

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME (*New Syllabus*)

DECEMBER 2021

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

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The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be updated with the applicable amendments which are as follows:

CS Examinations	Applicability of Amendments to Laws
December Session	upto 31 May of that Calender year
June Session	upto 30 November of previous Calender Year

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PROFESSIONAL PROGRAMME EXAMINATION
DECEMBER 2021
**GOVERNANCE, RISK MANAGEMENT, COMPLIANCES
AND ETHICS**

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

PART I

Question 1

- (a) *Z Finance Pvt. Ltd. (Z) is a deposit taking Non-Banking Financial Company (NBFC-D) registered with the Reserve Bank of India (RBI) and incorporated on 7th January, 2020. Z is engaged in the business of lending and accepting deposits. The newly appointed statutory auditor of the company advised the board that the company should have board committees in place as part of corporate governance compliances, but the board of directors disagreed as the company was newly incorporated private company. Do you agree with the advice of the statutory auditor? Explain in brief. Would your answer have been different if Z had been a non-deposit accepting NBFC ?* (5 marks)
- (b) *M/s. LMN & Co. Chartered Accountants have been appointed as the statutory auditors of AB Ltd. for the financial year 2019-20. During the course of their audit, certain transactions were observed to be irregular and on further scrutiny, the auditors uncovered a series of fraudulent transactions involving the Sales Manager and the Finance Manager. The amount involved was ₹50 lakhs. Under the circumstances, explain the reporting responsibilities of M/s. LMN & Co.* (5 marks)
- (c) *P Ltd. is a listed company having 10 directors but only 9 were present in a particular board meeting. What would be the quorum required for the board meeting? The number of interested directors in respect of an agenda item is 7. What would be the quorum in such a case ? Discuss with reference to Secretarial Standard-1 (SS-1).* (5 marks)
- (d) *SBL Limited is an unlisted public company having paid-up share capital of ₹10 crores and turnover of ₹ 300 crores. The Board of directors comprise of one nominee director, five non-executive directors, two non-resident directors and one managing director. Is the composition of the Board of directors valid ? Answer with reasons.* (5 marks)

Answer 1(a)

The Reserve Bank of India in the public interest and to regulate the credit system to the advantage of the country, issued directions known as the Non-Banking Financial Companies- Corporate Governance (Reserve Bank) Directions, 2015, relating to Corporate Governance vide Notification dated April 10, 2015 and vide master circular dated July 1, 2015.

These Directions require every non-deposit accepting Non-Banking Financial Company with asset size of ₹500 crore and above (NBFCs-ND-SI), as per its last audited balance sheet, and all deposit accepting Non-Banking Financial Companies (NBFCs-D), henceforth called as Applicable NBFCs to constitute the following committees of the board:

- i. **Audit Committee**, consisting of not less than three members of its Board of Directors. And in accordance with the provisions of Section 177 of the Companies Act, 2013. The Audit Committee must ensure that an Information System Audit of the internal systems and processes is conducted at least once in two years to assess operational risks faced by the NBFCs.
- ii. **Nomination committee**, to ensure 'fit and proper' status of proposed/ existing directors with the same powers, functions and duties as laid down in Section 178 of the Companies Act, 2013.
- iii. **Risk Management committee**, to manage the integrated risk, all Applicable NBFCs shall form a Risk Management Committee, besides the Asset Liability Management Committee.

In the instant case, Z is a deposit accepting company and therefore, the statutory auditor is correct in advising that the company has to establish board committees as part of corporate governance compliance.

If Z had been a non-deposit accepting NBFC, then it would have to comply with the RBI corporate governance criteria only when its assets size is ₹500 crore and above.

Answer 1(b)

As per section 143 (12) of the Companies Act, 2013 read with Companies (Audit and Auditors) Rules, 2015, if an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of ₹1 crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as prescribed.

Where the fraud is of an amount lesser than ₹1 crore, the auditor shall report the matter to Audit Committee constituted under section 177 of the Companies Act, 2013 or to the Board immediately, but not later than two days of the knowledge of the fraud, specifying the following:

- Nature of fraud with description;
- Approximate amount involved; and
- Parties involved.

The following details of each of the fraud reported to the Audit Committee or the Board during the year shall be disclosed in the Board's Report:

- Nature of fraud with description;
- Approximate amount involved;

- Parties involved, if remedial action not taken; and
- Remedial actions taken.

In the instant case, as the amount of fraud is less than ₹1 crore, M/s. LMN & Co. shall report the matter to the Audit Committee or the Board as stated above along with the disclosure in the Board's Report in the manner as may be prescribed.

Answer 1(c)

As per Secretarial Standard - 1 (SS-1) on Meetings of the board of directors, the quorum for board meeting shall be one-third of the total strength of the board or two directors, whichever is higher. Any fraction contained in the above one-third shall be rounded off to the next one.

Directors participating through electronic mode in a meeting shall be counted for the purpose of quorum, unless they are to be excluded for any items of business under the provisions of the Companies Act, 2013 or any other law.

In the instant case, P Ltd. has 10 directors. Therefore, the quorum for its board meeting would be 4 ($1/3$ rd of 10 = 3.33, rounded off to 4). As 9 directors are present, the requisite quorum is fulfilled.

If the number of interested directors exceeds or is equal to two-thirds of the total strength, the remaining directors present at the meeting, being not less than two, shall be the quorum during such item. In a board meeting, where 7 out of 9 directors present are interested in an agenda item, two-thirds of the total strength will be 7 ($2/3$ rd of 10 = 6.67, rounded off to 7). Hence, number of interested directors is equal to $2/3$ rd of total strength and the required quorum will be the number of directors who are not interested and present at the meeting, i.e. $9 - 7 = 2$ directors.

Answer 1(d)

Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes that the following class of companies shall appoint at least one women director:

- (1) Every listed company; and
 - (2) Every public company having paid-up share capital of one hundred crore rupees or more;
- or
- (3) Every public company having turnover of three hundred crore rupees or more.

Further, Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes the following class of companies shall have at least two independent directors:

- (1) Public Companies having paid-up share capital of 10 crore rupees or more; or
- (2) Public Companies having turnover of 100 crore rupees or more; or
- (3) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

Section 149(6) of the Companies Act, 2013 specifically excluded nominee director from being considered as Independent. Hence, nominee director cannot be treated as an Independent Director.

In view of above legal provisions, the present composition of Board of Directors is not in compliance with the provisions of the Companies Act, 2013 as the Company satisfying the threshold criteria given above should have atleast:

- Two Independent directors, and
- One Women director.

Hence, it should appoint atleast two independent directors and one women director.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

- (a) *Discuss, in brief, the actions the institutional investors in a listed company may take under the UK Stewardship Code if they are dissatisfied with the board's response to their concerns on the performance of the company during the previous financial year.* (5 marks)
- (b) *During the course of the statutory audit of Y Ltd., a listed company, it was observed for the first time that there are shares in the demat suspense account. State the disclosure requirements in this regard in Y Ltd.'s annual report.* (5 marks)
- (c) *"Shareholders and stakeholders are both associated with a corporation, but their interests in the organization differ." Explain with reference to stakeholder theory.* (5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *You are the company secretary of Q Ltd., a listed company. The Chairman of the Board of directors of Q Ltd. is concerned that the CEO of the company will be reaching his retirement age in a couple of years. He is vaguely aware that the company has a succession planning policy in place, but seeks your advice on the nature and best practices for succession planning.*
- (ii) *Prepare a detailed note on Institute of Directors for promoting good corporate governance for UK business.*
- (iii) *"Company law's central dilemma has been the separation of ownership and control in companies." Comment.* (5 marks each)

Answer 2(a)

The UK Stewardship Code sets out the principles of effective stewardship by investors. Stewardship responsibilities of institutional investors may include monitoring and engaging with companies on matters such as strategy, performance, risk, capital structure and corporate governance, including culture and remuneration.

The Stewardship Code also states that institutional shareholders should:

- Publicly disclose their policy on how they will discharge their stewardship responsibilities.
- Have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed.
- Monitor their investee companies.
- Establish clear guidelines on when and how they will escalate their stewardship activities.
- Be willing to act collectively with other investors where appropriate.
- Have a clear policy on voting and disclosure of voting activity.
- Report periodically on their stewardship and voting activities.

Institutional investors should have clear guidelines about the circumstances when they will intervene actively. Compliance with the code does not constitute an invitation to manage the affairs of a company. If the company's board does not respond constructively, the institutional investor should have guidelines for deciding whether and how to escalate their action. For example, an institutional investor may ask for a meeting with the company chairman, or find out whether other institutional shareholders share the same concerns so that joint action can be considered. Institutional investors should endeavour to identify at an early stage issues that may result in a significant loss in investment value. If they have concerns, they should seek to ensure that the appropriate members of the investee company's board or management are made aware.

Answer 2(b)

Para F of Schedule V of SEBI (LODR) Regulations, 2015 provides that the listed entity shall disclose the following details in its annual report, as long as there are shares in the demat suspense account or unclaimed suspense account, as applicable:

- (1) aggregate number of shareholders and the outstanding shares in the suspense account lying at the beginning of the year;
- (2) number of shareholders who approached listed entity for transfer of shares from suspense account during the year;
- (3) number of shareholders to whom shares were transferred from suspense account during the year;
- (4) aggregate number of shareholders and the outstanding shares in the suspense account lying at the end of the year;
- (5) that the voting rights on these shares shall remain frozen till the rightful owner of such shares claims the shares.

Hence, Y Ltd, having shares in suspense account, has to disclose the above information in its annual report.

Answer 2(c)

A shareholder is a person or entity that owns shares in the company. A shareholder is entitled to vote in general meetings, receive dividends from the company, transfer the shares etc. and include equity shareholders and preference shareholders of the company.

Stakeholders represent a substantially broad group, because they include anyone having an interest in the success or failure of a business. A company's stakeholders are "those groups without whose support the organization would cease to exist." This group include shareholders, but goes well beyond shareholders to also include creditors, customers, employees, investors, suppliers, the local community, government agencies and many others who have a 'stake' or claim in some aspect of the company's products, operations, markets, industry and outcomes. . Thus, shareholders are a subset of the larger group of stakeholders.

Traditionally, shareholders have been considered more important than all other stakeholders in a business, since they own the entity and have rights to receive its cash flows under certain circumstances. However, the stakeholder theory suggests that the purpose of a business is to create as much value as possible for stakeholders. It creates an ecosystem of related groups, all of whom need to be considered and satisfied to keep the company healthy and successful in the long term. In order to succeed and be sustainable over time, executives must keep the interests of customers, suppliers, employees, communities and shareholders aligned and going in the same direction.

Answer 2A(i)

Board succession planning is an ongoing process linked closely to a company's strategy. It is essential for good governance, as it sets the stage for board engagement, performance and effective leadership. Succession plans address the inevitable changes that occur when directors resign, retire or die. It helps ensure the inclusion of directors with a balanced level of institutional knowledge and fresh perspectives.

It is of utmost importance that the board of directors are prepared for resignation and / or retirement of its members. Succession planning for the board includes planning for all board positions and for the composition of the board as a whole.

The nomination and remuneration committee should review the skills required, identify the gaps, develop transparent appointment criteria and inform succession planning. The committee may also carry out regular reviews of the composition of the board, and report to the board on recommendations for changes in the future. Executive directors may be recruited from external sources, but companies should also develop internal talent and capability. Initiatives might include middle management development programmes, facilitating engagement from time to time with non executive directors and partnering and mentoring schemes.

In view of the approaching retirement of the CEO, the nomination committee should start the process of identification of the successor, which may be an internal or external appointment.

Some leading practices for board succession planning are:

- Using a skills metric to proactively shape board composition that incorporates strategic direction and opportunities, regulatory and industry developments, challenges, and transformation.
- Conducting robust annual performance evaluations, including facilitation by an independent third party.
- Establishing and enhancing written director's qualification standards that align

with the company's business and corporate strategy, and including these standards in corporate governance policies and bylaws as appropriate.

- Reviewing evolving committee and board leadership needs, including the time commitments required.
- Considering director election results and engagement by investors regarding board composition, independence, leadership and diversity.
- Prioritizing an independent mindset on boards, including through board diversity, to foster debate, challenge norms and invigorate board oversight processes and strategy development.
- Making sure mentoring and development opportunities are available for incoming directors.

Answer 2A(ii)

The Institute of Directors (IOD) is a non-party-political business organisation established in United Kingdom in 1903. The IOD is charged with promoting good corporate governance for UK business. The board of IOD is responsible for the overall leadership of the Institute of Directors (IOD) and setting its values, standards, aims and objectives and delivering them in line with the objects of the Royal Charter. The board is composed of the chair, a majority of non-executive directors, and the director general and executive directors. It acts as a unitary board and has the following powers and responsibilities:

- to manage the affairs and long-term success of the Institute
- to approve the strategy of the Institute, business and financial planning, to hold the executive to account and ensure financial and risk stewardship
- to approve the annual report and accounts
- to appoint, reappoint and remove (acting by the non-executive directors only) the director general and other executive directors, as the board permits
- to ensure open and transparent engagement with all stakeholders when carrying out its duties
- to establish and dissolve committees and groups of the board

The council is the guardian of the IOD constitution, ensuring that the objects of the IOD's Royal Charter are delivered. It comprises 11 members of geographical areas, 13 elected members and the IOD chairman. The council carries out the following responsibilities:

- to appoint, reappoint and remove the non-executive directors and to determine their independence, having considered any recommendations of the nomination committee
- to hold the board to account for the delivery of the charter objects and adherence to the laws of the institute
- to provide critique and opinion to the board on the overall progress of the institute
I to monitor the board's engagement with membership and stakeholders
- to appoint and remove a senior independent council member who will act as

deputy chair of the council The IOD seeks to provide an environment conducive to business success.

Answer 2A(iii)

Company law's central dilemma has been the separation of ownership and control in companies. Shareholders, being owners of the company, should ideally play a crucial role in governing the company. However, it is not practically possible for each shareholder to participate in the decision making process on a day to day basis. Further, the shareholders generally lack the knowledge and professional skills that are required to manage a company. Hence, they elect a board of directors to govern the company and take strategic decisions.

The shareholders vest control of the business in the board of directors, who in turn, appoint management specialists to run the business and return the profits of the business back to the owner shareholders. The directors have a fiduciary responsibility to the shareholders (principal) of their organisation.

Companies allow for the separation in the roles of ownership and management. It is not necessary that owners need to be managers and vice versa. Owners and managers may have differing views on various issues in the company. For instance, managers may pursue growth rather than maximize share value, whereas shareholders may prefer high leverage because it increases share values.

Question 3

- (a) *M Ltd. is a listed entity having a paid up equity share capital of ₹ 100 crores. The company has 1500 small shareholders. It received a notice from 1200 small shareholders proposing Mr. X, a small shareholder as a candidate for the post of small shareholder director. The board of directors of M Ltd. are not interested in the appointment of Mr. X as small shareholder director, as they feel that there are sufficient numbers of independent directors on the board who are taking adequate steps to protect the interests of all shareholders including small shareholders. Can such nomination be rejected. Discuss. (3 marks)*
- (b) *Whether the receipt of sitting fee for attending the board meeting by an Independent Director from a company would be considered as having pecuniary interest while considering his appointment in the holding company, subsidiary company or associate company of such company? (3 marks)*
- (c) *HP Ltd., a Non-Government unlisted company, have paid up share capital of ₹20 crores as on 31st March, 2019, it was increased to ₹25 crores during the financial year 2019-20. The company secretary advised that the company should have formal annual evaluation of performance of the Board, its committees and all the individual directors. Answer the following questions with reasons :*
- (i) *Discuss the legal provisions in this regard.*
 - (ii) *Whether the annual performance evaluation is mandatory based on the provided facts?*
 - (iii) *In the above case, if the company had been a Government Company, what would be your answer? (3 marks)*

- (d) *Explain the areas briefly in which Asian Corporate Governance Association (ACGA) works.* (3 marks)
- (e) *Write a short note on the content of Management Discussion and Analysis.* (3 marks)

Answer 3(a)

Section 151 of the Companies Act, 2013 read with the Rules made thereunder provides that a listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.

However, the use of "may" in both the Section and the Rules gives an impression that it is the prerogative of the Company with no obligation on the company to process the notice received from the small shareholders for appointment of a director representing small shareholders.

In the instant case, M Ltd. has sufficient number of independent directors who are taking adequate care of the interests of all shareholders including small shareholders. Under the circumstances, the board of M Ltd. may reject the appointment of Mr. X as small shareholder director by explaining the circumstances to the shareholders and the rationale for taking such decision.

Answer 3(b)

The term "Pecuniary relationship" as provided in section 149(6)(c) of the Companies Act, 2013 does not include receipt of remuneration, from one or more companies, by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members, in accordance with the provisions of the Act.

Hence, receipt of sitting fees would not be considered as pecuniary interest while considering his appointment in the holding company, subsidiary company or associate company of such company.

Answer 3(c)

- (i) Section 134(3) (p) of the Companies Act, 2013 read with Rule 8(4) of the Companies (Accounts) Rules, 2014 provides that the Board Report of every listed company and every other public company having paid up share capital of Rs. 25 crores or more calculated at the end of the preceding financial year except Government Companies has to do formal annual evaluation of the Board, its committees and all individual directors. The Board's report of such companies must include a statement indicating the manner and criteria of formal Board Evaluation.

Further, Section 178 of the Companies Act, 2013 contains that the Nomination and Remuneration Committee shall identify persons who are qualified to become Directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual Directors to be carried out either by the Board, by

the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

- (ii) As per the provided facts, HP Ltd. is a Non- Government, public, unlisted company having paid up share capital of Rs. 25 crores in the preceding financial year (2019-20), thus the annual performance evaluation is mandatory in the Financial year 2020-21 in this case.
- (iii) The Exemption has been granted to Government Company from compliance of the provisions of section 134(3) (p) of the Companies Act, 2013.

Answer 3(d)

The Asian Corporate Governance Association (ACGA) is an independent, non-profit membership organisation dedicated to working with investors, companies and regulators in the implementation of effective corporate governance practices throughout Asia.

ACGA's scope of work covers three areas:

1. **Research** : Tracking corporate governance developments across 12 markets in Asia Pacific and producing independent analysis of new laws and regulations, investor activism and corporate practices.
2. **Advocacy** : Engaging in a constructive dialogue with financial regulators, stock exchanges, institutional investors and companies on practical issues affecting the regulatory environment and the implementation of better corporate governance practices in Asia.
3. **Education** : Organising conferences and seminars that foster a deeper understanding of the competitive benefits of sound corporate governance and ways to implement it effectively.

Answer 3(e)

As per SEBI (LODR) Regulations, 2015, Management Discussion and Analysis Report should form part of the Annual Report of the Company to the shareholders. It should include discussion on the following matters within the limits set by the company's competitive position:

- a) Industry structure and developments
- b) Strength and weakness
- c) Opportunities and Threats
- d) Segment-wise or product-wise performance
- e) Outlook
- f) Risks and concerns
- g) Internal control systems and their adequacy
- h) Discussion on financial performance with respect to operational performance
- i) Material developments in Human Resources, Industrial Relations front, including number of people employed.

- j) Environmental Protection and Conservation, Technological conservation, Renewable energy developments, Foreign Exchange conservation
- k) Corporate social responsibility

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

PART II

Attempt all parts of either Q. No. 5 or Q. No. 5A

Question 4

- (a) *“A Company Secretary plays an important role in controlling the risk management.” Discuss.*
- (b) *What are the steps involved in risk identification ?*
- (c) *Discuss briefly the Enterprise Risk Management (ERM). Explain the components derived from the way management runs an enterprise and are integrated with the management process.*
- (d) *Discuss the roles and responsibilities of the personnel of an entity in enterprise-wide risk oversight. (5 marks each)*

Answer 4(a)

In terms of Section 203(1)(ii) of the Companies Act, 2013, a Company Secretary is a Key Managerial Personnel. Hence being a top level officer and board confidante, a Company Secretary can play a role in ensuring that a sound Enterprise wide Risk Management (ERM) which is effective throughout the company is in place. The company secretaries are governance professionals whose role is to enforce a compliance framework to safeguard the integrity of the organization and to promote high standards of ethical behavior.

The functions of a Governance Professional include:

1. Advising on best practice in governance, risk management and compliance.
2. Championing the compliance framework to safeguard organizational integrity.
3. Promoting and acting as a 'sound board' on standards of ethical and corporate behaviour.
4. Balancing the interests of the Board or governing body, management and other stakeholders.

Answer 4(b)

The process for risk identification starts by taking inventory of the potential project risks that can affect the project delivery. This step is crucial for efficient risk management throughout the project. The outputs of the risk identification are used as an input for risk

analysis, and they reduce a project manager's uncertainty. It is an iterative process that needs to be continuously repeated throughout the duration of a project. The process needs to be rigorous to make sure that all possible risks are identified. An effective risk identification process should include the following steps:

1. *Creating a systematic process* - The risk identification process should begin with project objectives and success factors.
2. *Gathering information from various sources* - Reliable and high quality information is essential for effective risk management.
3. *Applying risk identification tools and techniques* - The choice of the best suitable techniques will depend on the types of risks and activities, as well as organizational maturity.
4. *Documenting the risks* - Identified risks should be documented in a risk register and a risk breakdown structure, along with its causes and consequences.
5. *Documenting the risk identification process* - To improve and ease the risk identification process for future projects, the approach, participants, and scope of the process should be recorded.
6. *Assessing the process' effectiveness* - To improve it for future use, the effectiveness of the chosen process should be critically assessed after the project is completed.

Answer 4(c)

The Enterprise Risk Management is an integrated Framework which is one of the most widely recognized and applied enterprise risk management frameworks in the world. It provides a principles-based approach to help organizations design and implement enterprise-wide approaches to risk management.

Enterprise risk management deals with risks and opportunities affecting value creation or preservation, defined as follows:

Enterprise risk management is a process, effected by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.

This definition is purposefully broad. It captures key concepts fundamental to how companies and other organizations manage risk, providing a basis for application across organizations, industries, and sectors. It focuses directly on achievement of objectives established by a particular entity and provides a basis for defining enterprise risk management effectiveness.

Components of Enterprise Risk Management

Enterprise risk management consists of eight interrelated components. These are derived from the way management runs an enterprise and are integrated with the management process. These components are:

1. *Internal Environment* – The internal environment encompasses the tone of an

organization, and sets the basis for how risk is viewed and addressed by an entity's people, including risk management philosophy and risk appetite, integrity and ethical values, and the environment in which they operate.

2. *Objective Setting* – Objectives must exist before management can identify potential events affecting their achievement. Enterprise risk management ensures that management has in place a process to set objectives and that the chosen objectives support and align with the entity's mission and are consistent with its risk appetite.
3. *Event Identification* – Internal and external events affecting achievement of an entity's objectives must be identified, distinguished between risks and opportunities.
4. *Risk Assessment* – Risks are analysed, considering likelihood and impact, as a basis for determining how they should be managed. Risks are assessed on an inherent and a residual basis.
5. *Risk Response* – Management selects risk responses – avoiding, accepting, reducing, or sharing risk – developing a set of actions to align risks with the entity's risk tolerances and risk appetite.
6. *Control Activities* – Policies and procedures are established and implemented to help ensure the risk responses are effectively carried out.
7. *Information and Communication* – Relevant information is identified, captured, and communicated in a form and time frame that enable people to carry out their responsibilities. Effective communication also occurs in a broader sense, flowing down, across, and up the entity.
8. *Monitoring* – The entirety of enterprise risk management is monitored and modifications made as necessary. Monitoring is accomplished through ongoing management activities, separate evaluations, or both.

Enterprise risk management is not strictly a serial process, where one component affects only the next. It is a multi-directional, iterative process in which almost any component can and does influence another.

Answer 4(d)

The ultimate responsibility for enterprise-wide risk management starts at the top. However, everyone in the entity will have some role and responsibility for Enterprise risk management (ERM) as discussed below:

1. *Board of directors & CEO* - have ultimate accountability for all risks. Risk management practices must be discussed periodically and risk management related policies must be reviewed and approved. The extent to which the board is willing to accept any consequences of taking risk must be clearly defined.
2. *Senior management* - design, implement and maintain an effective risk framework. This involves developing policies and procedures, promoting a risk aware culture, establishing and monitoring the risk appetite and reporting regularly to the board of directors.

3. *Business units* - identify, assess, measure, monitor, control, and report risks to senior management. This involves managing relevant risks within the framework established by senior management and ensuring compliance with policies and procedures.
4. *Support functions (i.e. Legal, HR, IT etc.)* - provide support to business units in developing and enforcing policies and procedures.
5. *Internal audit & Compliance* - monitor and provide independent assurance of the effectiveness of the risk framework.
6. *Risk officer/management* - co-ordinate the establishment of the risk framework and provide risk management expertise.

PART III

Attempt all parts of either Q. No. 5 or Q. No. 5A

Question 5

- (a) *Define compliance. What is the difference between compliance and conformance?*
- (b) *Write a short note on reporting principles and standard disclosures under Global Reporting Initiative.*
- (c) *Discuss the guiding principles for preparation and presentation of an integrated report.*
- (d) *Define internal audit. What are the main aspects of internal auditing ?*
(5 marks each)

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *“Internal control is a part of the internal check system.” Discuss.*
- (ii) *Define financial reporting. What are its main components ?*
- (iii) *State in brief, the components of internal control under the framework of the Committee of Sponsoring Organizations (COSO).*
- (iv) *Specify, in brief, the information to be disclosed in board’s report.*
(5 marks each)

Answer 5(a)

OECD defines compliance as the act of adhering to, and the ability to demonstrate adherence to mandated requirements defined by laws and regulations, as well as voluntary requirements resulting from contractual obligations and internal policies.

The International Compliance Association has defined the term compliance as the ability to act according to an order, set of rules or request. Compliance mainly operates at two levels:

- Level 1 - compliance with the external rules that are imposed upon an organisation as a whole.

- Level 2 - compliance with internal systems of control that are imposed to achieve compliance with the externally imposed rules.

The difference between compliance and conformance is as below:

<i>Compliance</i>	<i>Conformance</i>
Forced adherence to a law, regulation, rule, process or practice.	Voluntary adherence to a standard, rule, specification, requirement, design, process or practice.
Applies to laws and regulations that one has no option but to follow or face penalties. Such regulations may potentially be productive for society but don't necessarily contribute to an organization's goals.	Applies to strategies and plans that are adopted to be more productive or to improve quality.

Answer 5(b)

Part 1 of Global Reporting Initiative (GRI) - Reporting Principles and Standard Disclosures - contains reporting principles, standard disclosures, and the criteria to be applied by an organization to prepare its sustainability report 'in accordance with the guidelines.

The Reporting Principles are fundamental to achieving transparency in sustainability reporting and therefore should be applied by all organizations when preparing a sustainability report. The Principles are divided into two groups:

- Principles for defining report content*: The Principles for Defining Report Content describe the process to be applied to identify what content the report should cover by considering the organization's activities, impacts, and the substantive expectations and interests of its stakeholders.
- Principles for defining Report Quality*: The Principles for Defining Report Quality guide on ensuring the quality of information in the sustainability report, including its proper presentation. The quality of the information is important to enable stakeholders to make sound and reasonable assessments of performance, and take appropriate actions.

There are two different types of Standard Disclosures:

- General Standard Disclosures:
 - Strategy and Analysis
 - Organizational Profile
 - Identified Material Aspects and Boundaries
 - Stakeholder Engagement
 - Report Profile
 - Governance
 - Ethics and Integrity

2. Specific Standard Disclosures:

- Disclosures on Management Approach
- Indicators

Answer 5(c)

Guiding Principles underpin the preparation of an integrated report, informing the content of the report and how information is presented. The following guidelines are applied individually and collectively for the purpose of preparing and presenting an integrated report:

1. *Strategic focus and future orientation* : An integrated report should provide insight into the organization's strategy, and how it relates to the organization's ability to create value in the short, medium and long term, and to its use of and effects on the capitals
2. *Connectivity of information* : An integrated report should show a holistic picture of the combination, interrelatedness and dependencies between the factors that affect the organization's ability to create value over time
3. *Stakeholder relationships* : An integrated report should provide insight into the nature and quality of the organization's relationships with its key stakeholders, including how and to what extent the organization understands, takes into account and responds to their legitimate needs and interests
4. *Materiality* : An integrated report should disclose information about matters that substantively affect the organization's ability to create value over the short, medium and long term
5. *Conciseness* : An integrated report should be concise
6. *Reliability and completeness* : An integrated report should include all material matters, both positive and negative, in a balanced way and without material error
7. *Consistency and comparability* : The information in an integrated report should be presented: (a) on a basis that is consistent over time; and (b) in a way that enables comparison with other organizations to the extent it is material to the organization's own ability to create value over time.

Answer 5(d)

Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

The main aspects of internal auditing are:

1. Review, appraisal and evaluation of the soundness, adequacy and application of financial, accounting and other operating controls.
2. Ascertaining the adequacy and reliability of management information and control systems.

3. Ascertaining the achievement of management objectives and compliance with established plans, policies and procedures.
4. Ensuring proper safeguards for assets - their utilization and accounting thereof.
5. Detection and prevention of fraud and error.
6. Ascertaining the integrity of management data in an organisation.
7. Identifying the areas of cost reduction, coupled with increased production, improved productivity and improved systems.
8. Ascertaining the quality of performance and undertaking 'value for money' exercises.
9. Compliance with statutory laws and rules including adherence to the Companies (Auditors' Report) Order to avoid adverse comments from the statutory auditors.
10. Undertaking special reviews and assignments directed by management to ensure economical and efficient use of resources.
11. To provide for a channel of communicating new ideas to the top management.

Answer 5A(i)

According to Standard on Auditing (SA) 315, internal control is the process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

Internal check refers to allocation of duties in such a manner that the work of one person is checked by another while that other is performing his own duties in a normal way. In other words, it may be referred to as a system of instituting checks on the day to-day transactions which operate continuously as a part of routine system whereby the work of one person is complementary to the work of another, the object being the prevention or early detection of errors or fraud. The objective of such allocation of duties is that no single individual has an exclusive control over any one transaction or group of transactions.

Thus, internal check is a part of the overall internal control system and a method of division of work with the objective of prevention or early detection of errors or fraud. Hence, it is not correct to say that internal control is part of the internal check system.

Answer 5A(ii)

Financial Reporting involves the disclosure of financial information to the various stakeholders about the financial performance and financial position of the organisation over a specified period of time. These stakeholders include – investors, creditors, public, debt providers, governments & government agencies. In case of listed companies the frequency of financial reporting is quarterly & annual.

Financial reporting serves two primary purposes. First, it helps management to engage in effective decision making concerning the company's objectives and overall

strategies. The data disclosed in the reports can help management discern the strengths and weaknesses of the company, as well as its overall financial health. Second, financial reporting provides vital information about the financial health and activities of the company to its stakeholders including its shareholders, potential investors, consumers, and government regulators. It is a way of ensuring that the company is being run appropriately.

The main components of financial reporting are:

1. The financial statements – Balance Sheet, Statement of Profit & Loss, Cash flow statement & Statement of changes in stock holder's equity
2. The notes to financial statements
3. Quarterly & Annual reports (in case of listed companies)
4. Prospectus (In case of companies going for IPOs)
5. Management Discussion & Analysis (In case of public companies)

The Government and the Institute of Chartered Accounts of India (ICAI) has issued various accounting standards and guidance notes which are applied for the purpose of financial reporting. This ensures uniformity across various diversified industries when they prepare and present their financial statements.

Answer 5A(iii)

A system of internal control has five components under the Committee of Sponsoring Organizations (COSO) framework which are as follows:

1. Control environment:

- Exercise integrity and ethical values.
- Make a commitment to competence.
- Use the board of directors and audit committee.
- Facilitate management's philosophy and operating style.
- Create organizational structure.
- Issue assignment of authority and responsibility.
- Utilize human resources policies and procedures.

2. Risk assessment:

- Create company wide objectives.
- Incorporate process-level objectives.
- Perform risk identification and analysis.
- Manage change.

3. Control activities:

- Follow policies and procedures.

- Improve security (application and network).
- Conduct application change management.
- Plan business continuity/backups.
- Perform outsourcing.

4. Information and communication:

- Measure quality of information.
- Measure effectiveness of communication.

5. Monitoring:

- Perform ongoing monitoring.
- Conduct separate evaluations.
- Report deficiencies.

Answer 5A(iv)

The Companies Act, 2013 mandates certain disclosures to be made in the board's report. In addition, a listed company has to comply with certain additional requirements under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Where a company is listed in an overseas stock exchange, then it has to also comply with the disclosure requirements of that exchange. A company regulated by any other law has to comply with the disclosure requirements of those laws.

The board's report should be based on the company's standalone financial statement and should relate to the financial year for which such statement has been prepared. If any information is specified elsewhere in the financial statement, then the board's report may give a reference thereof instead of repeating the same.

A board's report should typically include information under following heads:

- Company Specific Information
- General Information
- Capital and Debt Structure
- Credit Rating of Securities
- Investor Education and Protection Fund (IEPF)
- Management
- Disclosures Relating to Subsidiaries, Associates and Joint Ventures
- Details of Deposits
- Particulars of Loans, Guarantees And Investments
- Particulars of Contracts or Arrangements with Related Parties
- Corporate Social Responsibility (CSR)
- Conservation of Energy, Technology Absorption
- Foreign Exchange Earnings and Outgo

- Risk Management including management perception of Risk factors
- Details of Establishment of Vigil Mechanism
- Changes in directors and KMP
- Material Orders of Judicial Bodies /Regulators
- Auditors Reports including Secretarial Audit Report
- Explanations in Response to Auditors' Qualifications
- Compliance With Secretarial Standards
- Compliance of applicable regulations
- Corporate Insolvency Resolution Process Initiated under the Insolvency and Bankruptcy Code, 2016 (IBC)
- Failure to Implement any Corporate Action
- Annual Return link on website
- Sweat Equity, ESOPs etc.
- Attendance of Directors at meetings of Board
- Details of Committee meetings
- Additional Disclosures Under Listing Regulations
- Disclosures pertaining to the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 etc.

PART IV

Question 6

- (a) *“The Prevention of Corruption Act, 1988 enacted to combat corruption in public sector and not in the private sector businesses of India.” Do you agree with the statement ? Justify your answer with the help of provided provision in the Prevention of Corruption Act, 1988.*
- (b) *Explain the Economic Value Added (EVA) and how it is helpful in calculating the true economic profit of an enterprise ? (5 marks each)*

Answer 6(a)

The Prevention of Corruption Act, 1988 (PCA) criminalises the acceptance of gratification (pecuniary or otherwise) other than the acceptance of legal remuneration by public servants which is paid by their employers in connection with the performance of their duties. Aiding and abetting the commission of bribery is also an offence, such that any person, who bribes or attempts to bribe a public servant or acts as a middleman for such bribing may also be held liable. Further, the PCA creates an adverse presumption if a public servant's assets are disproportionate in value to his or her income and cannot be satisfactorily accounted for.

The provisions of the PCA apply regardless of the location or jurisdiction of the commission of an offence, as long as the same is committed by a 'public servant' as defined under it. Judicial decisions have also interpreted the term 'public servant' in the PCA to include a wide variety of persons, such as bank employees in both private and government owned banks.

The PCA deals only with bribery of public servants. It does not extend to bribery or corruption in the private sector, i.e. where a public servant is not involved. That said, a private person/entity will be liable for inducing a public servant to commit an act that is prohibited by the PCA, by corrupt or illegal means or by exercising personal influence.

Who is Public Servant [Section 2(c)]:

“Public servant” means –

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty; Public Duty has been defined by Section 2(b) of the Act, which means a duty in the discharge of which the State, the public or the community at large has an interest.
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called,

of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Answer 6(b)

Economic Value Added (EVA) is promoted by a consulting firm Stern Steward & Co., which was established in 1982 and pioneered the EVA concept in 1989. EVA is a performance measure that captures the true economic profit of an enterprise. EVA is used by over 300 successful companies. EVA is a value based financial performance measure. It is an investment decision tool and it is also a performance measure reflecting the absolute amount of shareholder value created.

It is computed as the product of the “excess return” made on an investment or investments and the capital invested in that investment or investments. “Economic Value Added (EVA) is the net operating profit minus an appropriate charge for the opportunity cost of all capital invested in an enterprise or project. It is an estimate of true economic profit, or amount by which earnings exceed or fall short of the required minimum rate of return investors could get by investing in other securities of comparable risk (Stewart, 1990).”

EVA is net operating profit after tax less capital charge.

Or, $EVA = NOPAT - (\text{Invested Capital} \times WACC)$

Where

NOPAT is Net Operating profit after taxes

WACC is Weighted average cost of capital

Components of EVA

The equation for EVA shows that there are three key components to a company's EVA: i.e. NOPAT, Capital invested, and the WACC:

- NOPAT can be calculated manually but is normally listed in a public company's financials.
- Invested Capital is the amount of money used to fund a specific project.
- WACC is the average rate of return a company expects to pay its investors; the weights are derived as a fraction of each financial source in a company's capital structure. WACC can also be calculated but is normally provided as public record.

An equation for invested capital often used to calculate EVA is = Total Assets - Current Liabilities, two figures easily found on a firm's balance sheet. In this case, the formula for EVA is: $NOPAT - (\text{Total Assets} - \text{Current Liabilities}) \times WACC$.

The cost of capital is a weighted average that reflects the cost of both debt and equity capital. Thus, EVA measures the excess of a firm's operating income over the cost of the capital employed in generating those earnings. It relates operating income to capital employed in an additive operation. This is in contrast to return on assets (ROA = operating income / capital), which compares operating income to capital employed in a multiplicative operation.

EVA assesses the performance of a company and its management through the idea that a business is only profitable when it creates wealth and returns for shareholders, thus requiring performance above a company's cost of capital. EVA as a performance indicator is very useful. The calculation shows how and where a company created wealth, through the inclusion of balance sheet items. This forces managers to be aware of assets and expenses when making managerial decisions. However, the EVA calculation relies heavily on the amount of invested capital, and is best used for asset-rich companies that are stable or mature. Companies with intangible assets, such as technology businesses, may not be good for an EVA evaluation.

ADVANCED TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

2. ALL the references to sections in Part-II of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2021-22 unless stated otherwise.
3. Wherever necessary, suitable assumptions can be made and the same be stated clearly in the answer.
4. Working notes should form part of the answer.

PART I

Question 1

- (a) UDB Builders Ltd had undertaken a project to construct residential tower in Jaipur having 100 apartments/flats. The builder has entered into an agreement to sell a flat of carpet area of 1800 sq. ft out of 100 flats to a customer Shiv Charan. The breakup of the cost and charges of the flat as per agreement are as follows:

(i) Price of flat including apportioned value of cost of land	₹84,00,000
(ii) Prime Location charges (PLC) (extra charges for getting garden and swimming pool view)	₹4,00,000
(iii) Club membership fee (Club to be formed after completion of construction of the tower)	₹5,00,000
(iv) Stamp duty for executing sale deed on actual basis	₹6,00,000
(v) Documentation charges	₹2,00,000
(vi) Maintenance charge to maintain building till the residential complex is handed over to housing society of members	₹4,00,000

The builder had received payment of ₹25,00,0000 on agreement and balance amount of the value of flat to be received after obtaining completion certificate for the corporation. The value of land is 1/3rd of the total consideration for the supply of flat.

Compute the value of taxable supply in respect of the flat so sold by the builder to the customer Shiv Charan for the purpose of GST. (5 marks)

- (b) Sanjay of New Delhi made a request for a Motor cab to "Destiny Rides" for travelling from New Delhi to Jaipur (Rajasthan). Sanjay after paying the cab charges using his debit card, get details of the drivers Joga Singh and the cab's registration number.

“Destiny Rides” is a mobile application owned and managed by “D. T. Ltd”, located in India. The application “destiny Rides” facilities a potential customer to connect with the persons providing cab service under the brand name of “Destiny Rides”.

D. T. Ltd. Claims that cab service is provided by Joga Singh and hence, he is liable to pay GST under the provisions of goods and service tax laws and Act.

You are required in the context of IGST Act, 2017 to determine who is liable to pay GST in this case would your answer be different, if D. T. Ltd, is located in New York (USA). (5 marks)

- (c) *“Diligent Force” a professional training institute gets its training material of “Aptitude Quotient” printed from “Durga Printing House” a printing press. The content of the material is provided by the “Diligent Force” who owns the usage rights of the same while the physical inputs including paper used for printing belong to the “Durga Printing House”. Justify, in the context of provisions of CGST Act, 2017 whether supply of training material by “Durga Printing House” constitutes supply of goods or supply of services. (5 marks)*

- (d) *Lokesh Pvt. Ltd a company engaged in the manufacturing of auto parts and spares having registered office and factory located at Jaipur has got itself registered under the composition scheme for the purpose of tax under GST. Company furnishes the following information/details and of the total value of supplies including inward supplies taxed under reverse charge basis for the financial year 2020-21:*

<i>Particulars</i>	<i>Amount (₹)</i>
<i>(i) Intra-state supplies of auto spares ‘V’ units chargeable to GST @12%</i>	<i>36,00,000</i>
<i>(ii) Intra-state supplies of auto spares ‘X’ chargeable to GST @ 5%</i>	<i>30,00,000</i>
<i>(iii) Inward supplies on which tax payable under Reverse Charge having GST rate of 18%</i>	<i>9,60,000</i>
<i>(iv) Intra-state supplies wholly exempt under section 11 of CGST</i>	<i>16,40,000</i>

Determine the tax liability of Lokesh Pvt. Ltd. payable under composition and the gross total tax liability for the Financial year 2020-21. (5 marks)

Answer 1(a)

Computation of Value of taxable supply under GST of the Flat

<i>S. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1.	Price of flat including apportioned value of cost of land	84,00,000
2.	Prime Location Charges (PLC) (extra charge for getting garden and swimming pool view). (Charges are part of construction service of flat being naturally bundled)	4,00,000

3.	Club membership fee (Club to be formed after construction is complete). Not part of construction service of flat being neither part of composite supply nor naturally bundled	Nil
4.	Stamp duty for executing sale deed on actual basis. (Stamp duty does not form part of value of service. It is only reimbursement of expenses incurred on behalf of the customer)	Nil
5.	Documentation Charges (These charges are part of construction service of flat)	2,00,000
6.	Maintenance charges to maintain building till the residential tower is handed over to Housing Society of Members. (Not part of construction service being neither of composite supply nor naturally bundled).	Nil
	Total Consideration for the supply of flat	90,00,000
	Less : Value of land or undivided share of land being 1/3rd of the total amount charged	(30,00,000)
Taxable Value of Supply		60,00,000

Answer 1(b)

As per section 5(5) of the Integrated Goods and Services Tax Act, 2017, the Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-state supplies which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

As per section 2(45) of the Central Goods and Services Tax Act, 2017, "Electronic commerce operator" (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

The Central Government has notified services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle and the tax on inter-state supplies which shall be paid by the electronic commerce operator.

Thus, in the above case D.T. Ltd., is liable to pay GST in respect of supply of the said service. Thus, the contention of D.T. Ltd. that Joga Singh should pay GST on the same as he is provider of service is not correct.

Further, proviso to section 5(5) of the Integrated Goods and Services Tax Act, 2017, provides that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such

electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Thus, even if D.T. Ltd, is located in New York (USA) a non-taxable territory its liability to pay GST will not be extinguished. The representative of D.T. Ltd or the person appointed by D.T. Ltd will be required to discharge the GST liability on behalf of D.T. Ltd.

Answer 1(c)

Circular No. 11/11/2017-GST dated 20.10.2017 has clarified that supply of books printed with contents supplied by the recipient of such printed goods is composite supply and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

Principal supply has been defined in section 2(90) of the Central Goods and Services Tax Act, 2017 as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

In the case of printing of books where content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer.

Supply of printing of the content supplied by the recipient of supply is the principal supply and therefore, such supplies would constitute supply of service and not supply of goods.

Thus, in view of the above mentioned provisions, the supply of training material by Durga Printing House would constitute supply of services.

Answer 1(d)

Computation of turnover for tax under Composition Scheme

S. No.	Particulars	Amount (Rs.)
1.	Intra-state supplies of Auto Spares 'V'	36,00,000
2.	Intra-state supplies of Auto Spares 'X'	30,00,000
3.	Inward supplies on which tax payable under Reverse Charge Mechanism (RCM)(GST Rate 18%)	Nil
4.	Intra state supplies wholly exempt under section 11 of Central Goods and Services Tax Act, 2017	16,40,000
	Turnover within the State	82,40,000
	Rate of composite tax (CGST 0.5% + SGST 0.5%)	1%
	Total Composite Tax	82,400

2. Tax payable under reverse charge basis

<i>Particulars</i>	<i>Amount (Rs.)</i>
Inward supplies on which tax payable under RCM of Rs. 9,60,000	9,60,000
Rate of GST	18%
Tax payable under RCM	1,72,800

3. Total tax payable by the Company for 2020-21

	<i>Amount (Rs.)</i>
Under Composition	82,400
Under RCM	1,72,800
	<u>2,55,200</u>

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

- (a) Jagatguru Textiles Ltd. transfers from Bellary in Karnataka stocks of 15,000 meters of cloth having cost of ₹15,00,000 requiring further processing before sale to its Bhilwara branch located in Rajasthan from where it is being sold. The Bhilwara branch, apart from processing its own goods is also engaged in processing of the similar nature goods for other persons located in Rajasthan. There are no other factories in the neighboring area of Bellary in Karnataka who are engaged in the same business work of processing as being done by the Bhilwara, Rajasthan unit of Jagatguru Textiles Ltd. Other persons located in Rajasthan supply the same variety of goods in lots of 15,000 meters each time and thereafter make sells of such processed goods to wholesalers. The price of such lot of goods in the market is ₹14,75,000.

Determine the value of supply in the aforesaid case by explaining in brief the provisions of CGST Act, 2017. (5 marks)

- (b) Explain the system prescribed under the CGST Act, 2017 to facilitate smaller dealers or dealers having no IT infrastructure and who are also not Information Technology Savvy to comply with the procedural requirement under the CGST Act, 2017. (5 marks)

- (c) ABC Ltd. of Jaipur, Rajasthan engaged in business was making till 28.02.2021 Intra-state supplies of the taxable goods. Total value of taxable supplies of goods till 28.02.2021 was of ₹16,50,000. However, on 01.03.2021, it has effected Inter-state supply of taxable goods amounting in total of ₹3,00,000. Manager (Taxation) of ABC Ltd. is of the view that it is not required to get registered under GST law since its aggregate turnover is not likely to exceed ₹20,00,000 during the financial year 2020-21. However to become sure seeks your opinion as a consultant relating to his view as to requirement of registration under GST.

Advise suitably to the company ABC Ltd in the matter of requirement of registration as per provisions contained under the CGST Act, 2017. (5 marks)

- (d) XYZ Ltd, of Delhi, engaged in various activities has provided the following services in the month of March 2021, of which values are being listed against each.
- (i) Service of interior decoration in respect of immovable property located in Jammu ₹5 lakh.
 - (ii) Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney which is a fixed establishment of the Indian Hotel Chain for ₹15 Lakhs.
 - (iii) Freight-forwarding services : ₹12 lakh profit earned on buying and selling cargo space on airlines for export of goods. In some other cases, commission of ₹3 lakh earned from airlines on acting as intermediary in arranging cargo space on airlines for export of goods.
 - (iv) Online information and database access and retrieval services provided to clients in UK : ₹5 lakhs.

All the values given here in above are exclusive of taxes, cess & GST. You are required to compute the value of taxable supplies for the purpose of GST liabilities by giving the reason in brief in the context of provision of CGST Act, 2017.

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) XYZ Ltd. a taxable person registered under GST is eligible to get refund from the proper authority. Manager Finance of the company seeks your opinion to know whether there is any provision under the Act for obtaining a provisional sanction of refund. Advice the company suitably in the context of provisions contained under the CGST Act, 2017. (5 marks)
- (ii) Goyal Fashions, a registered supplier of designer outfits in Delhi, decided to exhibit its products in a Fashion Show being organized at Hotel Part Royal, Delhi on 04.01.2021 Goyal Fashion for the occasion, gets the makeover of its models done by Galaxy Beauty Services Ltd, Ashok Vihar, Delhi for which a consideration of ₹5,00,000 (excluding GST) has been charged. Galaxy Beauty Services Ltd, issued a duly signed tax invoice on 10.02.2020 showing the lumpsum amount of ₹5,90,000 inclusive of CGST and SGST @ 9% each. Goyal Fashions made the payment the very next day.

Answer the following questions in the context of provisions of the CGST Act, 2017 :

- (a) Examine and state whether the tax invoice has been issued within the time limit prescribed under the law by Galaxy Beauty Services Ltd.
- (b) Tax consultant of Goyal Fashions objected to the invoice raised suggesting that the amount of tax charged in respect of the taxable supply should be shown separately in the invoice raised by Galaxy Beauty Services Ltd. However, Galaxy Beauty Services Ltd, contended that there is no mandatory requirement of showing tax component separately in the invoice. Examine and State the validity of the objection raised by tax consultant of Goyal Fashions. (5 marks)

- (iii) *State the rate of tax for collection of tax at source applicable to electronic commerce operator (ECO) under the CGST Act, under the SGST Act and under the IGST Act, 2017. Also specify when and on which of the value the rate of tax for collection at source be applicable.* (5 marks)
- (iv) *Determine the place of supply of services as well as their taxability in each of the following independent cases in the context of provisions contained in the CGST Act, 2017 :*
- (a) *Ajay the owner of an immovable property located in New Delhi gives on rent the said property to Basant of U. P. for use in commercial purposes.*
- (b) *Rahul, a Delhi based Interior Decorator provides his professional services to Rama Enterprises of Agra in respect of property which is intended to be located in Punjab.*
- (c) *A USA based company possessing specialization in mineral exploration has been awarded a contract by Singhal Sons Mines of Jaipur (Rajasthan) for mineral exploration in respect of specific sites located in Canada.*
- (d) *Rohit, a consulting Engineer provides his professional consultancy services to a UK based company in respect of its three properties located in UK, USA and Dubai.*
- (e) *A Delhi based builder provides construction services to Punjab based company in respect of construction of its new building in Bangladesh.* (5 marks)

Answer 2(a)

As per section 25(4) of the Central Goods and Services Tax Act, 2017 a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration be treated as distinct person for the purposes of this Act.

As per provisions of section 7 read with Para- 2 of Schedule -1, transfer of goods between two registered units of the same person (having the same PAN) will be treated as supply even if the transfer is made without consideration, as such persons will be treated as 'distinct persons' under the GST law.

The value of the supply would be the open market value of such supply, if open market value cannot be determined, the value shall be the value of supply of goods of like kind and quality prevailing in the market. If value cannot be determined any of the above modes, then the value shall be determined as per Rule 30 or Rule 31 of the CGST Rules in that order.

In this case, although goods of like kind and quality are available, the same may not be accepted as the 'like goods' since they are supplied by another manufacturers located in Rajasthan whereas supplier in the case of Jagatguru Textiles is located at Bellary in Karnataka. Transportation cost in respect of manufacturers of Rajasthan are lower and thus less expensive in comparison to goods under consideration which were supplied from Karnataka.

Therefore, the value of the supply would be taken as per Rule 30 of the Central Goods and Services Tax Rules at 110% of the cost (110% x 15,00,000) = Rs.16,50,000 for charge of GST.

Answer 2(b)

Under the Central Goods and Services Tax Act, 2017 to facilitate smaller dealers or dealers having no IT infrastructure and who are also not Information Technology Savvy following facilities shall be made available:

- (i) **Tax Return Preparer (TRP)** : A taxable person may prepare his registration application/ returns himself or can approach the TRP for assistance. TRP will prepare the registration document/ return in prescribed format on the basis of the information furnished by the taxable person. The legal responsibility of the correctness of information contained in the forms prepared by the TRP will remain with the taxable person only and the TRP shall not be liable for any errors or incorrect information.
- (ii) **Facilitation Centre (FC)** : GST Facilitation Centre shall be responsible for the digitization and/ or uploading of the forms and documents including summary sheet duly signed by the Authorized Signatory and given to it by the taxable person.

After uploading the data on common portal using the ID and Password of FC, a print-out of acknowledgement will be taken and signed by the FC and handed over to the taxable person for his records.

The FC will scan and upload the summary sheet duly signed by the Authorized Signatory.

- (iii) Further, the Government has introduced facility of Nil returns through SMS.

Answer 2(c)

The opinion of the Manager (Taxation) of ABC Ltd. is not correct. As per provisions of section 24 of Central Goods and Services Tax Act, 2017 person making inter-state taxable supply are compulsorily required to obtain registration.

Section 24 of Central Goods and Services Tax Act, 2017 is an overriding section that makes it mandatory to obtain registration by certain prescribed persons even though the conditions prescribed under Section 22 are not fulfilled. Hence, ABC Ltd. despite having the turnover below the threshold limit of 20 lakh is mandatorily required to obtain registration.

As per provisions of section 25 of the Central Goods and Services Tax Act, 2017 every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within 30 days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed.

Thus, ABC Ltd. is required to obtain registration up-to 31.03.2021, because of making of Inter State supply of taxable goods on 01.03.2021.

Answer 2(d)**XYZ Ltd. - Delhi****The value of taxable supply for the month of March, 2021**

<i>S. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1.	Service of interior decoration in respect of immovable property located in Jammu: As per section 12(3) of Central Goods and Services Tax Act, 2017 in respect of services provided directly in relation to immovable property, the place of supply shall be the location of immovable property. Therefore, in the given case, the place of supply of service shall be in Jammu.	5,00,000
2.	Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney which is not fixed establishment As per proviso to section 12(3) of the IGST act if the location of the immovable property is outside India, the place of supply shall be the location of recipient As per Sec 2(14)(b) Defines location of the Recipient as follows Where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment. Therefore location of service recipient would be Sydney i.e., non taxable territory & GST will be exempt.	Exempt
3.	Freight Forwarding: According to section 12(8), where the transportation of goods is to a place outside India, the place of supply shall be destination of such goods. The said services if provided by an aircraft from customs station of clearance in India to a place outside India have been exempt vide Entry 19A of Notification No. 12/2017 initially for the period till 30.09.2018, however extended from time to time and currently the exemption is valid until 30.9.2022. As per section 12(2), the place of supply of intermediary services shall be the location of registered person, assuming that services are provided to registered person. Hence it shall be taxable.	Nil
4.	Online information database access and retrieval services: As per provisions of Section 13(12), the place of supply of service shall be the location of the recipient of services i.e., UK. Since it is outside taxable territory, hence it shall not be taxable.	3,00,000 Nil
Total Value of taxable Supply		8,00,000

Answer 2(A)(i)

XYZ Ltd. can obtain a provisional sanction for the refund as the proper officer may sanction refund of an amount up to ninety percent of the total amount of refund so claimed as reduced by the amount of Input Tax Credit (ITC) accepted on a provisional basis in case of Zero Rated Supplies.

This provisional refund shall be granted subject to the following conditions:

- i) The person claiming refund has not been prosecuted for any offence under the Act or under any earlier law prior to GST where the amount of tax evaded exceeds Rs. 250 Lakhs during the period of five years immediately preceding the tax period to which the claim for refund relates.
- ii) GST Compliance rating of the applicant is not less than five on a scale of ten.
- iii) Issues for which refund is claimed are not pending under proceedings of any appeal, review or revision and if pending, the same has not been stayed by any court or appropriate authority.

Answer 2A(ii)

**IF CANDIDATES ASSUMED DATE OF ISSUE OF COMPLETION OF SERVICE:
04.01.2021 & DATE OF ISSUE OF INVOICE: 10.02.2020**

- (a) As per section 31 of the Central Goods and Services Tax Act, 2017 read with the Central Goods and Services Tax Rules, 2017, in case of taxable supply of services, invoices should be issued before or after the provision of service, but within a period of 30 day (45 days in case of insurer, Banking company or financial institutions including NBFCs) from the date of supply of service.

In the present case, the tax invoice should have been issued in the prescribed time limit of 30 days from the date of supply of service i.e., up-to 03.02.2021 and invoice has been issued on 10.02.2020. This is **issued within time limit**.

- (b) Section 31 of the Central Goods and Services Tax Act, 2017 read with the Central Goods and Services Tax Rules, 2017, inter alia, provides that tax invoice shall contain the following particulars:
 - (i) Total value of supply of goods or services or both,
 - (ii) Rate of tax (Central tax, State tax, Integrated tax, Union territory Tax or Cess)
 - (iii) Amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union Territory Tax or Cess)

The objection raised by the tax consultant of Goyal Fashions suggesting that the amount of tax charged in respect of the taxable supply should be shown separately in the invoice raised by Galaxy Beauty Services Ltd, is valid in law. In the present case, the tax amount has not been shown separately in the invoice.

Alternate Answer 2 to 2A(ii)**IF CANDIDATES ASSUMED DATE OF ISSUE OF COMPLETION OF SERVICE:
04.01.2021 & DATE OF ISSUE OF INVOICE: 10.02.2021**

- (a) As per section 31 of the CGST Act, 2017 read with the CGST Rules, 2017 in case of taxable supply of services, invoices should be issued before or after the provision of service, but within a period of 30 days (45 days in case of insurer). Banking company or financial institutions including NBFCs from the date of supply of service.

In view of said provisions in the present case, **the tax invoice has been not issued** within the time limit. The tax invoice should have been issued in the prescribed time limit of 30 days from the date of supply of service i.e., up to 03.02.2021

- (b) Section 31 of the CGST Act 2017, read with the CGST Rules, 2017 inter alia provides that tax invoice shall contain the following particulars;
- (i) Total value of supply of goods or services or both.
 - (ii) Rate of tax (central tax, state tax, integrated tax, union territory tax or Cess)
 - (iii) Amount of tax charged in respect of taxable goods or services (central tax, state tax, integrated tax, union territory tax or Cess)

The objection raised by the tax consultant of Goyal Fashions suggesting that the amount of tax charged in respect of the taxable supply should be shown separately in the invoice raised by Galaxy Beauty Services Ltd. is valid in law. In the present case, the tax amount has not been shown separately in the invoice.

Alternate Answer 3 to 2A(ii)**IF CANDIDATES ASSUMED DATE OF ISSUE OF COMPLETION OF SERVICE:
04.01.2020 & DATE OF ISSUE OF INVOICE: 10.02.2020**

- (a) As per section 31 of the CGST Act, 2017 read with the CGST Rules, 2017 in case of taxable supply of services, invoices should be issued before or after the provision of service, but within a period of 30 days (45 days in case of insurer). Banking company or financial institutions including NBFCs from the date of supply of service.

In view of said provisions in the present case, **the tax invoice has been not issued** within the time limit. The tax invoice should have been issued in the prescribed time limit of 30 days from the date of supply of service i.e., up to 03.02.2020

- (b) Section 31 of the CGST Act 2017, read with the CGST Rules, 2017 inter alia provides that tax invoice shall contain the following particulars;
- (i) Total value of supply of goods or services or both.
 - (ii) Rate of tax (central tax, state tax, integrated tax, union territory tax or Cess)

- (iii) Amount of tax charged in respect of taxable goods or services (central tax, state tax, integrated tax, union territory tax or Cess)

The objection raised by the tax consultant of Goyal Fashions suggesting that the amount of tax charged in respect of the taxable supply should be shown separately in the invoice raised by Galaxy Beauty Services Ltd. is valid in law. In the present case, the tax amount has not been shown separately in the invoice.

Answer 2A(iii)

The rate of tax collection at source (TCS) is 0.5% under CGST Act, 2017; 0.5% under SGST Act, 2017 and 1% under IGST Act, 2017.

TCS would be on the net value of taxable supplies made through the electronic commerce where the consideration with respect to such supplies is to be collected by the electronic commerce operator.

The net value of taxable supplies is the aggregate value of taxable supplies of goods or services or both made during any month by all registered taxable persons through the operator as reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Answer 2A(iv)

- (i) As per Section 12(3) of Integrated Goods and Services Tax Act, 2017 in respect of services provided directly in relation to immovable property, the place of supply shall be place where immovable property is located or intended to be located. Therefore, in the given case, the place of supply of service shall be New Delhi which falls within the ambit of taxable territory and shall be liable to GST.
- (ii) As per section 12(3) of Integrated Goods and Services Tax Act, 2017 in respect of services provided directly in relation to immovable property, the place of supply be place where immovable property is located or intended to be located. The place of supply of services shall be Punjab as the concerned property is intended to be located in Punjab which falls within the ambit of Taxable Territory and thus this service shall be liable to GST.
- (iii) As per Section 13(4) of Integrated Goods and Services Tax Act, 2017 in respect of services provided directly in relation to immovable property, the place of supply shall be place where immovable property is located or intended to be located. In this case, since specific sites in respect of which mineral exploration is to be carried out are located in Canada, the place of supply of service shall be Canada which does not fall within the ambit of taxable territory and resultantly, this service will not be liable to GST.
- (iv) As per Section 13(4) of Integrated Goods and Services Tax Act, 2017 in respect of services provided directly in relation to immovable property, the place of supply shall be place where immovable property is located or intended to be located. Since, in this case, consulting engineer's services provided by Mr. Rohit are in respect of property which falls within non-taxable territory, hence no GST is payable by Mr. Rohit.
- (v) As per Section 12(3) of Integrated Goods and Services Tax Act, 2017 in respect of services provided directly in relation to immovable property, the place of supply

shall be place where immovable property is located or intended to be located. If the immovable property is located or intended to be located outside India, the place of supply shall be location of the recipient

In this case services provided in relation to immovable property located in Bangladesh, the place of supply shall be location of the recipient i.e., Punjab which falls within the ambit of Taxable Territory and thus this service shall be liable to GST.

Question 3

(a) Explain in brief the meaning of the following terms in the context of the provisions contained under the CGST Act, 2017 :

(i) Goods

(ii) Services.

(4 marks)

(b) Decide as per provisions contained under the CGST Act, 2017 whether the following activities constitute supply or not :

(i) Services received from Government against taxes paid.

(ii) Buying a new car in exchange of old car.

(4 marks)

(c) Xavier started profession of Architect w.e.f. 01.04.2020. His value of intra-state taxable supply upto 30.09.2020 was ₹20 lakh. He applied for registration on 01.10.2020 and opted for Presumptive Scheme for service suppliers in registration application and was granted registration as per provisions of GST law. He made intra-state taxable supplies of ₹35 lakh for the quarter ending 31.12.2020.

You are required to determine the Presumptive tax liability of Xavier under Notification No. 2/2019-CT(R) for the period 01.04.2020 to 31.12.2020.

(4 marks)

(d) Calculate the value of taxable supply and GST liability of GG Freight and Goods carries engaged in the business of transport of goods by road for the month of March, 2021 from the given particulars. Give reasons for taxability or exemption of each item. Suitable assumptions may be made wherever required. GG freight and goods carriers avails ITC. Take the rate of GST chargeable at 12%. Total freight charges received for the month of March, 2021 of ₹20,00,000 and following charges included in 20 lakhs.

Particulars	Amount (₹)
(i) Freight charges received from Government Departments registered only for the purpose of tax deduction at source	4,00,000
(ii) Freight charges received from unregistered persons for transportation of their household goods	1,00,000
(iii) Freight collected for transporting goods in small vehicles for persons who paid less than ₹1,500 per trip	3,00,000

(4 marks)

- (e) *ABC Ltd. Co. registered as Company having under the GST, its head office in Mumbai. It has also obtained registration for its branch situated in Jaipur, Rajasthan. ABC Ltd, had transferred 1000 units of finished goods from Mumbai to Jaipur branch without consideration, as stock transfer. You are required to state in the context of provision of GST whether such transaction qualifies as supply.* (4 marks)

Answer 3(a)

- i) Goods as per Section 2(52) of Central Goods and Services Tax Act, 2017 means every kind of movable property other than money and securities but includes; actionable claim, Growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply of under a contract of supply.
- ii) Services as per Section 2(102) of Central Goods and Services Tax Act, 2017 means anything other than, goods, money and securities but includes activities relating to;
- a) the use of money, or
 - b) its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Answer 3(b)

- i) Not a Supply. Tax payer pays different types of taxes to the government treasury and government performs welfare activities out of such taxes. There should be a direct link and a not any casual link between activity and consideration. Therefore, such activities do not constitute service as there is no direct link between such services and taxes; hence, such activities would not qualify as supply.
- ii) Supply. As per section 7(1)(a) of Central Goods and Services Tax Act, 2017, supply includes exchange of goods for a consideration by a person in the course or furtherance of business. Thus, buying a new car in exchange of old car will constitute supply and dealer of car will be liable to pay GST.

Answer 3(c)

As per Notification No. 02/2019-CT(R) dated 07.03.2019, if registered person is eligible to take the benefit of this notification, he shall pay GST at the rate of 6% (3% CGST and 3% SGST/UTGST) on his aggregate turnover i.e., "First supplies of goods or services or both" upto Rs. 50 lakhs.

Explanation to Notification No. 02/2019-CT(R) dated 07.03.2019 provide that the expression "first supplies of goods or services or both" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

At the same time, for determining its eligibility to the scheme, the supplies made from 1st day of April till it becomes eligible for scheme shall be taken into account.

Thus, where supplier has taken the GST registration for the first time, the presumptive tax at the rate of 6% shall be payable on the supplies made by him only after the date of registration.

In the instant case, Xavier was eligible to opt for composition scheme as on 1.10.2020 as his aggregate turnover till such date was Rs. 20 lakhs [less than Rs. 50 lakhs].

Since for the purpose of eligibility, the turnover from the first day of April needs to be considered, the turnover of Rs. 20 lakhs made during 1.4.2020 and 30.9.2020 also shall be included, the turnover of Xavier breached the limit of Rs. 50 lakhs during the period 1.10.2020 and 31.12.2020 as he made supplies for Rs. 35 lakhs during such period.

Thus, the amount of composition tax liability of Xavier under notification No. 2/2019-CT (R) will be Rs. 30,00,000 x 6% = Rs. 1,80,000.

Xavier shall be liable to pay tax under normal scheme on turnover of Rs. 5,00,000.

Answer 3(d)

Computation of Value of taxable supply and GST for March, 2021 GG Freight and Goods Carriers

<i>Particulars</i>	<i>Amount (Rs.)</i>
Total freight received	20,00,000
<i>Less</i> : Freight charges received from Government department registered only for the purpose of tax deduction at source. [Exempt vide Entry 21B of Notification No. 12/2017 CT (Rate)]	4,00,000
<i>Less</i> : Freight charges received from unregistered persons for transportation of their household goods [Exempt vide Entry 21A of Notification No. 12/2017-CT (Rate)]	1,00,000
<i>Less</i> : Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1500 per trip (Exempt, since the freight on all consignments transported into a goods carriage doesn't exceed Rs.1500) [Exempt vide Entry 21 of Notification No. 12/2017-CT (Rate)]	3,00,000
Total value of taxable supply	12,00,000
GST payable @ 12% on Rs.12,00,000	1,44,000

Answer 3(e)

Yes, As per section 7(1)(c) read with Schedule 1 of Central Goods and Services Tax Act, 2017, when a person who has obtained or is required to obtain registration in a State or Union Territory in respect of an establishment in another State or Union Territory, then such establishments shall be treated as establishments of distinct persons.

Transactions between different establishments with separate GST registration, of same legal entity (e.g. Stock transfers or Branch transfers) will qualify as 'supply' under GST.

Accordingly, in view of section 7(1)(c) the stock transfer between Mumbai & Jaipur branch shall be treated as supply under GST.

Question 4

- (a) *Decent Laminates and Plywood Pvt. Ltd imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The goods so imported were warehoused at Mumbai Port from the date of their import in the month of June, 2020. Decent Laminates and Plywood Pvt. Ltd sought an extension of the warehousing of goods till November, 2020 which was granted. However, even after the expiry of extended period, it did not remove the goods from the warehouse. Subsequently, Decent Laminates and Plywood Pvt. Ltd applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the imported goods had become unfit for use on account of non-availability of orders for clearance and had lost their shell life also.*

Explain, in the context of provisions of Customs Act, 1962 with the help of a decided case law, if any, whether the application for remission of duty filed by Decent Laminates and Plywood Pvt. Ltd is valid in law. (4 marks)

- (b) *Specify the conditions when can an appeal be filed before the Appellate Tribunal as per section 129-A under the Customs Act, 1962.*

State also all those matters for which the Appellate Tribunal does not hold jurisdiction under the Customs Act, 1962. (6 marks)

Answer 4(a)

Remission can be granted under Section 23 only when the imported goods have been lost or destroyed at any time before clearance for home consumption. The expression "at any time before clearance for home consumption" as provided in section 23 means the time period originally fixed and extended period available for warehousing and not after the lapse of such periods.

The said expression (at any time before clearance for home consumption) cannot be extended to a period after the lapse of the extended period merely because the goods were not cleared within the stipulated time. It would be a case of goods improperly removed from the warehouse.

The facts of the given case are similar to the case of *CCEx. vs. Decorative Laminates (I) Pvt. Ltd.* [2010] 257 ELT 61 (Ker.). The High Court held that the circumstances made out under section 23 were not applicable in the instant case as the destruction/ loss of the goods had not occurred before the clearance for home consumption.

Hence, the application for remission of duty filed by Decent Laminates and Plywood Pvt. Ltd is not valid in law.

Answer 4(b)

Person aggrieved by any of the following orders as per section 129-A of the Customs Act, 1962 may appeal to the Appellate Tribunal against:

- a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;

- b) an order passed by the Commissioner (Appeals) under Section 128A;
- c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128;
- d) an order passed by the Board or the Principal Commissioner of Customs under Section 130.

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b), if such order relates to:

- a) any goods imported or exported as baggage;
- b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- c) payment of drawback as provided in Chapter- X, and the rules.

PART II

Question 5

- (a) *Ghanshyam Goswami, a NRI aged 83 years, wishes to file his return of Income for A. Y. 2021-22. His Gross Income in India including interest received on his SB accounts in India total is ₹7,50,000. Determine and workout the tax liability of Ghanshyam Goswami for A. Y. 2021-22. Give Working notes. (3 marks)*
- (b) *State the meaning assigned to "Speculative Transaction" under the Income Tax Act, 1961. Explain with brief reasons whether the following are in the nature of speculative transactions :*
 - (i) *Hedging contract in respect of raw materials*
 - (ii) *Forward contract. (3 marks)*
- (c) *Mr. Kamlesh borrowed on hundi, a sum of ₹3,75,000 during May, 2020 by way of a bearer cheque. He partly repaid ₹1,50,000 on 01.12.2020 by way of bearer cheque. Examine the consequences of said transactions. (3 marks)*
- (d) *For the Assessment year 2021-22, Shankar is a non-resident in India. From the information given below, find out his income chargeable to tax for the Assessment year 2021-22 :*
 - (i) *Technical fees received from an Indian company in Japan for advice given by him in respect of a project situated in China ₹3,68,000.*
 - (ii) *Income from a business situated in Sri Lanka (goods are sold in Sri Lanka, sale consideration is received in Sri Lanka but business is partly controlled in Sri Lanka and partly in India) ₹3,25,000.*
 - (iii) *Income from rent of vacant plot in Mumbai given to a foreign company is ₹2,44,000, such income is received in foreign currency in Japan. (3 marks)*
- (e) *What is the role of the Double Taxation Avoidance Agreement in deciding the Income of a resident earned outside India ? (3 marks)*

Answer 5(a)**Computation of Tax Liability of Mr. Ghanshyam Goswami for AY 2021-22**

Gross Total Income	Rs. 7,50,000
Less : Deduction u/s 80TTA (Refer Note1)	(Rs. 10,000)
Total Income	Rs. 7,40,000
Tax on Total Income of Rs. 740000:	Rs. 60,500
Add : Cess @ 4%:	Rs. 2,420
Total Tax Payable	Rs. 62,920

Note 1 : Deduction u/s 80TTB - Individual who is a resident senior citizen aged 60 years and above at any time during the previous year can claim a deduction of maximum Rs. 50,000 from his Gross Total income on account of interest received on deposits including interest on saving bank accounts. Since Mr. Goswami is Non-Resident, therefore deduction is restricted upto Rs. 10,000 only u/s 80TTA.

Note 2 : The basic exemption limit for an individual depends on his/her age as well as Residential Status. According to age, Mr. Ghanshyam Goswami falls into category of "Super Senior Citizen" being above 80 years of age. For NRI individuals, the basic exemption limit is Rs. 2,50,000 in a financial year irrespective of their age. Therefore, the basic exemption limit for Mr. Ghanshyam Goswami will be Rs. 2,50,000 only.

Assumption : The amount of interest on saving bank accounts are not specifically mentioned. Therefore, it is assumed that the interest received on saving bank account is Rs. 10,000 or more.

Answer 5(b)

As per section 43(5) of the Income tax Act, 1961, Speculative Transaction means a transaction in which a contract for the purchase or sales of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips of the shares.

Proviso to section 43(5) lists down certain transactions which have been expressly excluded from the scope of speculative transaction. Let us understand the nature of following transactions in light of the said provisions.

i) Hedging contract in respect of raw materials or merchandise:

In terms of Clause (a) of Proviso to Section 43(5), A contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchandising business to guard against loss through future price fluctuations in respect of his contracts for the actual delivery of goods manufactured by him or merchandise sold by him is not in the nature of a speculative transaction.

ii) Forward contract;

In terms of Clause (c) of Proviso to Section 43(5), a contract entered into by a member of a forward market or stock exchange in the course of any transaction

in the nature of jobbing or arbitrage to guard against any loss which may arise in the ordinary course of the business as a member is not in the nature of a speculative transaction.

Answer 5(c)

It has been provided u/s 69D of the Income tax Act, 1961, that if any amount is borrowed on a hundi or any amount due thereon is repaid other than through an account payee cheque, then the amount so borrowed or repaid shall be deemed to be the income of the person for the P.Y. in which the amount was borrowed or repaid, as the case may be.

It has been further stated u/s 69D of the Income tax Act, 1961, that if any amount borrowed on hundi has been deemed to be the income of any person, he will again not be liable to be assessed in respect of such amount on repayment of such amount.

Thus, if Rs. 3,75,000 were borrowed by Mr. Kamlesh through a bearer cheque, the same would be taxable as his income u/s 69D during the PY 2020-21 and repayment made subsequently of Rs. 1,50,000 will not have any effect.

Income u/s 69D will be taxable @ 60% + 25% Surcharge + 4% HEC.

Answer 5(d)

Computation of Taxable Income of Mr. Shankar (Non-Resident) for AY 2021-22

<i>Particulars</i>	<i>Amount</i>
(i) Technical fees received from an Indian company in Japan for advice given by him in respect of a project situated in China shall not be chargeable to tax because it is not deemed to accrue or arise in India and not received in India.	Nil
(ii) Income from a business situated in Sri Lanka, partly controlled in India. (This income is taxable in case of Resident and Ordinarily Resident (ROR) and Resident but not Ordinarily Resident (RNOR). Since, Mr. Shankar is non resident, the same will not chargeable to tax in India)	Nil
(iii) Income from rent of vacant plot in Mumbai (such income is accrued in India, hence taxable)	2,44,000
Income Chargeable to Tax	2,44,000

Answer 5(e)

In the case of a resident, if an income earned outside India is charged to tax in that country then the application of section 90, 90A and 91 in respect of double taxation relief has to be looked into.

If a double taxation avoidance agreement has been entered into between Government of India and the Government of that country (in which he has earned income) then the agreement will be looked into for deciding the taxability of such incomes accruing or arising outside India.

If an agreement with a foreign country does not exist, then in respect of income earned outside India, the tax paid on such income in the foreign country (ascertaining the average rate of tax and applying such rate on the said income) or the Indian rate of tax, whichever is lower, is deductible from the total tax payable by the assessee on his total income including such foreign income.

Attempt all parts of either Q. No. 6 or Q. No. 6A

Question 6

- (a) *Kanishk had purchased a House Property in Delhi on 12.01.2013 for ₹17,40,000. He sold this house to his friend Suresh on 21.03.2021 for a consideration of ₹35,00,000. He paid brokerage @ 2% on the sale price.*

On the date of registration stamp duty value of the said property is ₹39,50,000. However, on the date of agreement stamp duty value of the said property was ₹37,25,000. Suresh had paid advance 20% of the value of the property by way of A/c payee cheque at the time of agreement. Compute the Capital Gain taxable in the hands of Kanishk for Assessment year 2021-22 ?

What are the tax implications in the hands of Suresh for the same Assessment year ? Cost Inflation Index: F.Y. 2012-13-200; F.Y. 2020-21-301. (5 marks)

- (b) *Specify all those documents which are required to be submitted for making an appeal to the Appellate Tribunal as per provisions of Income Tax Act, 1961. (5 marks)*

- (c) *A limited liability partnership (LLP) has following income for the Assessment year 2021-22 :*

<i>Particulars</i>	<i>Amount (₹)</i>
<i>Profit from business eligible for deduction @ 100% of profits under section 80-IA</i>	<i>12,50,000</i>
<i>Profit from other business</i>	<i>17,50,000</i>
<i>Long term capital gain on sale of house property</i>	<i>11,20,000</i>

Compute the tax payable by the LLP for Assessment year 2021-22, assuming that LLP has available AMT Credit for financial year 2019-20 is ₹14,650. It has no other income during the Assessment year 2021-22. Also compute the total carry forward of AMT Credit (if any). (5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

- (i) *Mr. Rajiv is a salaried individual working with a MNC in Jaipur, Rajasthan. He is staying in his ancestral house which was built by his grandfather in 1975. During the P. Y. 2020-21, he decided to reconstruct his house for which he gave an all-inclusive contract to Mr. P. The overall contract price was ₹47,50,000. The contract was entered into Oct., 2020 and Mr. P handed over the reconstructed*

house back to Mr. Rajiv on 01.02.2021. Due to poor condition of house prior to reconstruction, Rajiv decided to shift temporarily in a rented furnished apartment from 01.04.2020 onwards at a monthly rent of ₹60,000 per month. The landlord of Mr. Rajiv and Mr. P. (Contractor) does not have PAN.

- (a) State whether any Tax is required to be deducted by Rajiv on payment of rent made to his landlord and the amount of such TDS, if applicable.
(3 marks)
- (b) State whether Tax is to be deducted by Rajiv from payment made to Mr. P. (Contractor). If yes, determine the amount of tax to be deducted by Rajiv during the P.Y. 2020-21.
(2 marks)
- (ii) Enumerate any five of the cases where 'income' is deemed to accrue or arise in India u/s 9 of Income-tax Act, 1961 even though it may actually accrue or arise outside India.
(5 marks)
- (iii) Provisions of Chapter X-A of Income-tax Act, 1961 relating to General Anti Avoidance Rule (GAAR) made applicable from A.Y. 2018-19 in relation to the arrangement as specified therein. Explain all those cases/matters where the provisions of GAAR do not apply.
(5 marks)

Answer 6(a)

Computation of Capital Gain in the hands of the Kanishk for AY 2021-22

Particulars	Amount
Sales Consideration received or accruing as a result of transfer (Working Note 1)	35,00,000
Less : Brokerage @ 2% of Rs. 35,00,000	(70,000)
Net Sale Consideration	34,30,000
Less : Indexed cost of acquisition (Rs. 17,40,000 * 301/200)	(26,18,700)
Long-term capital gain	8,11,300

Tax Treatment in the hands of the buyer Suresh: As per section 56(2)(x) of the Income tax Act, 1961, where any person receives from a non-relative, any immovable property for a consideration which is less than the stamp duty value on the date of agreement or date of registration as the case may be, and the difference between actual consideration and stamp duty value so considered is more than the higher of 50,000 or 10% (amendment by Finance Act, 2020) of the consideration so received, then the difference between such value and actual consideration of such property is chargeable to tax as income from other sources.

Since the difference of Rs. 2,25,000 (37,25,000 - 35,00,000) is not more than Rs. 3,50,000 being higher of Rs. 50,000 or Rs. 3,50,000 (10% of 35,00,000), no income would be chargeable to tax as income from other sources in the hands of Suresh.

Working Note 1:

Where the date of registration and date of agreement are not the same and part or whole of the consideration is paid by way of A/c payee cheque or A/c payee bank draft or

by use of ECS on or before the date of agreement, then stamp duty value on the date of agreement may be taken for the purpose of determining income taxable under the head "Income from other sources".

In the present case, Suresh has paid 20% of the consideration by way of A/c payee cheque, the stamp duty value on the date of agreement has to be taken.

Working Note 2 :

As per section 50C of the Income tax Act, 1961, where the consideration received or accruing as a result of transfer of land or building or both, is less than the value adopted or assessed or assessable by the stamp valuation authority, the value adopted or assessed or assessable by the stamp valuation authority shall be deemed to be the full value of consideration received or accruing as a result of transfer. Further, where the stamp duty value on the date of agreement or registration, as the case may be, **does not exceed 110% (amendment by FA 2020) of the amount of actual consideration received** or receivable then the consideration so received would be deemed to be the full value of the consideration. In the present case, since Kanishk has received 20% of the consideration by way of A/c payee cheque on the date of agreement, the stamp duty value of Rs. 37,25,000 on the date of agreement would be taken for the purpose of computing full value of consideration.

Further, since the stamp duty of House Property is Rs. 37,25,000 does not exceed Rs. 38,50,000 i.e., 110% of 35,00,000, the consideration received i.e., Hence Actual consideration 35,00,000 in respect of House Property would be deemed to be the full value of consideration.

Answer 6(b)

The following documents are required to be submitted for making an appeal to the ITAT:

- The memorandum of appeal in Form No. 36 with the grounds of appeal.
- Copy of the order of the Commissioner (Appeals).
- Copy of the grounds of appeal and statement of facts filed before the Commissioner (Appeals).
- Copy of the order of the Assessing Officer.
- Challan for payment of requisite fee.

All those documents are required to be submitted in duplicate except the memorandum of appeal in Form No. 36 which is to be filed in triplicate.

Answer 6(c)

Computation of Taxable Income of LLP AY 2021-22

<i>Particulars</i>	<i>Amount</i>
Income from Business & Profession	
Profit from eligible business u/s 80-IA	12,50,000
Profit from other business	17,50,000

Income from Capital Gain

LTCG on sale of House Property	11,20,000
Gross Total Income	41,20,000
Less : Deduction u/s 80-IA	12,50,000
Taxable Income	28,70,000

Computation of Tax Liability (as per normal provision)

<i>Particulars</i>	<i>Amount</i>
Tax on LTCG @ 20% on Rs. 11,20,000	2,24,000
Tax on Remaining Rs. 17,50,000 @ 30%	5,25,000
	7,49,000
Add : Health and Education cess @ 4%	29,960
Total Tax Liability	7,78,960

Computation of Adjusted Total Income u/s 115JC

<i>Particulars</i>	<i>Amount</i>
Taxable Income as per Income Tax Act, 1961	28,70,000
Add : Deduction u/s 80-IA	12,50,000
Adjusted Total Income	41,20,000

Computation of Tax (as per AMT)

<i>Particulars</i>	<i>Amount</i>
Tax as per AMT @ 18.5% of Adjusted Total Income	7,62,200
Add : Health and Education cess @ 4%	30,488
Total Tax Liability	7,92,688

Computation of Net Tax Liability of LLP

<i>Particulars</i>	<i>Amount</i>
Tax as per Normal Provision	7,78,960
Tax as per AMT Provision	7,92,688
Tax Payable (higher of above two)	7,92,688

Set-off and Carry forward of AMT Credit:

Opening AMT Credit of Rs.14,650 will not be set-off from current year tax liability, because AMT Credit shall be allowed to set-off in a year when tax as per normal provision is higher than AMT Tax.

In the given question, AMT Tax is higher than Normal tax, so opening AMT is not to be set-off in current year Tax liability.

Current year AMT Credit = Rs.7,92,688 – Rs. 7,78,960 = Rs. 13,728

Total AMT Credit carry forward = Rs. 14,650 + Rs. 13,728 = Rs. 28,378

Answer 6A(i)

- (a) As per provision of section 194-IB of the Income tax Act, 1961, Mr. Rajiv is required to deduct TDS on payment of rent made to his landlord @ 5% (The period 14.05.2020 to 31.03.2021, the rate is 3.75% instead of 5%) if the rent paid exceeds Rs. 50,000 per month or part thereof.

However, Section 206AA of the Income Tax Act, 1961 requires providing of PAN of deductee, failing which tax shall be deducted at a higher rate i.e. 20%.

Further, As per provision of Section 194IB of the Income tax Act, 1961, where the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

Therefore, In this case, Tax to be deducted by Mr. Rajiv from the payment made to landlord will be (Rs. 60000*10*20%) i.e. Rs. 1,20,000 but restricted to rent of last month = Rs. 60000 [Section 194 IB(4)] as landlord does not have PAN.

- b) As per provision of section 194M of the Income tax Act, 1961, any person, being an individual or a Hindu undivided family, is required to deduct TDS on payment made to a resident Contractor @ 5% of the amount paid to such contractor.

However, tax u/s 194M has to be deducted only if aggregate amount of sum paid to a resident during the P.Y. exceed Rs. 50,00,000.

Since, the amount paid by Mr. Rajiv to Mr. P is less than Rs. 50,00,000 i.e. 47,50,000 only. Thus, no tax has to be deducted by Mr. Rajiv.

Answer 6A(ii)

The cases enumerated u/s 9 of the Income tax Act, 1961 are as under:

- i. Income from Business Connection in India
- ii. Income from any property, asset or source of income in India.
- iii. Capital Gain on transfer of a capital asset situated in India
- iv. Income from salary, if services are rendered in India
- v. Income from salary (not being perquisite/allowance), if service is rendered outside India (provided that the employer is Government of India and the employee is citizen of India)

- vi. Dividend paid by the Indian Company.
- vii. Interest, royalty or technical fees received from Government of India
- viii. Interest, royalty or technical fees received from a resident (except when the payment pertains to business carried on by the payer outside India)
- ix. Interest, royalty or technical fees received from Non-Resident if the payment pertains to business carried on by the payer in India
- x. Gift of money (covered by sec 56(2)(x)] received from a resident person by a non-resident/ foreign company.

Answer 6(A)(iii)

The provision of General Anti Avoidance Rules 'GAAR' shall not apply in certain cases which are as follow:

- a) an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of rupees three crores.
- b) a Foreign Institutional Investor:
 - i. who is an assessee under the Act.
 - ii. who has not taken benefit of an agreement referred to in section 90 or section 90A as the case may be; and
 - iii. who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and other regulations as may be applicable, in relation to such investments;
- c) a person, being a non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor.
- d) any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the 1st day of April, 2017 by such person.

DRAFTING, PLEADINGS AND APPEARANCES

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer ALL Questions.

Question 1

Draft the following :

- (a) *Notice of Annual General Meeting for XYZ Ltd in which only ordinary businesses are to be transacted. Assume other facts, if required.*
- (b) *A specimen of Arbitration Agreement between two private companies to refer the dispute to two Arbitrators. On the assumed facts, examinee is expected to write minimum five main stipulations of the agreement.*
- (c) *Mr. AB is a Karta of AB-HUF a Joint Family. Family is engaged in various businesses and one of its business suffered heavy losses. With a view to fund the losses and its debts, AB-HUF decided to sale one of its property. You are required to draft a Deed of Sale of Joint Family Property. Assume other facts, if required.*
- (d) *A specimen of affidavit in support of Special Leave Petition filed before the Hon'ble Supreme Court of India. Assume facts, if required.*

(5 marks each)

Answer 1(a)

Name of the company: XYZ Ltd.

Registered Address:

CIN:

Email:

Telephone:

Website:

NOTICE

NOTICE is hereby given that the (Meeting Number) Annual General Meeting of XYZ Ltd. (CIN:.....) will be held on(day), the.....(date), 20.. atam/pm at(address) to transact the following business:

Ordinary Business:

1. To receive, consider and adopt the Audited Financial Statement of the Company for the financial year ended on 31st March ... and the Report of the Board of Directors and Auditors.
2. To declare dividend for the financial year ended on 31st March...
3. To appoint Director in place of Mr..... (DIN.....), who retire by rotation and being eligible, offer himself for reappointment.

- 4. To appoint Statutory Auditors and to determine their remuneration. For this purpose, to consider and if deemed fit, to pass, with or without modification, the following resolution as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the..... Annual General Meeting of the Company, at a remuneration of Rs. / - (Rupees only) for the year and Rs. / - (Rupees..... only) per year for the subsequent years plus reimbursement of out of pocket expenses and service tax, as applicable.”

“RESOLVED FURTHER THAT the Board of Directors of the Company (including a Committee thereof), be and is hereby authorised to do all such acts, deeds, matters and things as may be considered necessary, desirable or expedient to give effect to this Resolution.”

By Order of the Board of Directors

For.....

(Signature)

(Name)

Place

Date :20.....

Director/Company Secretary

DIN/ACS/FCS No

Answer 1(b)

This agreement is made and entered into between Mr..... and Mr. on this day of20.....witnesseth as follows:

WHEREAS differences and disputes have arisen between the parties above-mentioned regarding the matter of and the parties could not mutually settle the matter. Now the parties agree that the matter as under be referred to arbitration to obtain an award:

- 1. For the purpose of final determination of the dispute, the matter will be referred to Mr..... nominated by one party and Mr..... nominated by the other party as arbitrators and their award shall be final and binding on both the parties.
- 2. If differences should arise between the said two arbitrators on the question referred to them, the said arbitrators shall select an umpire and the award to be given by the umpire shall be final and both the parties hereby agree that the award so given by the umpire or arbitrators shall be binding on both the parties.

3. A reasonable time limit may be fixed after consulting the arbitrators for the grant of the award by them and umpire, if appointed, and the said time may be extended in consultation with the arbitrators or umpire, if need be.
4. The provisions of the Arbitration and Conciliation Act, 1966 so far as applicable and as are not inconsistent or repugnant to the purposes of this reference shall apply to this reference of arbitration.
5. Both the parties agree that they would co-operate and lead evidence etc., with the arbitrator so appointed as expeditiously as possible and it is an express condition of this agreement, that if any of the parties non-cooperate or is absent at the reference, the arbitrators would be at liberty to proceed with the reference ex-parte.
6. The parties hereto agree that this reference to arbitration would not be revoked either by death of either party or any other cause.
7. If the arbitrators or any of them as chosen under this agreement become incapacitated either by death or sickness or other disability, the parties retain the right of nominating substitutes and no fresh agreement thereof would be necessary.
8. It is an express stipulation that any award passed by the said arbitrators shall be binding on the parties their heirs, executors and legal representatives.

Having agreed to the above by both the parties, the said parties affix their signatures to this agreement this..... day20..... at..... .

Signature I

Signature II

Answer 1(c)

THIS DEED OF SALE made on this..... day of between AB for self and as Karta of AB-HUF and representing all other coparceners viz., his sons named.....all constituting a Hindu Mitakshara undivided family of, etc., (hereinafter called “the Vendor”) which expression shall, where the subject or context allows, be deemed to include at all times hereafter all persons being from time to time the coparceners of the said family of the one part and CD of etc. (hereinafter called “the purchaser”) of the other part.

WHEREAS the said Joint family for several years past owned and still owns and possess inter alia the Lands, hereditaments and premises described in Schedule A hereto as a part of its estate.

AND WHEREAS the said joint family also carried on and still carries on various businesses under the different name and styles. One of its business running in the name and style of..... which suffered a heavy loss and its capital and reserves estimated at Rs..... in the year owing to out-break of fire at its godown on the day of

AND WHEREAS the joint family could not also pay its statutory dues and other capital and revenue liabilities of the said business aggregating to Rs..... for the years. and also its business debts estimated at Rs.....

AND WHEREAS the said joint family has at present no funds nor any other means or resources to make up the deficit as regards to the capita loss and to pay the liability of the family as regards the said statutory dues except by sale of one of its properties.

AND WHEREAS in the circumstances aforesaid the said AB for self and as Karta of the said AB-HUF has by an agreement dated..... agreed with the said CD for sale of the property fully mentioned and described in the Schedule hereto at and for the sum of Rs.....

AND WHEREAS such sale is in the interest and for the benefit of the said joint family and its estate. AND WHEREAS the said CD after bona fide and independent enquiry is satisfied about the present financial condition of the family and in particular the debts and liabilities as aforesaid and the reasons for, circumstances behind and the necessary for the sale.

NOW THIS, INDENTURE WITNESSETHAS UNDER:

1. That in pursuance of the said agreement and in consideration of the sum of Rs..... paid by the said CD to the said AB simultaneously with the execution of these presents he, the said AB do hereby and hereunder for self and as Karta for and representing all other coparceners of the said joint family do hereby grant, sell, convey, transfer, assign and assure the said property together with all houses, buildings, fixtures etc., unto and to the use of the said CD absolutely and forever.
2. The Property sold is free from all encumbrances, charges, mortgages. Liens, prior agreement to sell, court proceedings, gift, of any nature whatsoever.
3. That from the date of execution of this Sale deed the CD becomes the sole and absolute owner of the said property under sale and shall be at full liberty to use, enjoy and utilize the said property under sale and also have right, power, absolute authority and be fully competent to sell or dispose off the same to anyone in any manner as deem fit.
4. That after the execution of this Sale deed neither the AB and othe coparceners nor their legal heirs, may raise any objection or create any charge or demand any share in the said property under sale here after.

IN WITNESS WHEREOF the parties hereto have signed this Deed of Sale on the date mentioned against their respective Signatures.

Witness:

Signed, sealed and delivered

AB.....

CD.....

Answer 1(d)

IN THE HON'BLE SUPREME COURT OF INDIA

IN THE MATTER OF:

.....Petitioner

Versus

.....Respondents

Affidavit

I..... in my capacity as a Managing Director of the Company, the petitioner, in the Special Leave Petition titled as above do hereby solemnly affirm and state as under:

1. That I am the Managing Director of the Petitioner Company and I am fully aware of and conversant with the relevant facts concerning the matter in issue in this petition.
2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.
3. That no special Leave Petition has been filed in the above matter earlier by me in the Hon'ble Supreme Court for similar relief.
4. That no relevant fact has been concealed or kept back in the Special Leave Petition.

Deponent

Verification

I, Deponent above named further solemnly affirm atthis the day of20....that the above averments are true and correct. Nothing has been kept back and have been concealed.

Deponent

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

Answer the following :

- (a) *Discuss the stages of Criminal Trial in Summons Cases.*
- (b) *Elucidate eight principles which a draftsman should keep in mind while drafting.*
- (c) *'Assignment of Patent is not valid until it is in writing', comment and discuss the relevant provisions. Is registration of assignment of patent is compulsory ?*
- (d) *'A Company Secretary should not render any fraudulent or misleading opinion'. Discuss. (4 marks each)*

OR (Alternate question to Q. No. 2)**Question 2A**

- (i) Write a note on testimonium clause of a Deed.
- (ii) What are the considerations to be taken into account in the case of the words used in an agreement are found ambiguous ?
- (iii) 'Objects of Trust must be lawful. Trust whose purpose is unlawful is void.' Discuss.
- (iv) Discuss the salient points to be kept in mind as a Company Secretary while drafting a contract of Appointment of a person as Managing Director of the Company. (4 marks each)

Answer 2(a)

Stages of Criminal Trials in Summons Case are as under:

Pre-trial : In the pre-trial stage, the process such as filing of FIR and investigation is conducted.

Charges : In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate would orally state the facts of the offense he is answerable.

Plea of guilty : The Magistrate asked the accused if he pleads guilty or has any defence to support his case. If the accused plead guilty, the Magistrate records the statement in words of the accused as far as possible and may convict him on his discretion.

Plea of guilty and absence of accused : In cases of petty offences, where the accused want to plead the guilty without appearing before the Court, the accused should send a letter containing an acceptance of guilt and the amount of fine provided in summons. The Magistrate can on his discretion convict the accused.

Prosecution and defence evidence : If the accused does not plead guilty, then the process of trial starts. The prosecution and the defence are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.

Judgement : When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the Judge. If the accused is acquitted, the prosecution has the right to appeal. The right to appeal is also extended to the accused.

Answer 2(b)

The draftsman should keep in mind the following Principles of drafting:

- (i) As far as possible the documents should be self-explanatory.
- (ii) The draftsman should begin by satisfying himself that he appreciates what he means to say in the document.
- (iii) The well drafted document should be clear to any person who has competent knowledge of the subject matter.

- (iv) The draft must be readily intelligible to a layman.
- (v) The documents may not be perfect because it says too much or too little or is ambiguous or contains one or more of the facts because it has to be applied in circumstances which the draftsman never contemplated. This should be avoided.
- (vi) Nothing is to be omitted or admitted at random on the document that is to say negative statement should generally be avoided.
- (vii) Use of judicial language should be made.
- (viii) The text of documents should be divided into paragraphs containing the relevant facts.
- (ix) Schedule should be provided in the documents. Whether any portion of the document should be put into the schedule(s) will depend on the circumstances.
- (x) The active voice is preferable to the passive voice, unless the passive voice in a particular connection make the meaning more clear.

Answer 2(c)

According to Section 68 of the Patents Act, 1970, assignments, etc., not to be valid unless in writing and duly executed. An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed.

An assignment of a patent or of a share of a patent, a mortgage, licence or the creation of any other interest in the patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and the application for registration of such document is filed in the prescribed manner with the Controller within six months from the execution of the document or within such period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows.

In view of the above, registration of assignment is compulsory.

Answer 2(d)

A Company Secretary should not render opinion that the he knows would be misleading. In addition, he/she should not render an opinion based on factual assumptions if he/she knows that the assumptions are false or that reliance on those facts is unreasonable. In addition, he/she should not be asked to render opinions on matters that are outside his or her area of professional competence. Where an opinion is appropriate but beyond the competence of the opinion giver, then the opinion giver should associate competent counsel to render the opinion. In no event should a Company Secretary be asked for opinions that are beyond the professional competence.

Answer 2A(i)

Testimonium is the clause in the last part of the deed. This signifies that the parties to the document have signed the deed. This clause marks the close of the deed and is an essential part of the deed.

The usual form of Testimonium clause is as under:

“In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written”. This is the usual English form of testimonium clause. In India, except in the case of Companies and corporations seals are not used and in those cases testimonium clause read as under:

“IN WITNESS WHEREOF parties hereto have signed this DEED on the date above written.”

Thus, testimonium clause can be worded according to the status and delegation of the executants. Moreover, this clause in the deed presupposes that the proper parties are signing the document.

Answer 2A(ii)

The cardinal rule is that clear and unambiguous words prevail over any hypothetical considerations or supposed intention. But if the words used are not clear and unambiguous the intention will have to be ascertained. In other words, if the intention of the parties can be gathered from the words and expressions used in a deed, such an intention does not require to be determined in any other manner except giving the words their normal or natural and primary meanings. It is the dominant intention of the document as disclosed from its whole tenor that must guide the construction of its contents. In case the terms are not unambiguous it is legitimate to take into account the surrounding circumstances for ascertaining the intention of the parties. The social milieu, the actual life situations and the prevailing conditions of the country are also relevant circumstances.

Answer 2A(iii)

Section 4 of the Indian Trusts Act, 1882 provides that the object of the trust must be lawful. The purpose of the trust is lawful unless it is:

- (i) forbidden by law, or
- (ii) is of such a nature that, if permitted, it would defeat the provisions of any law, or
- (iii) is fraudulent, or
- (iv) involves or implies injury to the person or property of another, or
- (v) the Court regards it as immoral or opposed to the public policy.

Every trust of which the purpose is unlawful is void and where a trust is created for two purposes, of which one is lawful and the other is unlawful, and the two purposes cannot be separated, the whole trust is void.

Examples of illegal trust are: trust in restraint of marriage, trust creating perpetuity by settlement of properties intended for maintenance of persons born or to be born indefinitely. Trust to defraud a creditor.

Answer 2A(iv)

While drafting a Contract of appointment of a person as a Managing Director following points need to be kept in mind:

- The person who is being appointed as Managing Director should be a Director of the Company, and

- He must be entrusted with substantial power of the Management.

Usually the Articles of Association of Companies empower the Board of Directors to appoint one or more of the Directors as Managing Director(s) and fix their remuneration subject to the provisions of section 196, 197, 198, 199, 200 and other applicable provisions of the Companies Act, 2013 and rules made thereunder. The Board of Directors critically examine the draft agreement for appointment of Managing Director and after having approved the same with or without modification, authorises one of the Director to sign and execute the same on behalf of the Company. It should, therefore, be made sure that the person executing the agreement on behalf of the Company should be authorized by the Board of Directors.

Attempt all parts of either Q. No. 3 or Q. No. 3A

Question 3

Explain the following:

- Delegation of powers by Board of Directors.*
- Is attestation, registration and stamping is necessary for an Agreement ?*
- Main characteristics of the Equitable Mortgage.*
- Facta probanda and Facta probantia.* *(4 marks each)*

OR (Alternate question to Q. No. 3)

Question 3A

Distinguish between the following:

- Appeal and Review.*
- Conveyance and Contract.*
- Power of Attorney and Letter of Authority.*
- Memorandum of Association and Articles of Association. (any four attributes of distinction).* *(4 marks each)*

Answer 3(a)

Section 179(3) of the Companies Act, 2013 provides that the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely: —

- to make calls on shareholders in respect of money unpaid on their shares;
- to authorise buy-back of securities under section 68;
- to issue securities, including debentures, whether in or outside India;
- to borrow monies;
- to invest the funds of the company;
- to grant loans or give guarantee or provide security in respect of loans;
- to approve financial statement and the Board's report;

- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;
- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of Directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:

Answer 3(b)

Attestation : It is not necessary for an agreement to be attested by any witness. But agreements are usually attested by one witness. Where registration is desired the agreement should be attested by two witnesses.

Registration : Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registerable. Only agreements creating an interest in immovable property worth more than Rs. 100 are required by law to be registered.

Stamp Duty : For the purpose of stamp duty, agreements are covered by Article 5 of schedule I to the Indian Stamp Act, 1899. The stamp duty for different kinds of agreements varies from State to State. While drafting an agreement draftsman should ascertain the proper stamp duty having regard to the changes made in the Stamp Act in the State where the agreement is executed.

Answer 3(c)

The main characteristics of the Equitable Mortgage are as under:

1. Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered.
2. It is not necessary for creation of mortgage that the property be located in the specified town or the company making deposit should have its registered office in that town.
3. This deposit can be made by the Company through its nominee or agent duly authorized.
4. Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor.
5. Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage.

Answer 3(d)

The material facts on which the party pleading relies for his claim or defence are called *facta probanda* and the facts by means of which the material facts are to be proved are called *facta probantia*.

- (a) *Facta probanda* : The facts which are to be proved. These are the facts on which a party relies and are ought to be stated in the pleading.
- (b) *Facta probantia* : These are the facts which are not to be stated because by their means *facta probanda* are proved. Thus these facts are the evidence as to the existence of certain facts on which the party relies for his cause of action or defence as the case may be.

Facta probanda are not facts in issue, but they are relevant in that at the trial their proof will establish the existence of facts in issue. No doubt in certain cases both the facts in issue and these facts in evidence are mixed up and are almost indistinguishable. They should not be stated in the pleading.

For example, A was married to B in accordance with a particular custom governing marriage between A and B. In this case the custom” is both a fact in issue and a fact in evidence, because once the custom is proved, then the marriage also, stands proved. In the pleading it is sufficient to allege that the marriage was celebrated in accordance with a particular custom. At the evidence stage, it will be sufficient to refer to the manual of customary law which records customs.

Answer 3A(i)

An appeal is a statutory right. An appeal is a plea for the matter to be judged again. An appeal is a resort to a higher court, or to a court to review the decision of a lower court, or to a court to review the order of an administrative agency. The decision of the lower court as well as the administrative agency can stay the same or the Higher Court can change it.

A review is not a statutory right of the people and is at the discretion of the Court, which can reject the request. A review is applied for at the same Court where the original decision was made and is a request to reconsider the legality of the ruling. A review is based on procedural irregularity, impropriety, irrationality and illegality.

Appeal is a statutory right of the individual whereas review is a discretionary right of the court.

An appeal is a request to change or modify the decision or verdict whereas review is a request to look into the legality of the ruling.

Answer 3A(ii)

Conveyance is not a Contract. The Distinction between conveyance and contract is quite clear. Contract remain to be performed and its specific performance may be sought but conveyance passes on the title of property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right. There may be cases where the transaction may pertain both contract as well as conveyance. For example, lease, whereby obligation is created while possession of the property is transferred by lessor to lessee.

More so, contracts are governed by provisions of the Indian Contract Act, 1872 whereas the cases of transfer of immovable property are governed by the Transfer of property Act, 1882 in India. A mere contract or sale would not amount to actual transfer of interest in the property but the deed of mortgage or sale would operate as conveyance of such interest. In other words, once the document transferring immovable property has been completed and registered as required by law, the transaction become conveyance. Any such transaction would be governed under the provisions of the Transfer of Property Act, 1882.

Answer 3A(iii)

According to section 2(21) of the Indian Stamp Act, 1899, "Power of Attorney" includes any instrument (not chargeable with fee under the law relating to Court fees for the time being in force) empowering a specified person to act for and in the name of the person executing it. It is governed by the provisions of the Power of Attorney Act, 1882. The law pertaining to power of attorney are based on the principles of agency as contained in the Contract Act, 1872. A Power of attorney can either be general or specific.

A letter of authority is nothing but a power of attorney. They are executed on plain paper and not on stamp paper. Usually, this is issued for collection of some documents, papers, dividend, interest etc., by one person on behalf of another. By and large, the law relating to power of attorney will also apply to the letter of authority.

Answer 3A(iv)

Difference between Memorandum of Association and Articles of Association:

1. The Memorandum contains the fundamental conditions upon which alone Company is allowed to be incorporated. The Articles of Association are the internal regulations of the Company.
2. Memorandum lays down the area beyond which the activities of the Company cannot go. Articles provide for regulation inside that area. Thus, Memorandum lays down the parameters for the Articles.
3. Memorandum of Association can be altered only under certain circumstances and in the manner provided in the Act but Articles can be altered by the members by passing a Special Resolution only.
4. Memorandum of Association cannot include any clause contrary to the provisions of the Companies Act. The Articles of Association are subsidiary both to the Companies Act and the Memorandum of Association

Question 4

In the light of Judicial pronouncement(s) discuss the following:

- (a) *Stamp Duty and Registration of Gift Deed.*
- (b) *Surrender of Lease is not a transfer.*
- (c) *Enforceability of Shareholders Agreement in India.*
- (d) *There is no particular format for making Complaint.* (4 marks each)

Answer 4(a)

The value of the property gifted must be set forth in the deed of gift. Stamp duty is payable on gift deed as on the conveyance as per amount of value of the property as mentioned in the Deed or as per market value of such property whichever is greater as per Article 23 of the Indian Stamp Act, 1899. If the value of the property is intentionally omitted is under-valued with a view to defraud the revenue, prosecution may be invited under section 64 of Indian Stamp Act (Muhamad Muzaffar Ali ILR 44 Allahabad 339 FB). Further, penalty provisions under Gift-tax Act may also be attracted.

Gift deed of immovable property is compulsorily registrable as per section 123 of the Transfer of Property Act and Section 17(1)(a) of the Registration Act, 1908, whatever may be the values.

Answer 4(b)

Surrender of lease is not transfer but mere yielding up by the lessee of his interest under the lease to the lessor by mutual agreement. It is in effect merger of the estate of the lessee into reversion. It is not a transfer or an assignment of any right or estate within the meaning of Section 5 of the Transfer of Property Act (*Makhanlal v. Nagendranath*, (1993) 60 Cal 379). A surrender must be made with clear intention to yield up as mere non-payment of rent for years together or abandonment of the site does not amount to surrender. (*Misri Lal v. Durga Narain*, AIR 1940 All. 317). A Requisition Order by the Government does not amount to any surrender (*Torabai v. Padan Chand*, 62 CWN 176). It may be expressed or implied. A surrender may be oral, if accompanied by delivery of possession.

Answer 4(c)

Shareholders' agreements are quite common in business. In India shareholder's agreement gained popularity and currency only lately with bloom in newer forms of business. Shareholders agreement is a contractual arrangement between the Shareholders and of a Company describing how the Company should be operated and the defining inter-se shareholders' rights and obligations. A Shareholders agreement creates personal obligation between the members signing such agreement. However, such agreement does not become a regulation of the Company in the way the provisions of Articles are. Though the international view on enforceability of shareholders' agreement are split but to a large extent courts are inclined towards favouring Shareholder's agreement as long as they are not found to be detrimental to the minority stakeholder's rights. The US Courts have largely accepted shareholder agreements. [*Blount V. Taft* 246 S.E. 2d 763 at 769 (1978)].

While shareholders agreements are enforceable in England regardless of whether they have been incorporated in the articles of association of the Company, in India courts have either refused to recognize clauses in shareholders' agreement or, even when consistent with company legislation, enforced such clause only if they have been incorporated in the article of association of the Company. There is a series of rulings where the courts have upheld that in case of any conflict between the Articles and Shareholder's agreement, the former will always prevail.

Answer 4(d)

There is no particular form for narration of the incident in the body of complaint. It is sufficient if it contains a valid and correct description how and in what manner the offence was committed. Only facts which are connected with the incident have to be stated in the Complaint. Facts which can prove involvement of the accused in the offence should also be mentioned. The petition of complaint must disclose the names of the witnesses of the offence. A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprit be suitably dealt with is a complaint (*Mohd. Yousuf v. Afaq Jahan*, AIR 2006 SC 705). Complaint need not be presented in person. A letter to a Magistrate stating facts constituting an offence and requesting to take action is a complaint. Police report is expressly excluded from the definition of complaint but the explanation to section 2(d) of the Code of Criminal Procedure, 1973 makes it clear that such report shall be deemed to be a complaint where after investigation it discloses commission of a non-cognizable offence. Police report means a report forwarded by police officer to a Magistrate section 173(2) of the Code of Criminal Procedure, 1973 .

Question 5

- (a) *XYZ Ltd wishes to shift its registered office from Maharashtra to Rajasthan. Draft a notice to convene Extraordinary General Meeting for this purpose along with Note and Explanatory Statement. Assume other facts, if required.*
- (b) *Mr. X is an owner of a Bungalow situated at Jaipur. He has given the said Bungalow on rent to Mr. A at a monthly rent of 50,000. As per the rent agreement tenant has to pay rent before 10th of every month. Failure to pay rent in time for continuous two months will empower the owner to force the tenant to vacate the Bungalow before the expiry of agreement. Tenant Mr. A is not paying rent for last three months. Notice have been served on the tenant Mr. A to vacate the Bungalow and pay the rent due to him. However, no response in this regard is received by the owner. Now Mr. X, the owner of the Bungalow wants to file the suit for Ejectment and recovery of arrear of rent.*

Draft appropriate suit to be filed before the Court of Small Causes. Assume other necessary facts, if required.

(8 marks each)

Answer 5(a)**Notice of Extra - Ordinary General Meeting**

Name of the Company

Registered Address

CIN : Email : Telephone :

Website :

Notice:

NOTICE is hereby given that an Extra-Ordinary General Meeting of the Members of

XYZ Ltd. will be held on..... (day),(date) atam/pm at(address) to transact the following Special Business:

Shifting of Registered Office:

To consider and, if thought fit, to pass with or without modification the following Resolution as a Special Resolution:

“RESOLVED that pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013 and subject to the approval of the Regional Director, the Registered Office of the Company be shifted from Maharashtra to Rajasthan.

RESOLVED FURTHER that clause-II of the Memorandum of Association of the Company be altered by substitution of the words in place of the words

RESOLVED FURTHER that the Board of Directors of the Company be and is hereby authorized to file the necessary petition(s) before the Regional Director,..... Region for confirmation of the alteration of Clause-II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith, including compliance of directions, if any, of the concerned authorities."

By Order of the Board of Directors

For.....

.....(Signature)

Place:.....

Director/Company Secretary

Date:.....

DIN/ACS/FCS No.

Notes:

1. The explanatory statement setting out the material facts pursuant to Section 102 of the Companies Act, 2013, relating the special business to be transacted at the meeting is annexed.
2. All members are entitled to attend and vote at the meeting is entitled to appoint proxy to attend and, on a poll, to vote instead of himself and the proxy need not be a member of the Company,
3. Proxies, in order to be effective, must be received in the enclosed Proxy form at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.
4. In compliance with provisions of section 108 of the Companies Act, 2013 and rule 20 of the Companies (Management and Administration) Rules, 2014, the

Company is pleased to provide members the facility of exercising their right to vote electronically on the item mentioned in this Notice. The Company has appointed Mr.....as scrutinizer for conducting the e-voting process in fair and transparent manner.

EXPLANATORY STATEMENT

As required by section 102 of the Companies Act, 2013, the explanatory statement sets out all material facts relating to business mentioned in item no 1 of the accompanying notice dated.....

Item No 1.

The registered office of the Company has been situated in the State of Maharashtra since the incorporation of the Company. The business of the Company has increased manifold since incorporation particularly in the state of Rajasthan. Directors of the Company too are belonging and residing in Rajasthan. It is expected that such growth trend of business in the State of Rajasthan will be maintained in future.

As the growth of Company's activities are now emerging in the state of Rajasthan, The Board of Directors are of the opinion that it will be more convenient and economical for the Company to manage the activities efficiently by shifting the Registered office in the state of Rajasthan.

A copy of Memorandum of Association is available for inspection at the Registered Office the Company on all working days of the Company between 11.00 a.m. to 1.00 p.m. up to the date of meeting and at the venue of the meeting for the duration of the Meeting.

The Board commends the passing of the resolution as a Special Resolution. None of the Directors and Key Managerial Personnel of the Company or their relatives is concerned or interested in the proposed Resolution.

Answer 5(b)

Suit for Ejectment and Arrears of Rent

In the Court of Small cause, Jaipur

Suit no..... of.....

'X' S/o..... agedyears, resident of *Plaintiff*

Versus

'A' S/o agedyears, resident of *Defendant*

Suit for Ejectment and Arrears of Rent

The above named Plaintiff states as follows:

- 1. The Plaintiff is the owner of the Bunglow situated at Jaipur, Rajasthan and bounded as below:

Boundaries of the Houses

* * * * *

- 2. That under the agreement made on20.....the defendant became a tenant to the plaintiff in respect of the Bunglow described in

paragraph 1 above at the rent of Rs.50000/- per month and has been in occupation of the said house as such tenant since the above mentioned date of the agreement.

3. That the defendant has not paid the rent for last three months.
4. That the plaintiff is duly determined the said tenancy by serving on the defendant, by registered post on20.....a notice to quit the said bungalow within 30 days of the receipt of the notice and pay the entire arrears of rent. That the said notice was served upon the defendant on , yet the defendant has not vacated the house, nor has he paid the said arrears of rent or any part thereof. Hence the defendant is liable to Ejectment.
5. That now a total sum of Rupees..... is due to plaintiff as against the defendant i.e. Rs..... on account of arrear of rent and Rs.... on account of damages for use of and occupation of Bungalow from till the date of filing of this suit.
6. That the cause of action for the said arose on, when the period stipulated in the said notice expired.
7. That the defendant resides at within the jurisdiction of the Court.
8. That the valuation of the suit for the purpose of jurisdiction and payment of court fee of Rs..... has been paid.

Therefore, the Plaintiff Claims:

- a) That the decree for Ejectment of the defendant from the bungalow described in paragraph 1 above be passed in favour of plaintiff.
- b) That the decree of Rupees.....; on account of arrear of rent be passed in favour of plaintiff.
- c) That the decree of Rupees.....; on account of damages for use and occupation at the rate of Rs..... Per month be passed in favour of the plaintiff as against the defendant.
- d) That a decree for further damages for use and occupation at the aforesaid rate till the Ejectment of the defendant be passed in favour of the plaintiff as against the defendant on payment of additional court fee.
- e) That cost of the suit be allowed to the plaintiff.

Place:

AB Plaintiff

Date:

through Advocate

Verification

I, AB, the aforesaid plaintiff, do hereby verify the contents of paragraphs and..... of the above plaint are true to my personal knowledge and the contents of the paragraphs..... and..... I believe to be true on information received.

Signed and verified this.....day of20.....at

AB

Plaintiff

Question 6

- (a) *Discuss Engrossment and Stamping of a Deed.*
- (b) *Explain Interlocutory Proceedings and Interlocutory Orders.*
- (c) *Draft a Specimen of Revocation of Trusts. Assume facts.*
- (d) *'Opinions considered inappropriate due to certain reasons'. Explain with illustrations. (4 marks each)*

Answer 6(a)

The draft of the document is required to be approved by the parties. In case of Companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the Board for this purpose by passing requisite resolution approving and authorizing of its execution. The document after approval is engrossed i.e. copied fair on the non-judicial stamp paper of appropriate value as may be chargeable as per the Indian Stamp Act. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution.

If a document is not properly stamped, it is rendered inadmissible in evidence nor will it be registered with Registrar of Assurances.

Answer 6(b)

Interlocutory proceedings are court hearings that focus on a specific matter related to a trial during the life cycle of the case. The period involved between initiation and disposal of litigation is substantially long. The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as "status quo". It means preserving existing state of things on a given day. In that context interlocutory orders are provisional, interim, and temporary as compared to final. It does not finally determine cause of action but only decides some intervening matter pertaining to the cause. The procedure followed in the court is that the separate application for interim relief is moved at the time of filing of suit or at a subsequent stage. The court either grants the order ex-parte or issues urgent show cause notice and the reply is to be filed within short time. One of the most common interlocutory reliefs sought is that of 'injunction'.

Section 397(2) of the Code of Criminal Procedure bars the exercise of revision power in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. The statutory bar on the power of revision in relation to interlocutory orders is intended with the object of eliminating inordinate delay in the disposal of criminal cases and to ensure expeditious trials. What is an interlocutory order, has always been a debatable issue, more so, because it has not been defined anywhere in the Code of Criminal Procedure.

An order which is not final but merely provisional or temporary is generally called an interlocutory order. But the true test of determining whether or not, an order is interlocutory in nature is whether the order in question finally disposes of the rights of the parties or

leaves the case still alive and undecided. For instance, grant or cancellation of bail, adjournment of cases, etc. are interlocutory orders. The Supreme Court has, however, held that the term 'interlocutory order' as used in Section 397(2) should be given liberal construction in favour of the accused in order to ensure fairness of the trial and the revision power of the High Court or the Sessions Judge could be attracted to "intermediate' or 'quasi-final orders which are not purely interlocutory in nature.

Answer 6(c)

THIS DEED is made on the (day) of by AB etc., (hereinafter called "the Settlor") of the one part and CD etc., (hereinafter called "the Trustee") of the other part.

WHEREAS by a deed of trust dated..... the Settlor transferred his property specified therein to the Trustee upon trust to sell the same and with the proceeds of the sale to pay the debts due from the Settlor to the several creditors named in the said deed;

AND WHEREAS the trust created as aforesaid has not yet been communicated to any of the aforesaid creditors;

AND WHEREAS the Settlor now desires to revoke the said trust and to make other arrangements for the discharge of his aforesaid debts.

NOW THIS DEED WITNESSES that the settlor hereby revokes the trust created by the aforesaid deed of trust. IN WITNESS WHEREOF parties have signed this deed on the day of

Signed by.....

In the presence of

and of.....

Answer 6(d)

In a business transaction a number of opinions would be considered inappropriate because their scope is not reasonably within the competence of the opinion giver or they are not cost-justified. Examples of such opinions include the following:

- The client is qualified to do business as a foreign corporation in all jurisdictions in which its property or activities require qualification or in which the failure to qualify would have a material adverse effect on the client;
- The client is not in material violation of any central, state or local law, regulation or administrative ruling; and
- The client is not in material violation of any contract, indenture or undertaking to which it is a party or by which it may be bound.

The common characteristic of these examples is that they are essentially open-ended. Requests for opinions of this sort inherently cast into question whether the party requesting the opinion may be effectively seeking legal insurance" rather than legal "assurance". An opinion giver may properly refuse to give such opinions.

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