal document which creates or confirms a right or record a fact is a—
- Document
 - Deed
 - Statute
 - Instrument

(1 Mark)

Solution:- d)

4. The preamble is most important in any legislation, it:
- Provides definitions in the Act.
 - Expresses scope, object and purpose of the Act
 - Provides summary of the entire Act
 - None of the above

(1 Mark)

Solution:- b)

5. Atul contracts to indemnify Neha against the consequences of any proceedings which Chirag may take against Neha in respect of a sum of Rs.15,000/- advanced by Chirag to Neha. Now, Neha who is called upon to pay the sum of money to Chirag but she fails to do so. Now, as per the provisions of the Indian Contract Act, 1872, advise the future course of action to be taken by Chirag.
- a) Chirag can recover the amount only from Neha
 - b) Chirag can recover the full amount from Atul
 - c) Chirag cannot recover the amount from Atul
 - d) Chirag can recover at least 10% of the total amount from Neha

(2 Marks)

Solution:- b)

6. Mr. Vishal parks his car at a parking lot, locks it, and keeps the keys with himself. Which of the following statement is correct in this regard ?
- a) This is a case of bailment
 - b) The parking people has possession of the car of Mr. Vishal
 - c) The parking people has custody of car of Mr. Vishal
 - d) This is the case of mortgage

(1 Mark)

Solution:- c)

7. M drew a cheque amounting to Rs. 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. State the nature of the Instrument as amounting to endorsement under the Negotiable Instrument Act,1881.
- a) Yes its an endorsement, as P becomes the holder of the cheque that he found in the N's safe locker.
 - b) No, its not an endorsement, as P does not become the holder of the cheque
 - c) Yes, its an endorsement, as P was a ultimate custodian of the cheque
 - d) No, its not an endorsement, as N endorsed it to C and not to the P.

(2 Marks)

Solution: - b)

8. 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

(1 Mark)

Solution:- d)

9. One Person Company shall file a copy of the duly adopted financial statements to the Registrar in:
- a) 30 days of the date of meeting in which it was adopted
 - b) 90 days of the date of meeting in which it was adopted
 - c) 90 days from the closure of the financial statement
 - d) 180 days from the closure of the financial statement

(1 Mark)

Solution:- d)

10. A guarantee which extend to a series of transactions is called
- a) Special Guarantee
 - b) Continuing Guarantee

- c) Specific Guarantee
- d) None of the above

(1 Mark)

Solution:- b)

11. An aid that expresses the scope, object and purpose of the Act—

- a) Title of the Act
- b) Heading of the Chapter
- c) Preamble
- d) Definitional sections

(1 Mark)

Solution:- c)

Part II

Question 1 is compulsory.

Answer any three out of remaining four questions.

Question 1.

(A) Aptech Technology Limited (listed on Stock Exchange) was incorporated on 1st October, 2019 with a paid-up share capital of Rs.200 crores. Within this small time of 4 months, it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to be fulfilled before the issue of sweat equity shares especially since their company is just a few months old?

(6 Marks)

Solution:-

Sweat equity shares of a class of shares already issued.

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

- (i) The issue is authorised by a special resolution passed by the company;
- (ii) The resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,

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

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

(B) Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide:

- (i) Whether the contention of Vijay is valid.
- (ii) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?

(6 Marks)

Solution:-

According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

- (i) The contention of Vijay shall be tenable, for the reason that the notice was not properly served.
- (ii) In the given circumstances, the company is bound to serve a valid notice to Vijay by registered post at his residential address at Kanpur and not outside India.

(C) Explaining the provisions of the Indian Contract Act, 1872, answer the following:

- (i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?
- (ii) C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

(4 Marks)

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 does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.
- (ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

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(D) Sandeep guarantees for Gaurav, a retail textile merchant, for an amount of ₹ 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Gaurav during the next 3 months.

After 1 month, Sandeep revokes the guarantee, when Sharma had supplied goods on credit for ₹ 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Sandeep is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Gaurav makes default in paying back Sharma for the goods already supplied on credit i.e. ₹ 40,000?

(3 Marks)

Solution:-

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

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

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

Question 2.

(A) Shekhar Limited appointed an individual firm, Suresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2019. Mrs. Kamala, wife of Mr. Suresh, invested in the equity shares having face value of ₹ 1 lakh of Shekhar Limited on 15th October, 2019. But Suresh & Company continues to function as statutory auditors of the company. Advice.

(5 Marks)

Solution:-

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

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

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

(B) The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary.

The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?

(5 Marks)

Solution: -

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

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

(C) Mrs.A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

(4 Marks)

Solution:-

Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Y's shop, when Mrs.A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

(D) Explain the function of 'proviso' as an internal aid to construction.

(3 Marks)

Solution:-

Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).

Question 3.

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

(5 Marks)

Solution:-

As per section 26(1) of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

Prospectus issued make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Accordingly, the Board of Directors of Ramesh Ltd. who proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government in compliance with the above stated provision and make a declaration about the compliance of the above stated provisions.

(B) K Limited, a subsidiary of Old Limited, decides to give a loan of ₹ 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ₹ 30,000 per month, to

buy 500 partly paid-up equity Shares of ₹ 1000 each in K Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013

(5 Marks)

Solution:-

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

- (a) The employee must not be a Key Managerial Personnel;
- (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- (c) The shares to be subscribed must be fully paid shares

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

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

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

(C) Mr. V draws a cheque of Rs. 11,000 and gives to Mr. B by way of gift. State with reason whether-

- (i) Mr.B is a holder in due course as per the Negotiable Instrument Act, 1881?
- (ii) Mr.B is entitled to receive the amount of Rs. 11,000 from the bank?

(4 Marks)

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 promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee thereof,(if payable to order),
- before the amount mentioned in it became payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In the instant case, Mr. V draws a cheque of Rs. 11,000 and gives to Mr. B by way of gift.

- (i) Mr. B is holder but not a holder in due course since he did not get the cheque for value and consideration.
- (ii) Mr. B's title is good and bonafide. As a holder, he is entitled to receive Rs. 11,000 from the bank on whom the cheque is drawn.

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(D) 'The meaning of a word is to be judged by the company it keeps'. Explain the concept of 'Noscitur A Sociis'.

(3 Marks)

Solution:-

Associated Words to be Understood in Common Sense Manner: When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one. On the other hand, there is the concept of 'Noscitur A Sociis' ('it is known by its associates'), that is to say 'the meaning of a word is to be judged by the company it keeps'. When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. It is a rule wider than the rule of ejusdem generis, rather ejusdem generis is only an application of the noscitur a sociis. It must be borne in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

For example, in the expression 'commercial establishment means an establishment which carries on any business, trade or profession', the term 'profession' was construed with the associated words 'business' and 'trade' and it was held that a private dispensary was not within the definition. (Devendra M. Surti (Dr.) vs. State of Gujrat, AIR 1969 SC 63 at 67).

Question 4.

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

(5 Marks)

Solution: -

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

However, a forged transfer is a nullity. It does not give the transferee (Mr. B) any title to the shares. Similarly any transfer made by Mr. B (to Mr. C) 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 (Mr. A) from the Register of Members, then the company is bound to restore the name of Mr. A as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North Staffordshire Railway Co.).

In the above case, 'therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers.

However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

(B) Chetan Ltd. issued a notice for holding its Annual general meeting on 7th November 2019. The notice was posted to the members on 16th October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

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

(5 Marks)

Solution:-

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

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

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

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

(C) Raj gives his umbrella to Manoj during raining season to be used for two days during Examinations. Manoj keeps the umbrella for a week. While going to Raj's house to return the umbrella, Manoj accidentally slips and the umbrella is badly damaged. Taking into account the provisions of the Indian Contract Act, 1872, who will bear the loss and why?

(4 Marks)

Solution:-

It is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished. [Section 160 of the Indian Contract Act, 1872]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. [Section 161]

In the instant case, Manoj shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

(D) What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

(3 Marks)

Solution:-

“Meaning of Service by post” [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing
- (ii) pre-paying, and
- (iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Question 5.

(A) Examine the validity of the following decision of the Board of Directors with reference of the provisions of the Companies Act, 2013:

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.

(5 Marks)

Solution:-

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

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

- (i) 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
- (ii) 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.

Hence, the contention of the Chairman is not valid.

(B) Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

(5 Marks)

Solution:-

Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares. However, he did not suffer any loss due to purchase of such shares.

Hence, Mr. Andrew will have no remedy against the company.

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

- (i) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for filing, or
- (ii) Under section 35 (2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
- (iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;
- (iv) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

(C) 'Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example.

(4 Marks)

Solution:-

Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, **for example**, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus' [*Gullipoli Sowria Raj V. Bandaru Pavani, (2009)*].

(D) Manoj owes money to Umesh. Therefore, he makes a promissory note for the amount in favour of Umesh, for safety of transmission he cuts the note in half and posts one half to Umesh. He then changes his mind and calls upon Umesh to return the half of the note which he had sent. Umesh requires Manoj to send the other half of the promissory note. Decide how rights of the parties are to be adjusted in reference to the Negotiable Instruments Act, 1881.

(3 Marks)

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 Umesh. Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of Umesh to have the other half of the promissory note sent to him is not maintainable. Manoj is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the promissory note.

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