(ALL BATCHES)

DATE: 17.07.2018MAXIMUM MARKS: 100 TIMING: 3¼Hours

PAPER 2 :LAW

Answer to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate who has not opted for Hindi Medium. His/her answer in Hindi will not be valued.

Question No. 1 is compulsory.

Candidates are also required to answer any Four questions from the remaining Five Questions.

In case, any candidate answers extra question(s)/sub-question(s) over and above the required number, then only the requisite number of questions first answered in the answer book shall be valued and subsequent extra question(s) answered shall be ignored.

Wherever necessary, suitable assumptions may be made and disclosed by way of note.

Answer 1:

(a) The problem asked in the question is based on the provisions of section 160 and 161 of the Indian Contract Act, 1872. Accordingly, it is the duty of the bailee to return or deliver the goods bailed according to the bailor's directions, 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. **2M**

According to Section 161, if, by the default of the bailee, the goods are not returned, delivered or tendered at theproper time, he is 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. **2M**

Therefore, applying the above provisions in the given case, Mahesh is liable for the loss, although he was not negligent, but because of his failure to deliver the car within a reasonable time *(Shaw & Co. v. Symmons*& Sons). **2M**

(b) **Doctrine of Constructive Notice:** In consequences of the registration of the memorandumand articles of association of the company with the Registrar of Companies, a person dealing with the company is deemed to have constructive notice of their contents (T.R. Pratt (Bombay)Ltd. v. E.D. Sassoon & Co. Ltd.). This is because these documents are construed as 'publicdocuments'. Accordingly if a person deals with a company in a manner incompatible with the provisions of the aforesaid documents or enters into transaction which is ultra vires these documents, he must do so at his peril. **2M**

The doctrine of constructive notice is not a positive one but a negative one like that of estoppels of which it forms parts. It operates only against the person who has been dealing with the company but not against the company itself; consequently he is prevented from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. **2M**

There is one limitation to the doctrine of constructive notice of the Memorandum and the Articles of a company. The outsiders dealing with the company are on their part entitled to assume that as far as the internal proceedings of the company are concerned, everything has been done properly in accordance with the Memorandum and Articles and the Act. They are only bound to read the registered documents and satisfy themselves that the proposed dealing is not inconsistent therewith, but are not bound to do more; they need not inquire into the regularity of the internal proceedings as required by the Memorandum and the Articles. This limitation of the doctrine of constructive notice is known as the 'doctrine of indoor management' or the rule laid down in the celebrated case of *Royal British Bank v. Turquand*. Thus, whereas the doctrine of constructive notice protects the company against outsiders, the doctrine of indoor management seeks to protect outsiders against the company. **2M**

(c) **Allotment of Shares**: The company has received 80% of the minimum subscription as statedin the prospectus. Hence, the allotment is in contravention of section 39(1) of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription stated in the prospectus. Under section 39 (3). **2M**

It is required to refund the money received (i.e. 80% of the minimum subscription) to the applicants. It has no other option available.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. **2M**

(d) An instrument is said to be discharged only when the party who is ultimately liable thereon is discharged from liability. **1M**

Therefore, discharge of a party to an instrument does not discharge the instrument itself. Consequently, the holder in due course may proceed against the other parties liable for the instrument. **1M**

On the other hand, when a bill has been discharged by payment, all rights there under are extinguished even a holder in due course cannot claim any amount under the bill. **2M**

Answer 2:

(a) A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. **2M**

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 days of grace are not allowed, whereas in a bill three days of grace are allowed for payment.
3. Notice of dishonour is not needed in a cheque, whereas notice of dishonour 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.

(1 Mark for each valid point Maximum Mark upto 4 Marks)

9. The drawer of a bill is discharged from liability, if it is not duly presented for payment but the drawer of a cheque is not discharged by delay of the holder in presenting the cheque for payment unless the drawer has suffered some loss due to delay.

(b) The legal issues in the presented problem in the question is covered under Section 62 (1) of the Companies Act, 2013 and pertains to the case Gas Meter Co. Ltd. Vs Diaphragm &General leather co. Ltd.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. 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. **3M**

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. **3M**

(c) **Rule of Ejusdem Generis:** The term ejusdem generic means of the same kind or species.Simply stated the rule means where any Act enumerates different subjects, general words following specific words are to be construed with reference to the words that precede them. The 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. **2M**

Thus the rule of 'ejusdem generis' means that where specific words are used and after these specific words, some general words are used, the general words would take their colour from the specific words used earlier (eg) where an Act permitted keeping of dogs, cats, cows, buffaloes and other animals, the expression 'other animals' would not include wide animals like lions and tigers, but would only mean domesticated animals like horses, etc. **1M**

However, there are certain cases/circumstances on which this rule cannot be applied in the interpretation of statutes. The general principle of 'ejusdem generis' applies only where the specific words are all of the same nature. When they are of different categories, then the meaning of general words following these specific words remain unaffected. These general words would not take colour from the earlier specific words. Again if the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.
Further, the Courts have a discretion whether to apply the 'ejusdem generis' doctrine in a particular case or not. For instance, the 'just and equitable' clause in the winding up, powers of the Court is held to be not restricted by the first five situations in which the Court may wind up a company. **1M**

(d) According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. **1M**

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. 1M

Thus, in the given case, D gets a good title to the watch . M is not liable to A for his negligence in the performance of his duties. 2M

Answer 3:

(a) Transmission and transfer of shares: Under Section 56 of the Companies Act, 2013,transmission of shares takes place when shares are transferred under the operation of law, either on the death of the registered shareholder or on his being adjudged as insolvent. 2M

Distinction between transfer and transmission of shares

	Transfer of shares		Transmission of shares
1.	It is effected by a voluntary/deliberate act of the parties by way of a contract.	**1.**	It takes place by operation of law e.g. due to death, insolvency or lunacy of a member.
2.	It takes place for consideration.	**2.**	No consideration is involved.
3.	The transferor has to execute a valid instrument of transfer.	**3.**	There is no prescribed instrument of transfer.
4.	As soon as the transfer is complete, the liability of the transferor ceases.	**4.**	Shares continue to be subject to the original liabilities.

(1 Mark for each valid point, Max. Marks4)

(b) Under 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. 2M

Therefore, in the present case, as the auditor has resigned, the 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.
Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting. 2M

Under 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 *theCompanies (Audit & Auditors) Rules, 2014,* the following steps should be taken for theremoval 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* 2M

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.

(c) According to Section 3(21) of the General Clauses Act, 1897, 'Financial Year' shall mean the year commencing on the first day of April. **2M**

The term year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December. **1M**

Hence, in view of the both above definitions, it can be concluded that Financial Year is a year which starts from first day of April to the end of March. **1M**

(d) **Agency by Ratification:** A person may act on behalf of another without his knowledge orconsent. **1M**

Later on such another person may accept the act of the former or reject it. If he accepts the act of the former done without his consent, he is said to have ratified that act and it places the parties in exactly the same position in which they would have been, the former had later's authority at the time he made the contract. Likewise, when an agent exceeds the authority bestowed upon him by the principal, the principal may ratify the unauthorised act. **3M**

Answer 4:

(a) A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per, the provisions of Section 105 (1) of the Companies Act, 2013 every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy and the proxy need not be a member of the company. Further, any provision in the articles of association of the companyrequiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members has a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority. **2M**

Where two proxy instruments by the same shareholder are lodged in respect of the same votes before the expiry of the time for lodging, there the proxies, the second in time will be counted and where one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. **2M**

Thus in case of Member A, the proxy Q (and not Proxy P) will be permitted to vote on his behalf. **1M**

However, in the case of Member B, the proxy R (and not Proxy S) will be permitted to vote as the proxy authorizing S to vote was deposited in less than 48 hours before the meeting. **1M**

(b) 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. **2M**

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. **1M**

Therefore the company is free to transfer any part of its profits to reserves as it deems fit. **1M**

(c) Section 100 (2) of the Companies Act, 2013 makes it obligatory on the Board of Directors to convene an extra ordinary meeting of members if requisitioned by the stipulated number of members. 40% of members constitute the required number and the board of directors have violated the provisions of law by not calling the meeting. **2M**

However, section 100 (4) of the Companies Act, 2013 provides that if Boardfail to proceed to call a meeting within 21 days from the date of receipt of a valid requisition for a date within 45 days of the receipt of the requisition, the requisitionists may themselves call a meeting within 3 months of the date of the requisition. **1M**

Moreover, where a meeting is called by the requisitionists and the registered office is not made available to them, it was decided in *R. Chettiar v. M. Chettiar* that the meeting may be held any where else.

Further, resolutions properly passed at such a meeting, are binding on the company. **2M**

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. **1M**

(d) **Illustrations:** Illustrations form a part of the statute and considered to be of relevanceand value in construing the text of the section. **1M**

However, illustration can not have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section. **1M**

(e) **Explanation:** An Explanation may be added to include something or to excludesomething from it. **1M**

Explanation should normally be read as to harmonise with and clear up any ambiguity in the main section. It should be construed as to widen the ambit of the section. **1M**

Answer 5:

(a) **Concept of Corporate Social Responsibility, CSR Committee & Minimum Contribution (Sections 135 of the Companies Act, 2013)**

Corporate Social Responsibility (CSR): CSR implies a concept, whereby companies decidevoluntarily to contribute to a better society and a cleaner environment — a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way.

According to section 135 of the Companies Act, 2013:

(i) Company which is required to constitute CSR committee:

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

(1) net worth of rupees 500 crore or more, or

(2) turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board. **2M**

(B) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company. **½M**

(C) However, the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as prepared in accordance with the provisions of section 381(1)(a) and section 198 of the Act. **½M**

(ii) Companies excluded from the requirements of the provisions of the Act in relation to CSR Committee:

Every company which ceases to be a company as per section 135(1) of the Act for three consecutive financial years –

(1) shall not be required to constitute a CSR Committee, and

(2) is not required to comply with the provisions as per section 135. **2M**

(iii) Required minimum contribution of the Companies towards CSR:

The Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy. **1M**

(b) The paying banker is discharged from liability, despite the forged Indorsement in favour of the payee, because of special protection granted by section 85(1) of the Negotiable Instruments Act, 1881. **3M**

In another instance, where the drawer's signature is forged, a banker remains liable to the drawer even by a payment in due course and cannot debit the drawer's account. **2M**

(c) Meaning of rule Harmonious Construction: When there is doubt about the meaning of thewords of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction. **2M**

It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it. **1M**

(d) Meaning of Guarantee Company*:*Where it is proposed to register a company with limitedliability, the choice before its promoters is either to limit their liability by the value of shares purchased by them or by limiting their liability by the amount of guarantees given by them. Section 2 (21) of the Companies Act, 2013 defines a Company Limited by Guarantee as a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

Thus, the liability of the members of a guarantee company is limited to a stipulated amount in terms of individual guarantees given by members and mentioned in the memorandum. The members cannot be called upon to contribute more than such stipulated amount for which each member has given a guarantee in the memorandum of association. The articles of association of such company shall state the number of members with which the company is to be registered. **2M**

Similarities and dis-similarities between the Guarantee Company and the Company having share capital: The common features between a "guarantee company" and the"company having share capital" are legal entity and limited liability. In case of a company limited by shares, the liability of its members is limited to the amount remaining unpaid on the shares held by them. Both these type of companies have to state this fact in their memorandum that the members' liability is limited. **2M**

However, the dissimilarities between a 'guarantee company' and 'company limited by shares' is that in the former case the members will be called upon to discharge their liability only after commencement of the winding up of the company and only to the extent of amounts guaranteed by them respectively. **1M**

Whereas in the case of a company limited by shares, the members may be called upon to discharge their liability at any time, either during the life of the company or during the course of its winding up and the amount payable by the members will be limited to the unpaid amount on shares held by them respectively. **1M**

Answer 6:

(a) Section 77 (1) clearly provides that it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge- holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation or such extended period as has been approved by the Registrar. **2M**

Under section 78 where a company fails to register the charge within the period specified in section 77, 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 thecharge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed. **3M**

Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge. **1M**

(b) According to section 128(1) of the Companies Act, 2013, every company is required to prepare and keep the books of accounts 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, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting. **1M**

The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. **1M** Further company may keep such books of accounts or other relevant papers in electronic mode as per the Rule 3 of the *Companies (Accounts) Rules, 2014*.

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. 1M

(c) According to **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 permanently fastened to anything attached to the earth.

3M

For example, trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property. 2M

(d) **Meaning of Sweat Equity Shares*:*** Section 2 (88) of the Companies Act, 2013 defines "sweatequity shares" as those equity shares which are issued by a company to its directors or employees at a discount or for consideration other than cash for providing their know-how or making available right in the nature of intellectual property rights or value additions, by whatever name called. 2M

Conditions to be fulfilled before issue of Sweat Equity Shares: Notwithstanding anythingcontained in Section 53 (Providing for issue of shares at a discount), a company may under section 54 of the Companies Act, 2013 issue sweat equity shares if the following conditions are fulfilled:

1. The shares being issued belong to a class of shares which have already been issued.
2. The issue should be authorised by a special resolution passed by the company in general meeting.
3. The resolution should specify number of shares, current market price, consideration, if any and the class or classes of directors or employees to whom such shares are to be issued.
4. Not less than one year has elapsed at the date of such issue, since the date on which the company had commenced business.
5. 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 may be prescribed. Under section 54 (2) 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.

(1 Mark for each valid point Max. Marks upto 4 Marks)

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