

**(GI-8)**

DATE: 08.02.2023

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.**

**DIVISION A****Answer 1:**

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

**DIVISION B****Answer 2:**

- (a)** (i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:
- The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting. **{2 M}**
- In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting. **{2 M}**

- (ii) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting. }{2 M}

**Answer:**

- (b) Preamble: The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The Preamble may recite the ground and the cause making a statute and the evil which is sought to be remedied by it. Like the Long Title, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, e.g., where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction. }{3<sup>1/2</sup> M}
- In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.
- Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment: ordinarily a proviso is not interpreted as stating a general rule. }{3<sup>1/2</sup> M}
- It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

**Answer:**

- (c) As per Section 3(22) of the General Clauses Act, 1897, the term "good faith" means 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; }{1<sup>1/2</sup> M}
- 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. }{1<sup>1/2</sup> 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. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith. }{1<sup>1/2</sup> M}
- In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title. }{1<sup>1/2</sup> M}

**Answer 3:**

- (a) According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
- Following are the exceptions to the above rule-
- (a) Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
  - (b) Where the subsidiary company holds such shares as a trustee; or
  - (c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.
- In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee.
- Therefore, we can conclude that in the given situation S can hold shares in H.

{3<sup>1/2</sup> M}

{1<sup>1/2</sup> M}

{1 M}

**Answer:**

- (b) Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for **hire**, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.
- Accordingly, applying the above provisions in the given case B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

{2 M}

{2 M}

**Answer:**

- (c) Appointment of Trustee for Depositors: Following provisions are required to be observed in this respect:
- One or more trustees for depositors need to be appointed by the company for creating security for the deposits.
  - A written consent shall be obtained from the trustee before their appointment.
  - A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
  - The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
  - No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:
    - (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
    - (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
    - (c) has any material pecuniary relationship with the company;
    - (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
    - (e) is related to any person specified in clause (a) above.

{1/2 M  
Each  
Point}

{1/2 M  
Each  
Point}

- No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board. {2 M}

**Answer 4:**

- (a)** As per section 3 of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of the company. {2 M}
- The other person (nominee) whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association.
- Such other person (nominee) may withdraw his consent in such manner as may be prescribed.
- Therefore, in terms of the above law, Mr. King, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.
- Following are the answers to the second part of the question as regards the eligibility for being nominated as nominee: {1 M}
- (i) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC. {2 M}
- (ii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen and resident in India, shall be a nominee or the sole member of a One Person Company. The term “Resident in India” means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year. Here Ms. Devaki though an Indian Citizen and also resident in India as she stayed for a period of more than 120 days during the immediately preceding financial year in India. So, she is eligible for being nominated as nominee of the OPC. {1 M}
- (iii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC. Mr. Ashok, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), can be nominated as nominee. {1 M}

**Answer:**

- (b)** Grammatical Interpretation and its exceptions: ‘Grammatical interpretation’ concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, ‘grammatical interpretation’ is the sole form allowable. The Court cannot take from or add to modify the letter of the law. {2 M}
- This rule, however, is subject to some exceptions:
- (1) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law. {2 M}
- (2) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature. {2 M}

**Answer:**

- (c) The term charge has been defined in section 2 (16) of the Companies Act, 2013 as 'an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage'. }{1<sup>1/2</sup> M}
- Punishment for contravention – According to section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under Chapter VI, a penalty shall be levied, ranging from Rs. 1 lakh to Rs. 10 lakhs. }{1 M}
- Every defaulting officer is punishable with imprisonment maximum up to six months or with minimum of Rs. twenty-five thousand and maximum of Rs. one lakh, or with both. }{1 M}
- Further, if any person willfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud). }{1<sup>1/2</sup> M}

**Answer 5:**

- (a) As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed. }{2 M}
- A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal. }{1 M}
- In the present case company has not neither given any written authority nor affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner. }{2 M}

**Answer:**

- (b) (i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. [Ram Narian Sons Ltd. Vs. Commissioner of Sales Tax AIR (1955) S.C. 765]. }{3 M}
- (ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may be added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section. }{3 M}

**Answer:**

- (c) As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company. }{2<sup>1/2</sup> M}
- Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors. }{3 M}

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013. } {1/2 M}

**Answer 6:**

- (a) Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed. } {4 M}
- In the present case, Mars India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. } {1 M}
- Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed. } {1 M}

**Answer:**

- (b) Capacity to make, etc., promissory notes, etc. (Section 26 of the Negotiable Instruments Act, 1881): Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. } {2 M}
- However, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself. } {1 M}
- As per the facts given in the question, Mr. S Venkatesh draws a cheque in favour of M, a minor. M endorses the same in favour of Mrs. A to settle his rental dues. The cheque was dishonoured when it was presented by Mrs. A to the bank on the ground of inadequacy of funds. Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as bind all parties except himself. Therefore, M is not liable. Mrs. A can, thus, proceed against Mr. S Venkatesh to collect her dues. } {2 M}

**Answer:**

- (c) (i) **"Affidavit"** [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. } {3 M}
- The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.
- (ii) **"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 be determined with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide, whether it is done negligently or not is presumed to have been done in good faith.

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