

(GI-1, GI-2+4, GI-3, GI-5+6 & VDI-1, VI-1, SI-1)
DATE: 13.09.2020 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. (A) d } 2 Mark for Each Valid Answer = Total 4 Marks
(B) b }
(C) a }
2. Ans. c
3. Ans. d
4. Ans. d
5. Ans. b
6. Ans. a
7. Ans. a
8. Ans. d
9. Ans. b
10. Ans. c
11. Ans. c
12. Ans. b
13. Ans. a } 1 Mark for Each Valid Answer = Total 26 Marks
14. Ans. d }
15. Ans. c }
16. Ans. d }
17. Ans. b }
18. Ans. d }
19. Ans. c }
20. Ans. c }
21. Ans. c }
22. Ans. d }
23. Ans. a }
24. Ans. a }
25. Ans. d }
26. Ans. b }

Answer 2:

- (a) **Associate company**, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. {3 M}
- Explanation.**—For the purposes of this clause,-
- (a) the expression "significant influence" means control of at least twenty per cent, of total voting power, or control of or participation in business decisions under an agreement; {2 M}
- (b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

Answer:

- (b) **Employees' stock option** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price; {2^{1/2} M}
- Sweat equity shares** means such equity shares as 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 rights in the nature of intellectual property rights or value additions, by whatever name called; {2^{1/2} M}

Answer:

- (c) Revocation of continuing guarantee: 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 M}
 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).
So far as the transactions before revocation are concerned, the liability of the surety for previous transactions (i.e. before revocation) remains.
- (i) Thus applying the above provisions in the given case, Amit is discharged from all the liabilities to Chander for any subsequent loan. {1 M}
- (ii) Answer in the second case would differ i.e. Amit is liable to Chander for Rs. 10,000 on default of Bikram since the loan was taken before the notice of revocation was given to Chander. {1 M}

Answer 3:

- (a) Quorum means the minimum number of members that must be present in person in order to constitute a meeting and transact business thereat. Thus quorum represents the minimum number of members on whose presence the meeting of a company can commence its business. Under section 103 (2) in case the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or the meeting, if called by requisitionists under section 100, shall stand cancelled. Therefore, the quorum is an extremely important element of a validly held meeting. {2 M}

Under the Companies Act, 2013 quorum is never considered immaterial in the holding of a valid meeting. However, under only one situation a meeting will be validly held even if the quorum is not present. If all the members are present, it is immaterial that the quorum required by the Articles is more than the total number of members and in such a case the meeting will be validly held even if the quorum as laid out in the Articles is not present. If for example, the Articles of a private company provide that 4 members personally present shall be a quorum and the number of members is reduced to 3, the meeting of members will be validly held when all the 3 members attend the meeting. {3 M}

Answer:

(b) According to section 42 of the companies act, 2013 any private or public company may make private placement through issued of a private placement offer letter. But the offer shall be made to persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons qualified institutional buyers and employees under employees stock option scheme will not be considered. {1 M}

Here rules prescribed limit as 200 persons in a financial year. But this limit should be counted separately for each type of security. {1 M}

If a company makes an offer or invitation to more than the prescribed number of persons it shall be deemed to be an offer to the public and shall be governed by the provisions related to prospectus. {1 M}

Also a company can not make fresh offer under this section if allotments with respect to any offer made earlier have been completed or that offer has been withdrawn or abandoned by the company. This rule is applicable even if the issue is of different kind of security. {1 M}

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly. {1 M}

In the given case PQR limited is a public company and looking at above provisions we can say that even a public company can make private placement. Company has given offer to 55 persons out of which 4 are qualified institutional buyers hence the offer is given to effectively 51 persons which is well within the limit of 200 persons. From this angle company is in compliance with private placement rules. {1 M}

But company has given another private placement offer which is non-compliance of provisions of section 42 hence the offers given by company will be treated as public offer and will be governed accordingly. {1 M}

But if the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers. Here we should not add 51 and 155 persons for checking the limit of 200 because this limit should be checked. {1 M}

Answer:

(c) **“Holder” [Section 8]**— The “holder” of a promissory note, bill of exchange or cheque means— {2 M}

- any person
- entitled in his own name to the possession thereof, and
- to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

“Holder in due course” [Section 9]— “Holder in due course” means—

- any person
- who for consideration
- became 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.

{2 M}

Answer 4:

- (a)** According to Rule 2 (1) (c) (xii), following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:
- (i) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hundred and sixty five days from the date of acceptance of such advance:
However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty five days shall not apply.
 - (ii) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;
 - (iii) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;
 - (iv) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;
 - (v) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;
 - (vi) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
 - (vii) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;
- However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.
Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

{1^{1/2} M}

{1^{1/2} M}

{1^{1/2} M}

{1^{1/2} M}

Answer:

- (b)** Quorum: In this case the quorum for holding a general meeting is 7 members to be personally present. For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.
- Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

{1 M}

{1 M}

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company. {1 M}

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present. {1 M}

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members. {1 M}

Thus it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting. {1 M}

Answer:

- (c) **"Affidavit" [Section 3(3)]** : 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. There are two important points derived from the above definition: {2 M}
1. Affirmation and declaration,
 2. In case of persons allowed affirming or declaring instead of swearing.

Answer 5:

(a)

- (i) In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees twenty five lakh or more by way of a convertible note (convertible into equity shares or repayable within period not exceeding five years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit. {1 M}

In the given case, Zarr Technology Private Limited, a start-up company, received Rs. 30.00 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of five years from the date of its issue, the amount of Rs. 30.00 lacs shall be considered as deposit.

- (ii) In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report. {1 M}

In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of Rs. 30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

If these conditions are satisfied Rs. 30.00 lacs shall not be treated as deposit.

- (iii) By not repaying the deposit of Rs. 50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:
- Punishment for the company: City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than Rs. one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to Rs. ten crores.
 - Punishment for officer-in-default: Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakhs but which may extend to Rs. two crores.
- Further, if it is proved that Swati had contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (Punishment for fraud).
- (iv) According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months. However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:
- (i) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
 - (ii) such deposits are repayable only on or after three months from the date of such deposits or renewal.
- In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of Rs. 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.
- (v) According to section 73 (1) of the Act, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public. However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987. In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Answer:

- (b) In simple words the restriction in a transfer of shares means the conditions that must be met before shares can be transferred by a shareholder to another person. Such restrictions are applicable to private companies within the definition of such companies under section 2(68) of the Companies Act, 2013. Restrictions reduce the freedom in transferring shares.

Refusal to transfer of shares on the other hand, means an irregularity in a particular transaction which renders the registration of the transfer of shares impossible until the irregularity is removed.

Refusal to register a transfer of shares is an act of an other wise permitted transaction whereas a restriction on a transfer is an obstacle to the transaction itself. Therefore, a shareholder may appeal to the Tribunal under section 58 (5) against a refusal to transfer but there is no remedy against a restriction imposed on transfer of shares in the Articles. {3 M}

It may be mentioned that restrictions on transfer are a distinguishing feature of private companies whereas under section 58 (2) the securities of a public company are freely transferable.

Answer:

(c) **Rule of Eiusdem Generis:** The term '**eiusdem generis**' means '**of the same kind or species**'. Simply stated, the rule means:

(i) Where any Act enumerated different subjects, general words following specific words are to be construed (and understood) with reference to the words that precede them. Those 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. Thus the rule of **eiusdem generis** means that where specific words are used and after those specific words. some general words are used, the general words would take their colour from the specific words used earlier.

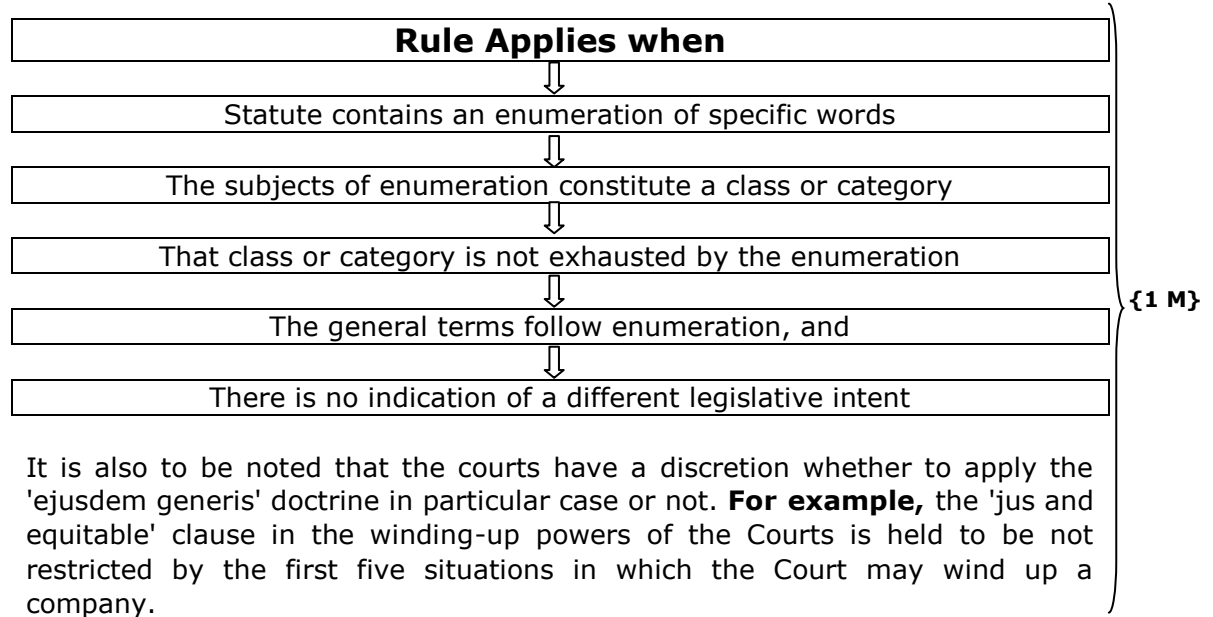
For instance 'in the expression in consequence of war, disturbance or any other cause', the words 'any other cause' would take colour from the earlier words 'war, disturbance and therefore, would be limited to causes of the same kind as the two named instance. **Similarly**, where an Act permits keeping of dogs, cats, cows, buffaloes and **Other animals**, the expression 'other animals' would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc. {1 M}

Where there was prohibition on importation of 'arms, ammunition, or gunpower or any other goods' the words 'any other goods' were construed as referring to goods similar to 'arms, ammunition or gun powder' (*AG vs. Brown (1920), 1 KB 773*).

(ii) If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.

(iii) We must note, however, that the general principle of 'eiusdem generis' applies only where the specific words are all the same nature. When they are of different categories, then the meaning of the general words following those specific words remains unaffected-those general words then would not take colour from the earlier specific words. {1 M}

In the expression charges, rates, duties and taxes', the term charges was read **eiusdem generis** taking colour from the succeeding terms rates, duties, and taxes. Here the general category preceded the enumeration of specific categories and so rule of **eiusdem generis** was technically not applicable and the court in fact applied the more general rule- *Noscitur a sociis* and rightly limited the meaning of the term charges.



Answer 6:

- (a) According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. } {2 M}
- Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. } {2 M}
- Mr. Antriksh, therefore, was ought to have been careful while purchasing property and should have noticed beforehand that NRT Limited had already created a charge on the property. } {2 M}
- In view of above, the contention of NRT Limited is correct. } {1 M}

Answer:

- (b) 'The auditors' report shall also state-
- (1) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements. } {1/2 M}
 - (2) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him; } {1/2 M}
 - (3) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that su-section and the manner in which he has dealt with it in preparing his report.; } {1/2 M}
 - (4) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns; } {1/2 M}

- (5) whether, in his opinion, the financial statements comply with the accounting standards; {1/2 M}
- (6) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company; {1/2 M}
- (7) whether any director is disqualified from being appointed as a director under sub section (2) of section 164; {1/2 M}
- (8) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith; {1/2 M}
- (9) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls; As per the rule 10A inserted by the Companies(Audit and Auditors) Amendments Rules, 2014 vide Notification dated 14th October, 2014 that for purposes of this clause under section 143(3), for the financial years commencing on or after 1st April, 2015, the report of the Auditor shall state about existence of adequate internal financial controls system and its operating effectiveness. {1/2 M}
- (10) such other matters as may be prescribed. {1/2 M}
- Rule 11 of the Companies (Audit and Auditors) Rules, 2014 provides that the auditor's report shall also include their views and comments on the following matters, namely:
- whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
 - whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
 - whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company. {2 M}

Answer 7:

- (a) The following class of companies shall file their financial statement in XBRL (extensible Business Reporting Language) mode and by using the XBRL taxonomy:
- all companies listed with any stock exchange(s) in India and their Indian subsidiaries; or
 - all companies having paid up capital of rupees 5 crores or above;
 - all companies having turnover of rupees 100 crores or above; or
 - all companies which were covered under the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2011. {4 M}
- However, Banking Companies, Insurance Companies, Power Companies and Non-Banking Financial Companies (NBFCs) and housing finance companies need not file financial statements under this rule. ABC Ltd. is required to file its financial statement in XBRL mode. {1 M}

Answer:**(b) Audit of accounts of branch office of company [Section 143(8)] :**

- (a) **Branch office in India :**
- Where a company has a branch office, the accounts of that office shall be audited either by:
- the company's auditor appointed under section 139, or
 - by any other person qualified for appointment as an auditor of the company under section 139. {1 M}

- (b) Branch office outside India :
If the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by:
 - (A) the company’s auditor or
 - (B) by an accountant or
 - (C) by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.
- (c) The duties and powers of the company’s auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.
- (d) The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.
- (e) The provisions of regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

Answer:

- (c) **Rule of Harmonious Construction:** When there is doubt about the meaning of the words 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. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained.
 - 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. An effort should be made to interpret a statute in such a way as harmonises with the object of the statute.

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