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INTERMEDIATE N'19 EXAM

SUBJECT- LAW

Test Code – PIN 5065

BRANCH - () (Date :)

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ANSWER - 1

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

ANSWER - 2

ANSWER - A

Under section 2 (70) of the Companies Act, 2013, "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.

Since, X purchased shares through the stock exchange (open market) which cannot be said to have bought shares on the basis of prospectus. X cannot bring action for deceit against the directors. Hence, X will not succeed. It was also held in the case of *Peek Vs. Gurney* that the above-mentioned remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

(6 MARKS)

ANSWER – B

(i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheetal about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable. (2 MARKS)

(ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc. (2 MARKS)

ANSWER - C

As per the Section 8 of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest.

Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order. (4.5 MARKS)

According to the given situation, on revocation of licence, the Central Government ordered for the amalgamation of the company with the separate entity registered under the section 8 of the Companies Act, 2013. However, an object for which both the Companies formed were promoting different objects. Accordingly, the order passed by the Central Government after the revocation of license, is not in compliance of the Section 8 of the Companies Act, 2013. (1.5 MARKS)

ANSWER – D

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Aman is not, but the surveyor is, responsible to Mr. Bhalla.

(3 MARKS)

ANSWER - 3

ANSWER – A

According to section 77(1) of the Companies Act, 2013, the prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge.

In the present case particulars of charge have not been filed within the prescribed period of 30 days.

However, the Registrar is empowered under proviso to section 77 (1) to extend the period of 30 days by another 300 days on payment of such additional fee as may be prescribed. Taking advantage of this provision, Mind Limited, should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

There will be no change in the situation if the charge was created on 12th February, 2018.

(5 MARKS)

ANSWER – B

In terms of section 68 (2) (c) of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid- up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.

Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:

- (a) Free reserves or
- (b) Security Premium account or
- (c) Proceeds of the issue of any shares or other specified securities

However, under the proviso to section 68 (1) no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

(5 MARKS)

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 which may be either an individual or a partnership firm or a body corporate, namely:

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. 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, Natraj Limited is an unlisted public company with the paid up share capital of Rs. 80 cores during the preceding financial year with the turnover of Rs. 110 crores. Since, Natraj 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 Natraj Limited to appoint an internal auditor for the financial year 2017-18.

(5 MARKS)

(ii) Qualifications of Internal Auditor

- (a) **Internal Auditor shall either be a chartered accountant or a cost accountant or such other professional as may be decided by the Board** to conduct internal audit of the functions and activities of the company.

Here, the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not.

- (b) The internal auditor **may or may not be an employee** of the company.

(2 MARKS)

ANSWER - 4

ANSWER - A

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of General Clauses Act, 1897 provides that the word ‘singular’ shall include the ‘plural’, unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

(4 MARKS)

ANSWER - B

- (i) 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.

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 MARKS)**

(ii) In terms of **Section 135(5) of the Companies Act, 2013**, the Board of every company to which section 135 is applicable, shall ensure that the **company spends**, in every Financial year **at least 2 per cent of average net profits of the company** made during the three immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending. Hence, such excess expense will not be counted in subsequent financial years as a part of CSR expenditure.

(2 MARKS)

ANSWER – C

(i) **Creation of debenture redemption reserve (DRR) account:** According to section 71 of the Companies Act, 2013, where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account **out of the profits of the company available for payment of dividend** and the amount credited to such account shall not be utilized by the company except for the redemption of debentures.

(3 MARKS)

(ii) **Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with the prescribed rules.

(3 MARKS)

ANSWER – D

According to section 143 of the Indian Contract Act, 1872, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

In the given question, Mayank does not acquaint Amrit with Babloo's previous conduct. Thus, the guarantee is invalid.

(3 MARKS)

ANSWER - 5

ANSWER - A

According to **section 61 of the Negotiable Instruments Act, 1881**, a bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a

business day. In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to drawee at a particular place, it must be presented at that place, and if at the due- date for presentment he cannot, after reasonable search, be found thereon, the bill is dishonoured.

When authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

(5 MARKS)

ANSWER - B

The Companies Act, 2013 by virtue of provisions as contained in Section 39 (1) and (2) regulates and restricts the minimum subscription and the application money payable in a public issue of shares as under:

Minimum subscription [Section 39 (1)]

No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -

- (i) the **amount stated in the prospectus** as the minimum amount has been subscribed; and
- (ii) the **sums payable on application** for such amount has been paid to and received by the company-

Application money: Section 39 (2) provides that the amount payable on application on each security **shall not be less than 5% of the nominal amount** of such security or such amount as SEBI may prescribe by making any regulations in this behalf.

Further section 39 (3) provides that if the **stated minimum amount** is **not received** by the company **within 30 days of the date of issue of the prospectus** or such time as prescribed by SEBI, the **company will be required to refund the application money** received within such time and manner as may be prescribed.

In case of any default under sub-section, the **company and its officer who is in default** shall be liable to a **penalty**, for each default, of **one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.**

Section 40 (3) provides that all moneys received on application from the public for subscription to the securities shall be kept in a separate bank account maintained with a scheduled bank.

(6 MARKS)

ANSWER - C

Principles of Grammatical Interpretation and Logical Interpretation: In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to **conclude the real meaning of the law and the intention of the legislature** behind enacting it.

Grammatical interpretation concerns itself **exclusively with the verbal expression of law**. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court- In all ordinary cases, the grammatical interpretation is the sole form allowable. The **court cannot delete or add to modify the letter of the law**. However, where the letter of the law is logically defective on account of **ambiguity, inconsistency or incompleteness**, the court is under a duty to travel beyond the letter of law so as to **determine the true intentions of the legislature**. So that a statute is enforceable at law, however, unreasonable it may be. The **duty of the court** is to **administer the law** as it stands rather **it is just or unreasonable**.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

(6 MARKS)

ANSWER - 6

ANSWER - A

According to **section 128(1) of the Companies Act, 2013**, **every company is required to prepare and keep the books of accounts and other relevant books and papers and financial statement** for every financial year which give a **true and fair view of the state of the affairs of the company**, including that of its branch office or offices, if any, and explain the transactions effected both at the **registered office** and its branches and such books shall be **kept on accrual basis** and according to the double entry system of accounting.

The proviso to section 128(1) further provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Further company may keep such books of accounts or other relevant papers in electronic mode as per the Rule 3 of the *Companies (Accounts) Rules, 2014*.

Therefore, the Board of Bharat Ltd. is empowered to keep its books of account at its corporate office in Mumbai by following the above procedure.

(4 MARKS)

ANSWER – B

According to **section 82 of the Negotiable Instruments Act, 1881**, the maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon-

- (a) **By cancellation**-to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and to all parties claiming under such holder,
- (b) **By release**- to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge;
- (c) **By payment**-to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

Further, as per section 83 of the Negotiable Instruments Act, 1881, if the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

(2 MARKS)

ANSWER – C

According to section 131 of the Companies Act, 2013,

(1) Preparation of revised financial statement or revised report on the approval of Tribunal:

If it appears to the directors of a company that—

- (a) the financial statement of the company; or
- (b) the report of the Board,

do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Tribunal to serve the notice: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Number of times of revision and recast: provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Reason for revision to be disclosed: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

- (2)** Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

- (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
- (b) the making of any necessary consequential alternation.

- (3) Framing of rules by the Central Government in relation to revised financial statement or director's report:** The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—

- (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
- (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;

(c) require the directors to take such steps as may be prescribed.

(5 MARKS)

ANSWER – D

For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the Annual General Meeting. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be illegal barring a few occasions.

One resolution which should be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors by a single resolution.

Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. S and Mr. P as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.

(3 MARKS)