

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

DATE: 19.06.2020

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. a
  2. Ans. c
  3. Ans. b
  4. Ans. a
  5. Ans. c
  6. Ans. c
  7. Ans. c
  8. Ans. d
  9. Ans. a
  10. Ans. a
  11. Ans. d
  12. Ans. c
  13. Ans. d
  14. Ans. a
  15. Ans. a
  16. Ans. d
  17. Ans. b
  18. Ans. c
  19. Ans. b
  20. Ans. d
  21. Ans. c
  22. Ans. a
  23. Ans. a
  24. Ans. b
  25. Ans. d
  26. Ans. b
- { 1 M for each question } = (22 Marks)
- { 2 M for each question } = (8 Marks)

**Answer 2:**

- (a) According to the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—
- (i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change; {3 M}
- (ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.
- Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this Certificate by ROC. {1 M}
- Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements. {1 M}

**Answer:**

- (b) Allotment of Shares: The company has received 80% of the minimum subscription as stated in 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. {2<sup>1/2</sup> M}
- Under section 39 (3), 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. {2<sup>1/2</sup> 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. {2<sup>1/2</sup> M}
- 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). {1<sup>1/2</sup> M}

**Answer 3:**

- (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)** Section 134(3)(c) of the Companies Act, 2013 provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include a number of statements as prescribed in the sub section including Directors' Responsibility Statement.

Further section 134(5) states that the Directors Responsibility Statement shall state that:

- (i) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures; {1 M}
- (ii) The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period; {1 M}
- (iii) The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; {1 M}
- (iv) That the directors had prepared the annual accounts on a going concern basis; and {1/2 M}
- (v) The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively; and {1 M}
- (vi) The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. {1/2 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. {1 1/2 M}

**Answer 4:**

- (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.
- 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<sup>1/2</sup> 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<sup>1/2</sup> M}

**Answer 5:**

- (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. **{2 1/2 M}**
- (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 6:**

- (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.

(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; **{2 M}**

(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.

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 M}**

3. Every private company having –

(a) Turnover of 200 crore rupees or more during the preceding financial year; or

(b) 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 7:**

- (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**

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