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INTERMEDIATE NOV'19 EXAM

SUBJECT- LAW

Test Code – PIN 5060

BRANCH - () (Date :)

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DIVISION A

ANSWER-1

(30*1 = 30 MARKS)

1. B
2. C
3. B
4. B
5. C
6. C
7. B
8. B
9. D
10. B
11. B
12. B
13. C
14. D
15. C
16. B
17. A
18. D
19. D
20. D
21. B
22. B
23. D
24. A
25. C

DIVISION B

ANSWER-1

ANSWER-A

(i) According to section 141 (3)(d) (i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding 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:

In the present case, Mr. A. is holding security of Rs. 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

(3 MARKS)

(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 holding 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:

Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of Rs. 90,000 face Value in the ABC Ltd., which is as per requirement of proviso to section 141 (3)(d)(i), Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

(3 MARKS)

ANSWER-B

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.

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
- (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.

(5 MARKS)

ANSWER-C

As per section 27 of the General Clause Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing
- (ii) pre-paying, and
- (iii) posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Thus, where a notice is sent by the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

Hence, in the given situation, a notice was rightfully served to Mr. Wise.

(4 MARKS)

ANSWER-D

The limitation of liability is an essential clause in the Memorandum and on registration of the company becomes binding on all present and future members.

The present question states that the liability of the members has been increased by the company without clarifying the mode. The company can act only through its Board of Directors or through its members. The Board of Directors do not have the authority to alter the clause; hence it means that the alteration was approved by the members at a general meeting. However, section 13 of the Act which deals with the alteration of the Memorandum does not provide for the alteration of its liability clause. Hence, the liability of members cannot be altered once the company is formed.

The alteration in the given question is therefore invalid.

(4 MARKS)

ANSWER-2

ANSWER-A

Alteration of Capital [Section 61 (1) read with section 13 of the Companies Act, 2013]: Under section 61 (1) a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting as under :

- (i) it may **increase its authorized share capital** by such amount as it thinks expedient;
- (ii) it may **consolidate and divide all or any of its share capital** of a larger amount than its existing shares
- (iii) **convert all or any of its paid up shares into stock** and reconvert that stock into fully paid shares of any denomination
- (iv) **sub-divide the whole or any part of its shares** into shares of smaller amount than is fixed by the Memorandum
- (v) **cancel those shares** which, at the time of passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64 where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

Section 13 provides for the procedure to be followed for alteration of the Memorandum, as under :

- a. A special resolution must be passed to effect the alteration. For this purpose a Board Meeting must be held to convene a general meeting of the members and all legal provisions in this behalf followed including the circulation of a detailed explanatory note on the proposed change along with the notice for the general meeting;
- b. The company must file with the Registrar the special resolution passed by the company to effect an alteration in the capital clause of the Memorandum;
- c. No alteration to the Memorandum will have effect unless it has been registered with the Registrar as above.

(6 MARKS)

ANSWER-B

(i) **Title:** An enactment would have what is known as 'Short Title' and also a 'Long Title'. The short title merely identifies the enactment and is chosen merely for convenience. The 'Long title' describes the enactment and does not merely identify it.

The Long title is a part of the Act and, therefore, can be referred to for ascertaining the object and scope of the Act.

(ii) **Preamble:** It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it.

The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot override the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

(5 MARKS)

ANSWER-C

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 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. It is not necessary that the proxy 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 have 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.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

(6 MARKS)

ANSWER-3

ANSWER-A

- (i) In accordance with the provisions of the Companies Act, 2013, as contained under section 129(3) and (4):

Where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own. The consolidated financial statements shall also be laid before the AGM of the company along with the laying of its own financial statement. The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiaries in Form AOC-1. For the purpose of consolidated financial statements, 'subsidiaries' shall include associate company and joint venture.

- (ii) According to *Companies (Accounts) Rules, 2014*, the consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III to the Act and the applicable accounting standards. However, for a company which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions of consolidated financial statements provided in Schedule III to the Act. The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements.
- (iii) If the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements the following viz.
- (a) The deviation from the accounting standards,
 - (b) The reasons for such deviation, and
 - (c) The financial effects, if any, arising out of such deviation.
- (iv) The Central Government may, on its own or on any application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this Section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest. Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(6 MARKS)

ANSWER-B

Section 133 of the Indian Contract Act, 1872 deals with the provision related to the discharge of the surety. Provisions states that where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent it would discharge the surety in respect of all transactions taking place subsequent to such variance.

(1 MARK)

Following is the answer in the light of the above provision:

- (i) In case where, Mr. Ram has manipulated the funds of the company since the time of his appointment. In this case Mr. Janak is liable as a surety for the loss suffered by the Swaraj Company due to manipulation of the funds by Mr. Ram during the three years of his service.

- (ii) In case where, Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary. In this case, variance in the terms of the contract (i.e., to work on lower salary) was made without surety's consent. For all the transactions taking place subsequent to such variance, shall discharge the surety for the loss suffered by the Swaraj company.

(1.5*2 = 3 MARKS)

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.

Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.

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 10 lakhs.

Every defaulting officer is punishable with imprisonment for a term not exceeding 6 months or fine which shall not be less than 25,000 rupees, but not exceeding 1 lakh rupees or both.

(4 MARKS)

ANSWER-D

Disqualification of auditor : According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ` 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15th October 2016 i.e. after the investment made by his wife in the equity shares of EF Limited.

(3 MARKS)

ANSWER-4

ANSWER-A

According to section 130 of the Companies Act, 2013,

- (1) **On Filing of an application:** A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a

court of competent jurisdiction or the Tribunal to the effect that— (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.

- (2) **Nature of Revised Accounts:** The accounts so revised or re-cast shall be final.
- (3) **Time Period:** No order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:

Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

(5 MARKS)

ANSWER-B

According to **Section 73 (2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:**

- (a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- (b) filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
- (c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- (d) providing such deposit insurance in such manner and to such extent as may be prescribed;
- (e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company :
- (f) Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Exceptions :

1. In case of private company - Points (a) to (e) above shall not apply to private Companies which accepts from its members monies not exceeding 100%, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.
2. In case of Specified International Financial Service Centre (IFSC) Public Company - Points (a) to (e) above shall not apply to a Specified IFSC public company which accepts from its members, monies not exceeding 100% of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

Hence, Atul Ltd. can accept deposits from its members by following the above condition and regulations.

(6 MARKS)

ANSWER-C

Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

The essential elements of the contract of the bailment are :

1. **Delivery of goods**—The essence of bailment is delivery of goods by one person to another.
2. **Bailment is a contract**—In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.
3. **Return of goods in specific**—The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.
4. **Ownership of goods**—In a bailment, it is only the possession of goods which is transferred and the bailor continues to be the owner of the goods.
5. **Property must be movable**—Bailment is only for movable goods and never for immovable goods or money.

Difference between contract of bailment and contract of pledge :

1. **Right of sale**—In case of pledge, the pawnee (pledgee) can sell the goods and recover his debt, if pawnor (pledger) does not pay while in bailment the bailee can retain the goods and sue for damages, but he has no authority to sell the goods.
2. **Purpose**—Pledge is specifically for securing a debt, while bailment may be for any purpose e.g. for repairs, safe custody etc.
3. **Right to use the goods**—In case of pledge, pawnee cannot use the goods pledged but bailee can use the bailed goods if contract so provides.

(6 MARKS)

ANSWER-5

ANSWER-A

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board

of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the *Companies (Management and Administration) Rules 2014* read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

(6 MARKS)

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;
- (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;
- (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;
- (iv) that the **directors had prepared the annual accounts** on a going concern basis; and
- (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
- (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**.

(6 MARKS)

ANSWER-C

Meaning of 'Holder' and the 'Holder in due course' of a negotiable instrument: 'Holder': Holder of negotiable instrument means as regards all parties prior to himself, a holder of an instrument for which value has at any time been given.

'Holder in due course': (i) In the case of an instrument payable to bearer means any person who, for consideration became its possessor before the amount of an instrument payable. (ii) In the case of an instrument payable to order, 'holder in due course' means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable. (iii) He had come to possess the instrument without having sufficient cause to believe that any defect existed in the title of transferor from whom he derived his title.

The problem is based upon the privileges of a 'holder in due course'. Section 42 of the Negotiable Instrument Act, 1881, states that an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due cause claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer. In this problem, P is not a fictitious payee and D, the drawer can recover the amount of the cheque from A's bankers.

(5 MARKS)