

(GI-11, GI-12+15, GI-13+14 & SI-5)

DATE: 04.01.2020

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:

- | | | | |
|-----|--------|---|------------|
| 1. | Ans. c | } | {1 M Each} |
| 2. | Ans. c | | |
| 3. | Ans. c | | |
| 4. | Ans. d | | |
| 5. | Ans. a | | |
| 6. | Ans. a | | |
| 7. | Ans. b | | |
| 8. | Ans. d | | |
| 9. | Ans. c | | |
| 10. | Ans. c | | |
| 11. | Ans. c | | |
| 12. | Ans. d | | |
| 13. | Ans. a | } | {2 M Each} |
| 14. | Ans. b | | |
| 15. | Ans. c | | |
| 16. | Ans. b | | |
| 17. | Ans. b | | |
| 18. | Ans. a | | |
| 19. | Ans. b | | |
| 20. | Ans. a | | |
| 21. | Ans. d | | |

Answer 2:

- (a)** According to section 16 of the Companies Act, 2013 if a company is registered by a name which-
- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
 - is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name.
- Then the company shall change its name by passing an ordinary resolution within 6 months.
- Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable. In the given case, owner of registered trade mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trade mark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13. } {1 M}

Answer:

(b) Bailee’s Duties and Liabilities: The problem as asked in the question is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, “in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed.” } {3 M}

Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by B to M. So M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also (Motilal v Bai Mani). } {2 M}

Answer:

(c) The Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, and section 35 more particularly includes a director of the company in the imposition of liability for such misstatements. } {3 M}

Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus. } {1 M}

Answer 3:

(a) The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal. In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares. } {2 M}

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order-

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or } {2 M}

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages. } {1 M}

Answer:

(b) The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways: }

1. By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor. }
 2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131). }
- The liability of the surety for previous transactions however remains. } {1 M}
- Thus applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan. }
- Answer in the second case would differ i.e. A is liable to C for Rs. 5,000 on default of B since the loan was taken before the notice of revocation was given to C. }

Answer:**(c) Register of Deposits:**

- Every company accepting deposits shall maintain one or more separate registers for deposits accepted or renewed at its registered office. Following particulars shall be entered separately in the case of each depositor:
 - (a) name, address and PAN of the depositor/s;
 - (b) particulars of the guardian, in case of a minor;
 - (c) particulars of the nominee;
 - (d) deposit receipt number;
 - (e) date and the amount of each deposit;
 - (f) duration of the deposit and the date on which each deposit is repayable;
 - (g) rate of interest on such deposits to be payable to the depositor;
 - (h) due date for payment of interest;
 - (i) mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
 - (j) date or dates on which the payment of interest shall be made;
 - (k) particulars of security or charge created for repayment of deposits;
 - (l) any other relevant particulars.
- The entries shall be made within seven days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose. }
- The said register shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register. }

Answer 4:

- (a) Member, in relation to a company, means-**
- (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members even if the subscription money has not been paid to the company; }
 - (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company; }
 - (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository; }

Answer:

- (b)** A promissory note is an instrument (not being a bank note or currency note) in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or the holder of, a certain person or to the bearer of the instrument, (Section 4 of the Negotiable Instruments Act, 1881).

In view of the above provision of the said Act, following are the essential elements of a promissory note-

1. It must be in writing.
2. The promise to pay must be unconditional.
3. The amount promised must be a certain and a definite sum of money.
4. The instrument must be signed by the maker.
5. The person to whom the promise is made must be a definite person.

} {2 M}

Thus:

(i) In case (i), it is not a valid promissory note because the amount is not certain.

} {1 M}

(ii) In case (ii), it is not a valid promissory note because it is conditional.

} {1 M}

(iii) In case (iii), it is a valid promissory note because death of A is a certainty even if time of death is not certain.

} {1 M}

Answer:

(c) 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:-

} {2 M}

(a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(b) In the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

} {2 M}

(i) The chairman cannot reject the demand for poll subject to provision in the articles of company.

(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Answer 5:

(a) The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation.

} {1 M}

[Section 77(1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

} {2 M}

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to section 77(1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay advalorem fees. Since first sixty days from creation of charge were expired on 11th May, 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed advalorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge. {2 M}

Answer:

- (b) As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surrender (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surrender. Section 138 of the negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence. {2 M}
- Once a cheque is issued by the drawer, a presumption under Section 139 of the negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138. {3 M}
- Also, Section 140 of the negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.
- Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the negotiable Instruments Act, 1881.

Answer:

- (c) According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year. {2 M}
- The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.
- The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. {2 M}
- Thus, the first AGM of infotech should have been held on or before 31st December, 2017. Further, the Registrar does not have the power to grant extension to time.

Answer 6:

- (a) In the given case, Shipra Sugar Mills Limited has not made adequate profits during the current year ending on 31st March, 2019, but it still wants to declare dividend at 20%. This can be done out of accumulated profits. Hence, the company can declare a dividend at the rate of 20% subject to the following: {2 M}

- The total amount to be drawn from free reserves shall not exceed 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
 - The amount so drawn shall first be utilised to set off the losses incurred in the current financial year and only thereafter, dividend at 20% shall be declared.
 - After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.
- The modus operandi will be to get the desired dividend recommended by the Board of Directors and put up the same for the approval of the members at the ensuing Annual General Meeting as the authority to declare dividend lies with the members of the company.

Answer:

- (b) As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".
- (i) Payment of dividend: In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30th day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).
- (ii) Transfer of unpaid or unclaimed dividend: As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive).

Answer:

- (c) According to Section 8(1) of the Companies Act, 2013, the companies having licence under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects for which they are formed.
- Hence, in the instant case, the proposed act of Alpha Herbals, a company having licence under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Act of 2013.

Answer 7:

- (a) Filing of financial statements in XBRL Mode
- As per Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

- (i) companies listed with stock exchanges in India and their Indian subsidiaries;
 - (ii) companies having paid up capital of five crore rupees or above;
 - (iii) companies having turnover of one hundred crore rupees or above;
 - (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.
- Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules. **{1 M}**
- Hence A housing Finance Ltd., being a housing finance company, is exempted from filing its financial statement in XBRL mode. **{1 M}**

Answer:

- (b)** The rules regarding interpretation of deeds and documents are as follows:
- First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document. **{1 M}**
- It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.
- The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by a ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense. **{2 M}**
- It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will over ride the latter one. **{2 M}**

Answer:

- (c)** (i) Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor. **{2 M}**
- Conclusion: In the present case, Ayush, an auditor of X Ltd., joined as partner with consultancy firm where B is also a partner and B is also the Finance executive of X Ltd. Hence Ayush has attracted clause (3)(c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

- (ii) As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. } {2 M}
- In the present case, Mr. Abhi. is holding security of Rs. 1000 in the Abhiman Ltd, therefore, he is not eligible for appointment as an auditor of Abhiman Ltd.
