

(GI-5+7, GI-6, GI-8, GI-9, SI-2+4, SI-3 & VI-2)

DATE: 19.08.2019

MAXIMUM MARKS: 100

TIMING: 3¼ Hours

PAPER : 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 & 2 is compulsory.

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

Answer 1: (ATTEMPT ANY 30 QUESTIONS)

- (1) Ans. (d)
- (2) Ans. (c)
- (3) Ans. (b)
- (4) Ans. (a)
- (5) Ans. (b)
- (6) Ans. (c)
- (7) Ans. (c)
- (8) Ans. (d)
- (9) Ans. (b)
- (10) Ans. (b)
- (11) Ans. (c)
- (12) Ans. (d)
- (13) Ans. (b)
- (14) Ans. (c)
- (15) Ans. (b)
- (16) Ans. (d)
- (17) Ans. (c)
- (18) Ans. (a)
- (19) Ans. (c)
- (20) Ans. (c)
- (21) Ans. (c)
- (22) Ans. (a)
- (23) Ans. (b)
- (24) Ans. (c)
- (25) Ans. (d)
- (26) Ans. (b)
- (27) Ans. (b)
- (28) Ans. (a)
- (29) Ans. (a)
- (30) Ans. (b)

{1 M for each question} = (30 Marks)

Answer 1:

- (a)** In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—
- (i) controls the composition of the Board of Directors; or
 - (ii) exercises or controls more than one-half of the voting rights either at its own or together with one or more of its subsidiary companies:
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

{2 M}

Explanation.—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

{1 M}

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the voting rights. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

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

{1 M}

{1 M}

Answer:

- (b) 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.
- Section 2 (51) of the Companies Act, 2013 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.
- In the given instance, HR Manager is not a KMP of the MNO Private Ltd. He is drawing salary of Rs. 30,000 per month and loan taken to buy 500 partly paid up equity shares of Rs. 1000 each in MNO Private Ltd.
- Keeping the above provisions of law in mind, the company's (MNO Private 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 Rs. 1.8 Lakhs.
- ii. The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

{3 M}

{2 M}

Answer:

- (c) 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. According to Section 161, 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, notwithstanding the exercise of reasonable care on his part.
- 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).

{2^{1/2} M}

{1^{1/2} M}

Answer 2:

- (a) Voting rights of a member: Section 47 governs the voting rights of members. Under section 47 (1) every holder of an equity share has the right to vote, on every resolution placed before the company. if the voting on the resolution is put to a poll his voting right in that case shall be in proportion to his share in the paid up capital of the company. A member may exercise his right to vote personally or through a proxy. **{1 M}**
- Section 47 (2) provides for every holder of preference shares in the share capital of the company has a right to vote only on a resolution which directly affects the rights attached to the preference share capital. **{1 M}**
- The sub section further provides that in the case of any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital, the preference shareholder's voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company. **{1 M}**
- Further, the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares. **{1 M}**
- Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company. **{1 M}**

Answer:

- (b) Issue of bonus shares [Section 63]: As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—
- (i) its free reserves;
 - (ii) the securities premium account; or
 - (iii) the capital redemption reserve account:
- Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets. **{3 M}**
- As per the given facts, ABC Ltd. has total eligible amount of Rs. 12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is Rs. 30.00 lakhs. Accordingly:
- (i) For issue of 1:3 bonus shares, there will be a requirement of Rs. 10 lakhs (i.e., $\frac{1}{3} \times 30.00$ lakh) which is well within the limit of available amount of Rs. 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3. **{1 M}**
 - (ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of Rs. 15 lakhs (i.e., $\frac{1}{2} \times 30.00$ lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of Rs. 15 Lakhs is exceeding the available eligible amount of Rs. 12 lakhs. **{1 M}**

Answer:

- (c) 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. **{2^{1/2} M}**

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 favour of Rajendra and the said agency is not revocable. The revocation of agency by Sunil is not lawful. {1½ M}

Answer 3:

- (a) "Eligible company" means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits: {2 M}
- However, an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution. {2 M}
- An eligible company shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent. of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. {2 M}
- ABC Limited is having a net worth of 120 crore rupees. Hence, it can fall in the category of eligible company. {1 M}
- Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. {1 M}

Answer:

- (b) 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 chargeholder 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. {2 M}
- 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 the charge 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. {2 M}
- 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. {1 M}

Answer:

- (c) The facts of the problem are identical with the facts of a case known as H.N.D. Mulla Feroze Vs. C.Y. Somaya Julu, J(2004) 55 SCL (AP) wherein the Andhra Pradesh High Court held 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 dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. }{2^{1/2} M}
- Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instruments Act, 1881. Therefore X also is not liable for the cheque but legally liable for the payments for the goods. }{1^{1/2} M}

Answer 4:

- (a) As per the provisions of Section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year, within 60 days from the date on which the annual general meeting should have been held, together with the statement specifying the reasons for not holding the annual general meeting. }{3 M}
- In the given question, even in the case of not holding of Annual General Meeting, the company shall file with the Registrar a copy of the annual return along with a statement specifying the reasons for not holding the annual general meeting within 60 days from the date on which the annual general meeting should have been held. Hence, the contention of directors is not correct. }{2 M}

Answer:

- (b) According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members. }
- (i) As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper. }{2^{1/2} M}
- (ii) As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed. }{2^{1/2} M}
- Accordingly, a director Mr. Bheem, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section. }

Answer

- (c) According to the provisions of Section 44 of the Negotiable Instruments Act, 1881, when there is a partial absence or failure of money consideration for which a person signed a bill of exchange, the same rules as applicable for total absence or failure of consideration will apply. }{2^{1/2} M}
- Thus, the parties standing in immediate relation to each other cannot recover more than the actual consideration. Accordingly, X can recover only Rs. 8000. }{1^{1/2} M}

Answer 5:

- (a) As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company. **{3 M}**
- Thus, as per the given facts, M/s Future Ltd. can adjust the sum of Rs. 50,000 unpaid call money against the declared dividend of 10%, i.e. $5,00,000 \times 10/100 = 50,000$. Hence, Karan's unpaid call money (Rs. 50,000) can be adjusted fully from the entitled dividend amount of Rs. 50,000/-. **{2 M}**

Answer:

- (b) Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.
- As per the given facts, following are the answers in the given situations-
- (i) Amount that Company has to spend towards CSR: According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy. **{3 M}**
- Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.
- (ii) Composition of CSR Committee: The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director. **{2 M}**
- (a) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director, shall have its CSR Committee without such director;
- (b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

Answer:

- (c) (i) Class of companies required to appoint Internal Auditor: Section 138 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014 prescribes the class of companies required to appoint Internal Auditor. According to it, following class of companies shall be required to appoint an internal auditor or a firm of internal auditors. **{3 M}**
1. Every listed company;
 2. Every unlisted public company having –
 - (a) Paid up share capital of 50 crore rupees or more during the preceding financial year; or
 - (b) Turnover of 200 crore rupees or more during the preceding financial year; or
 - (c) Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
 - (d) Outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and

3. Every private company having –
- Turnover of 200 crore rupees or more during the preceding financial year; or
 - Outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.
- As per the facts given in the question, PQR Limited is an unlisted public company with the paid up share capital of Rs. 80 crores during the preceding financial year with the turnover of Rs. 110 crores. Since PQR Limited fulfills one of the criteria with paid up share capital of more than 50 crore rupees during the preceding financial year, it is mandatory for the PQR Limited to appoint an internal auditor for the financial year 2015-16.
- (ii) As per the section 138(1), an internal auditor shall either be a Chartered Accountant (engaged in practice on not) or a Cost Accountant, or such other professional as may be decided by the Board. Even an employee of the company may also be appointed as an Internal auditor of the company as per the Rule 13 of the Companies (Accounts) Rules, 2014. **{1 M}**

Answer 6:

- (a) 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. **{3 M}**
- (i) Mr. B is holder but not a holder in due course since he did not get the cheque for value and consideration. **{1 M}**
- (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. **{1 M}**

Answer:

- (b) "Good Faith" [Section 3(22) of the General Clauses Act, 1897]: A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not; **{3 M}**
- The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable. **{2 M}**

Answer:

(c) Internal aids to interpretation / construction are those which are found within the text of the statutes. On the other hand external aids of interpretation are those factors which are external to the text of the statute but are of great help.

Examples of internal aids to interpretation:

1. Definitional sections and clauses
2. Illustrations
3. Provisos
4. Long title and short title
5. Preambles
6. Heading and title of chapter
7. Marginal notes
8. Explanations
9. Schedules
10. Reading the statute as a whole

**Maximum
2 Marks
for
Any Five**

Examples of external aids to interpretation:

1. Historical setting (Background)
2. Consolidating statute & Previous law
3. Usage
4. Earlier & later analogous acts
5. Earlier acts explained by the later act
6. Reference to repealed acts
7. Dictionary definition
8. Use of foreign decisions

**Maximum
2 Marks
for
Any Five**
