

(GI-1, GI-3, GI-4, VI-1 & SI-1)

DATE: 20.07.2019

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. d
3. Ans. d
4. Ans. b
5. Ans. c
6. Ans. a
7. Ans. b
8. Ans. c
9. Ans. c
10. Ans. d
11. Ans. c
12. Ans. a
13. Ans. b
14. Ans. d
15. Ans. b
16. Ans. c
17. Ans. c
18. Ans. a
19. Ans. d
20. Ans. a
21. Ans. a
22. Ans. c
23. Ans. d
24. Ans. d
25. Ans. d
26. Ans. c
27. Ans. d
28. Ans. c
29. Ans. a
30. Ans. c
31. Ans. b
32. Ans. c
33. Ans. b
34. Ans. a
35. Ans. b
36. Ans. a

[Any 30 Points, Each 1 Mark x 30 = 30 Marks]

Answer 2:

(a) As per Rule 3 of the Companies (Incorporation) Rules, 2014, One Person Company (OPC) cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees. **{3 M}**

According to the above provisions, following are the answers to the given circumstances:

(i) Where, if the promoters increases the paid up capital of the company by Rs. 10.00 lakh during 2017-2018 i.e., to Rs. 55 lakh (45+10= 55), 'New' (OPC) may convert itself voluntarily into any other kind of company due to increase in the paid up share capital exceeding 50 lakh rupees. This could be done by the 'New' by alteration of memorandum and articles of the company in compliance with the Provisions of the Act. **{1 M}**

(ii) Where if the turnover of the 'New' during 2017-18 was Rs. 3.00 crore, there will be no change in the answer, as it meets up the requirement of minimum turnover i.e., Rs. 2 crore for voluntarily conversion of 'New' (OPC) into any other kind of company. **{1 M}**

Answer

(b) Under the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less. **{2^{1/2} M}**

In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission. **{1^{1/2} M}**

Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid. **{1 M}**

Answer

(c) [An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. To constitute a valid agency in an emergency,] **[1 M]** following conditions must be satisfied.

(i) Agent should not be a in a position or have any opportunity to communicate with his principal within the time available. **{1 M}**

(ii) There should have been actual and definite commercial necessity for the agent to act promptly. **{1/2 M}**

(iii) The agent should have acted bonafide and for the benefit of the principal. **{1/2 M}**

(iv) The agent should have adopted the most reasonable and practicable course under the circumstances, and **{1/2 M}**

(v) The agent must have been in possession of the goods belonging to his principal and which are the subject of act. **{1/2 M}**

Answer 3:

(a) Shelf prospectus – As per the Explanation given in Section 31 of the Companies Act, 2013, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. **{1 M}**

Provisions relating to issue of Shelf-prospectus:

(1) Filing of shelf prospectus with the registrar: According to section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the

- Registrar at the stage-
- (i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
 - (ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- (2) Filing of information memorandum with the shelf prospectus: A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:
- (3) Intimation of changes: Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.
- Memorandum together with the shelf prospectus shall be deemed to be a prospectus: Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Answer:

- (b) Meaning of Sweat Equity Shares: Section 2 (88) of the Companies Act, 2013 defines "sweat equity 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. Conditions to be fulfilled before issue of Sweat Equity Shares: Notwithstanding anything contained 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 pari passu with other equity shareholders.

Answer

- (c) [M shall have to bear the loss since he failed to return the umbrella within the stipulated time] [2 M] [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.] [2 M]

Answer 4:

- (a) Acceptance of deposit from public: According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe. {1 M}
- Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits. {2 M}
- Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed. {1 M}
- Since, Ashish Ltd. has a net worth of Rs. 80 crores and turnover of Rs. 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above. {1 M}

Answer:

- (b) Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company. {3 M}
- (i) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge-
- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,
- enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, despite the fact that no intimation has been received by him from the company.
- (ii) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under section 81(1). According to the Companies (Registration of Charges) Rules, 2014 with respect to the satisfaction of charge- {2 M}

- (1) A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar along with the fee.
- (2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge.

Answer:

- (c) Minor being a party to negotiable instrument: Every person competent to contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a promissory note, bill of exchange or cheque (Section 26, para 1, Negotiable Instruments Act, 1881). {2 M}
- As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself (Section 26, para 2).
- [In view of the provisions of Section 26 explained above, the promissory note executed by X and M is valid even though a minor is a party to it.] **[1 M]** [M, being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely X from liability.] **[1 M]**

Answer 5:

- (a) (i) Ordinary Business [Section 102 (2)]: In accordance with the provision of Companies Act, 2013 as contained in Section 102 (2), the only ordinary business can be transacted at an AGM and comprises of the following business: {3 M}
- (a) Consideration of financial statements and the reports of the Board of Directors and auditors.
- (b) Declaration of dividend.
- (c) Appointment of Directors in place of those retiring; and
- (d) Appointment of auditors and fixation of their remuneration.
- (ii) Special Business: Any other business transacted at the annual general meeting or at any other meeting of the members shall be deemed to be special business. {1 M}
- Ordinary business can be passed by an ordinary resolution. However, special business may be transacted either by passing ordinary resolution or special resolution, depending upon the requirements of Companies Act, 2013. {1 M}

Answer:

- (b) 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 company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. 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. {2 M}
- [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.] **[1 M]**

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

Answer:

- (c) Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. {1 1/2 M}
- On applying the above provision in the given cases-
- (i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name. {1/2 M}
- (ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein. {1/2 M}
- (iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name. {1/2 M}
- (iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name. {1/2 M}
- (v) No, B is not a holder because he is in wrongful possession of the instrument. {1/2 M}

Answer 6:

- (a) Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting: {2 1/2 M}
- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;
- Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub- section (5) above. {1 1/2 M}
- Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons. {1 M}

Answer:

- (b) Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company. {2 1/2 M}
- [In the given case, has given proper notice.
- However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.] [1 1/2 M] [So, can undertake the inspection only during the above mentioned period and not two days prior to the meeting.] [1 M]

Answer:

- (c) "Provision as to offence punishable under two or more enactments" [Section 26]:
 Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence. {2^{1/2} M}
 Thus, Mr. Ram shall be liable to be punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence. {1^{1/2} M}

Answer 7:

- (a) Interim Dividend: According to section 123(3) of the Companies Act, 2013, The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. {1 M}
 However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years. {1^{1/2} M}
 [In the instant case, Interim dividend by TAT Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. $(12+15+18)/3 = 45/3 = 15\%$].] [1^{1/2} M]
 [Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.] [1 M]

Answer:

- (b) (i) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder. {1 M}
 As per the facts given in the question, Mr. A is holding equity shares of face value of Rs. 10 Lakhs and has not paid an amount of Rs. 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get Rs. 1.20 lakh towards dividend, out of which an amount of Rs. 1 lakh can be adjusted towards call money due on his shares. Rs. 20,000 can be paid to him in cash or by cheque or in any electronic mode. {1^{1/2} M}
- (ii) [According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker.] [1 M] [Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017.] [1 M] [Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. R will be entitled to the dividend.] [1/2 M]

Answer:

- (c) Rule of Eiusdem Generis: The term eiusdem 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 {2 M}

of the same kind as the specific words previously mentioned unless there is something to show that a wider sense was intended. Thus the rule of 'ejusdem generis' means 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.

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.

{2 M}
