

Exam: S.Y.B.Com (Financial Management) Semester-IV	Dated: 26th April 2019
Subject: Corporate Law	Q.P. Code:66923

INSTRUCTION FOR EXAMINERS AND MODERATORS:

1. For all descriptive theory questions the examiner can adopt their own sanction and if possible, to give full marks, Sections must be written properly wherever required, followed by correct explanation.
2. For all questions asking definitions, there must be atleast one author's or Law definition.
3. For any query please feel free to contact:

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Q.1 A Fill in the blanks. (Any Eight)

- I Section 3 (1) (i)
- II 7
- III LLP
- IV Unlimited
- V 2002
- VI Jammu and Kashmir
- VII Trade Mark
- VIII Partnership
- IX Preliminary Contract
- X Copyright

Q.1 B State whether the following statement are true or false. (Any Seven)

- I False
- II True
- III False
- IV False
- V True
- VI False
- VII False
- VIII True
- IX False
- X True

Q.2 a. Define Company. Explain its characteristics.

Section 3 (1) (i) of the Companies Act, 1956 defines a company as "a company formed and registered under this Act or an existing company". Section 3(1) (ii) Of the act states that "an existing company means a company formed and registered under any of the previous companies laws".

According to Chief Justice Marshall of USA, "A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of law, it possesses only those properties which the character of its creation of its creation confers upon it either expressly or as incidental to its very existence".

Characteristics:

- Incorporated association
- Artificial legal person
- Separate Legal Entity

Perpetual Existence
Common Seal
Limited Liability
Etc.

b. Distinguish between private company and public company.

1. *Minimum number:* The minimum number of persons required to form a public company is 7. It is 2 in case of a private company.
2. *Maximum number:* There is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 50 in a private company.
3. *Number of directors.* A public company must have at least 3 directors whereas a private company must have at least 2 directors (Sec. 252)
4. *Restriction on appointment of directors.* In the case of a public company, the directors must file with the Register a consent to act as directors or sign an undertaking for their qualification shares. The directors of a private company need not do so (Sec 266)
5. *Restriction on invitation to subscribe for shares.* A public company invites the general public to subscribe for shares. A private company prohibits invitation to public to subscribe for its shares.
6. *Name of the Company :* In a private company, the words "Private Limited" shall be added at the end of its name.
7. *Public subscription :* A private company cannot invite the public to purchase its shares or debentures. A public company may do so.
8. *Issue of prospectus :* Unlike a public company a private company is not expected to issue a prospectus or file a statement in lieu of prospectus with the Registrar before allotting shares.
9. *Transferability of Shares.* In a public company, the shares are freely transferable (Sec. 82). In a private company the right to transfer shares is restricted by Articles.
10. *Special Privileges.* A private company enjoys some special privileges. A public company enjoys no such privileges.
11. *Quorum.* If the Articles of a company do not provide for a larger quorum. 5 members personally present in the case of a public company are quorum for a meeting of the company. It is 2 in the case of a private company (Sec. 174)
12. *Managerial remuneration.* Total managerial remuneration in a public company cannot exceed 11 per cent of the net profits (Sec. 198). No such restriction applies to a private company.
13. *Commencement of business.* A private company may commence its business immediately after obtaining a certificate of incorporation. A public company cannot commence its business until it is granted a "Certificate of Commencement of business".

OR

Q.2 c. Define Prospectus. Explain the contents of a company Prospectus.

Section 2(36) defines a prospectus as “any document described as issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting orders from the public for the subscription or purchase of any share in, or debentures of, a body corporate”.

Brief Explanation of the following Schedule is required:

Part I of Schedule II

Part II of Schedule II

I General Information

II Financial Information

Part III of Schedule II

Q.3 a. Discuss the rights and duties of a partner in a partnership firm.

Rights of Partner:

Section 12(a): Right to take part in the conduct of the Business

Section 12(c): Right to be consulted

Section 12(d): Right of access to books

Section 13(a): Right to remuneration

Section 13(b): Right to share profits

Section 13(c): Interest on capital

Section 13(d): Interest on advances

Section 13(e): Right to be indemnified

Section 31: Right to stop the admission of a new partner

Section 32(1): Right to retire

Section 33: Right not to be expelled

Section 36(1): Right of outgoing partner to carry on a competing business

Section 37: Right of outgoing partner to share subsequent profits

Section 40: Right to dissolve the firm

Duties of a Partner

Section 9: General duties of a partner

Section 10: To indemnify for fraud

Section 13(f): To indemnify for wilful neglect

Section 12(b) & Section 13(a): To attend duties diligently without remuneration

Section 13(b): To share losses

Section 16(a): To account for any profit

Section 16(b): To account and pay for profits of competing for business

b. Explain the modes of dissolution of partnership firm. (Brief Explanation of each of modes)

(i) Dissolution by Agreement

(ii) Compulsory dissolution

(iii) Dissolution by Court

OR

Q.3 c. Define LLP. Explain the procedure of conversion of LLP into Company.

(Any Two definitions of LLP)

SN	Basis of difference	Explanation
1.	<i>Forms</i>	Form URC-1, INC-1, INC-22, DIR-3, DIR-12
2.	<i>Pre-conditions</i>	<p><i>Pre-conditions to be met before conversion:-</i></p> <p>Consent required from all the secured creditors for such conversion</p> <p>Minimum 7 partners are required to be exist in the LLP</p> <p>Newspaper advertisement to be published in a National and local daily newspaper</p> <p>NOC to be taken from the Registrar where the LLP is registered</p> <p>Meeting to be held of the Partners where majority of Partners have given their consent for such conversion</p>
3.	<i>Procedure</i>	<i>Procedure for the Conversion of LLP into Company</i>
3.1	<i>Application for DIN and DSC</i>	<p>Authorising one or more partner to take necessary steps and for the execution of papers, deeds, documents etc. pursuant to registration of the LLP as a Company.</p> <p>For DSC Application <i>Documents Required</i> Self Attested Id Proof & Address Proof, Photograph</p> <p>For DIN Application DIN by the proposed director is a prerequisite to become a director in the company. To apply for DIN, you have to file Form DIR-3 with the following attachments:- Attachments for DIR-3 Self Attested ID Proof & Address Proof Photograph Education Qualification of the Applicant</p>
3.2	<i>Name approval</i>	<p>First of all, the Name availability is to be checked from the MCA.</p> <p>Then proposed name is to be applied for the name by filing Form INC-1. Once the name has been approved, then it is valid for next 60 days.</p> <p>Subscriber to MOA shall be the applicant for the availability of Name application.</p>

3.3	<i>Preparation and filing of Form URC-1</i>	<p>Following documents are attached with the form URC-1: A list which contains the names, address, and occupations of all persons named therein as members with details of shares held by them respectively</p> <ul style="list-style-type: none"> • Details about the proposed directors of the company which include their names including surnames, DIN, residential address, and their interest in other firms or bodies corporate along with their consent to act as director of the company; • An affidavit by each of the persons proposed as first directors to state that he is not disqualified to be a director under section 164(1); • Partners details of the LLP containing the name and address of the Partners; • A copy of the LLP agreement and certificate of registration duly verified by at least two designated partners; • A statement showing the particulars of the share capital i.e. the nominal share capital of the company and number of shares into which it is divided ; no. of shares taken and amount paid on each share; • Written Consent OR No objection certificate from all the secured creditors of the LLP; • Certificate from a Company Secretary in Practice/Cost Accountant in Practice/Chartered Accountant in Practice certifying the compliance with all the provisions of Stamp Act, to the extent applicable; • An affidavit duly notarised, from all the members or partners providing that in the event of registration as a company under Part I Chapter XXI of the Companies Act, 2013, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for this dissolution as Limited Liability Partnership • Declaration of two or more directors verifying the particulars of all members/partners
3.4	<i>Filing of MOA & AOA</i>	<p>After getting approved of the form URC-1, file MOA and AOA with concerned ROC and the number of shares to be subscribed by each. Following forms are required to be filed with ROC:</p> <ul style="list-style-type: none"> • E-form INC-7: (Company Incorporation Application) • E-form INC-22: (Notice of situation of Registered Office) • E-form DIR-12: (appointment of directors of the proposed company)
3.5	Certificate of Incorporation	<p>Once all the clarifications are provided, the certificate of the incorporation is issued by the registrar of the companies which is the conclusive evidence of company incorporation.</p>

Q.4 a. Define Consumer. Explain the differences between District, State and National Redressal Agencies.

(Any two definition of Consumer)

Basis of Difference	District	State Commission	National Commission
Composition	It consists of a president and two other members.	It consists of a president and two other members.	It consists of a president and four other members.
Who can be a President	A working or retired judge of District Court.	A working or retired judge of High Court.	A working or retired judge of Supreme Court.
Appointment of President	The president is appointed by the state government on the recommendation of the selection committee.	The president is appointed by the state government after consultation with the chief justice of the High Court.	The president is appointed by the central government after consultation with the chief justice of India,
Jurisdiction	In 1986, it had jurisdiction to entertain complaints where the value of goods or services does not exceed Rs 5, 00,000 but now the limit is raised to 20 lakhs.	In 1986, it had jurisdiction to entertain complaints when the value of goods or services exceeds Rs 5,00,000 and does not exceed Rs 20,00,000 but now it is raised to more than Rs 20,00,000 and up to Rs1 crore.	In 1986, it had jurisdiction to entertain complaints where the value of goods or services exceeds Rs 20 lakhs but now the limit is raised and it entertains the complaints of goods or services where the value exceeds Rs 1 crore.
Appeal against orders	Any person who is aggrieved by the order of District Forum can appeal against such order to State Commission within 30 days and by depositing Rs 25000 or 50% of the penalty amount whichever is less.	Any person who is aggrieved by the order of State Commission can appeal against such order to National Commission within 30 days and by depositing Rs 35000 or 50% of penalty amount whichever is less.	Any person who is aggrieved by the order of the National Commission can appeal against such order to Supreme Court within 30 days and by depositing 50% of penalty amount but only cases where value of goods or services exceeds Rs 1 crore can file appeal in Supreme Court.

b. Explain the silent features of Competition Commission of India.

1. Prohibition of certain agreements, which are considered to be anticompetitive in nature. Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti- competitive if they cause or are likely to cause

an appreciable adverse effect on competition within India.

2. Prohibition of Abuse of dominant position- If an enterprise by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market access or through in any other mode are prohibited.

3. Regulation of combinations which cause or are likely to cause an appreciable adverse affect on competition within the relevant market in India is also considered to be void.

4. Entrust Competition Commission of India the responsibility of undertaking competition advocacy, awareness and training about competition issues.

5. Anti Agreements

6. Types of agreement

7. Abuse of dominant position

8. Combinations, etc.

OR

Q.4 c. Explain the various unfair trade practices found in businesses in India.

"unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;—

1. the practice of making any statement, whether orally or in writing or by visible representation which,—

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof; Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or

services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Q.5 I Explain IPR in India in detail.

A

Historically the first system of protection of intellectual property came in the form of (Venetian Ordinance) in 1485. This was followed by Statute of Monopolies in England in 1623, which extended patent rights for Technology Inventions. In the United States, patent laws were introduced in 1760. Most European countries developed their Patent Laws between 1880 to 1889. In India Patent Act was introduced in the year 1856 which remained in force for over 50 years, which was subsequently modified and amended and was called "The Indian Patents and Designs Act, 1911".

After Independence a comprehensive bill on patent rights was enacted in the year 1970 and was called "The Patents Act, 1970". Specific statutes protected only certain type of Intellectual output; till recently only four forms were protected. The protection was in the form of grant of copyrights, patents, designs and trademarks. In India, copyrights were regulated under the Copyright Act, 1957; patents under Patents Act, 1970; trademarks under Trade and Merchandise Marks Act 1958; and designs under Designs Act, 1911. With the establishment of WTO and India being signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), several new legislations were passed for the protection of intellectual property rights to meet the international obligations. These included: Trade Marks, called the Trade Mark Act, 1999; Designs Act, 1911 was replaced by the Designs Act, 2000; the Copyright Act, 1957 amended a number of times, the latest is called Copyright (Amendment) Act, 2012; and the latest amendments made to the Patents Act, 1970 in 2005. Besides, new legislations on geographical indications and plant varieties were also enacted. These are called Geographical Indications of Goods (Registration and Protection) Act, 1999, and Protection of Plant Varieties and Farmers' Rights Act, 2001 respectively. Over the past fifteen years, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy. In 1990s, many countries unilaterally strengthened their laws and regulations in this area, and many others were poised to do likewise. At the multilateral level, the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization elevates the protection and enforcement of IPRs to the level of solemn international commitment. It is strongly felt that under the global competitive environment, stronger IPR protection increases incentives for innovation and raises returns to international technology transfer.

II Explain the rights of copyright holder.

Rights of Copyright holder: Under the Copyright Act, the owner has certain exclusive rights to control the use of their copyright material. The rights differ according to the type of work protected.

a. Literary, dramatic and musical works

The copyright owner has the right to:

- reproduce the work in material form (eg photocopy or scan the work)
- publish the work (supply copies to the public)
- communicate the work to the public (by email, post work on intranet or Internet, make

available online or to include the work on free-to-air or subscription TV

- perform the work in public
- make an adaptation of the work (eg writing a screenplay based on a novel, or a new arrangement of a song)

b. Artistic works

The copyright owner has the right to:

- reproduce the work in material form (ie to make a copy of the artwork such as reproductions on postcards)
- publish the work (ie supply copies to the public; eg offer postcards for sale)
- communicate the work to the public (by email, posting it on intranet or Internet or including the work on free-to-air or subscription TV)

Back

to

top

c. Films

The copyright owner has the right to:

- make a copy of the film (eg to make a video or DVD copies)
- show the film to the public (eg to show the film at a cinema)
- communicate the film to the public (eg to show the film on free-to-air or subscription TV or to make the film available online)

d. Sound Recordings

The copyright owner has the right to:

- make a copy of the sound recording (eg to make cassettes or CDs from the master)
- play the recording in public (eg to play the recording in a shop as background music)
- communicate the recording to the public (eg to make the recording available online)
- enter into a commercial rental arrangement (eg allowing students to borrow the sound recording on commercial terms)

e. Broadcasts

The copyright owner has the right to:

- make a film or sound recording of the broadcast
- re-broadcast the broadcast
- communicate it to the public otherwise than by broadcasting it

OR

Q.5 Write a short note on following. (Any Three)

B I Doctrine of Constructive Notice

The Memorandum and Articles of a company are registered with the Registrar. These are the public documents and open to public inspection. Every person contracting with the company must acquaint himself with their contents and must make sure that his contract is in accordance with them, otherwise he cannot sue the company. On registration the memorandum and articles of association become public documents. These documents are available for public inspection either in the office of the company or in the office of the Registrar of Companies on payment of one rupee for each inspection and can be copied (Sec. 610). Every person who deals with the company, whether shareholder or an outsider is presumed to have read the memorandum and articles of association of the company and is deemed to know the contents of these documents. Therefore, the knowledge of these documents and their contents is known as the constructive notice of memorandum and articles of association. It is presumed that persons dealing with the company have not only read these documents but they have also understood their proper meaning. Where a person deals with the company in a manner, which is inconsistent with the provisions of memorandum or articles, or enters into a transaction which is beyond the powers of the company, shall be personally liable to bear the consequences regarding such dealings.

Doctrine of constructive notice' is an unreal doctrine at least in the Indian state. It does not take notice of the realities of business life. People know a company through its officers and not through its documents. The courts in India do not seem to have taken it seriously though.

The Memorandum and Articles, on registration, assume the character of public documents. The office of the Registrar is a public office and documents registered there are open and accessible to the public at large. Therefore, every outsider dealing with the company is deemed to have notice of the contents of the Memorandum and Articles. This is known as Constructive Notice of Memorandum and Articles.

Under the doctrine of 'constructive notice', every person dealing or proposing to enter into a contract with the company is deemed to have constructive notice of the contents of its Memorandum and Articles. Whether he actually reads them or not, it is presumed that he has read these documents and has ascertained the exact powers of the company to enter into contract, the extent to which these powers have been delegated to the directors and the limitations to such powers. He is presumed not only to have read them, but to have understood them properly. Consequently, if a person enters into a contract which is ultra vires the Memorandum, or beyond the authority of the directors conferred by the Articles, then the contract becomes invalid and he cannot enforce it, notwithstanding the fact that he acted in good faith and money was applied for the purposes of the company.

II True Test of Partnership

In a partnership, all the elements mentioned above must be present. Thus, although sharing of profits is a strong evidence of the existence of partnership, yet the true test is the element of agency. For this reason, creditor who advances money on the understanding that he would have a share in the profits of business in lieu of interest is not a partner. Similarly, an employee getting a share of profits as a part of his remuneration, or the seller of goodwill of the business receiving a portion of the profits, is not a partner. In all these cases the third element of partnership, namely, agency is absent.

A creditor or an employee or the seller of the goodwill cannot bind the firm by their actions, can be called partners. Thus, in the absence of definite partnership agreement the Court, in order to dete

rmine the existence of partnership, must take into account all the relevant circumstances, such as, the conduct of parties; the mode of doing business; who controls the property; the mode of keeping accounts; the manner of distribution of profits; evidence of employees and correspondence.

To sum up, for determining the existence of partnership, the following must be considered: (1) There must be an agreement-oral or written;

(2) the agreement must be to share the profits ;

(3) those profits must arise from a business; and

(4) that business must be carried on by all or anyone of them acting for all.

III Consumer Dispute

Consumer rights are those rights belonging to a consumer that to protect him/her from being cheated by a salesman/manufacturer. The Consumer Protection Laws of India ensure fair trade and well-being of the consumer in the market. A consumer can be defined as a person who purchase goods or services for his own use and to resell or use such goods in production and manufacturing.

According to Section 2(1)(e) of the Consumer Protection Act, ' a Consumer Dispute' means a dispute where a person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. If the other party agrees to the complaint, dispute ceases.

Generally, laws in relation to product or service liability differ from nation to nation. The main objective of product or service liability is protection and safety of the consumer even if the consumer is himself responsible for his own loss. Product liability generally involves claims against companies and business organizations including retailers, marketers and manufacturers.

Often, we come across situations where a particular company make various promises in order to sell products but seldom fail to keep such promises. For example, x purchases a mixer grinder from M/s Y & Co. operating in the same town. The grinder malfunctions within the warranty period of 1 year. Both the manufacturer and the seller failed to rectify mixer grinder.

To tackle such day to day problems which a consumer suffers, Consumer Rights were created to protect the rights of the consumers. The Consumer Protection Act, 1986 was enacted to ensure speedy redressal of consumer grievances.

IV Copyright

The Copyright Act, 1957, along with the Copyright Rules, 1958, is the governing law for copyright protection in India. Copyright laws serve to create property rights for certain kinds of intellectual property, generally called works of authorship. Copyright laws protect the legal rights of the creator of an 'original work' by preventing others from reproducing the work in any other way. Modern copyright laws serve to protect a variety of intellectual property ranging from songs and jingles to computer software and proprietary databases. The intellectual property protected under copyright laws can be classified as follows:

Literary Works: These cover published works including books, articles, journals, and periodicals, as well as manuscripts. Even adaptations, translations, and abridgements are taken as original works and are protected under copyright law. Very importantly, these also cover computer programs and computer databases.

Dramatic Works: A dramatic work is a work capable of being physically performed. It need not be fixed in writing or otherwise. Some examples of dramatic works are a piece of recitation, choreographic work, elements of a dance or ballet, costumes, and scenery associated with a drama, etc.

Musical Works: A musical work means a work consisting of music and it includes graphical notation of such a work. The words in a song and the music have separate rights and the rights cannot be merged.

Artistic Works: Artistic works are works such as paintings, sculptures, drawings, engravings, photographs, and architectural works, irrespective of judgements on their artistic quality.

Cinematographic Films and Sound Recordings: Cinematography covers any method used to record moving images, including video recording and recordings of short clips using webcams and cell-phones. Soundtracks of movies also come under cinematography. Similarly, stand-alone sound recordings are also protected under copyright laws.

V Articles of Association

Articles of Association are the rules, regulations and bye-laws for governing the internal affairs of the company. They may be described as the internal regulation of the company governing its management and embodying the powers of the directors and officers of the company as well as the powers of the shareholders. They lay down the mode and the manner in which the business of the company is to be conducted.

The Articles of Association or AOA are the legal document that along with the memorandum of association serves as the constitution of the company. It is comprised of rules and regulations that govern the company's internal affairs. The articles of association are concerned with the internal management of the company and aims at carrying out the objectives as mentioned in the memorandum. These define the company's purpose and lay out the guidelines of how the task is to be carried out within the organization. The articles of association cover the information related to the board of directors, general meetings, voting rights, board proceedings, etc.

The articles of association are the contracts between the shareholders and the organization and among the shareholder themselves. This document often defines the manner in which the shares are to be issued, dividend to be paid, the financial records to be audited and the power to be given to the shareholders with the voting rights.

The articles of association can be considered as the user manual for the organization that comprises of the methodology that can be used to accomplish the company's day to day operations. This document is a binding on the shareholders and the organization and has nothing to do with the outsiders. Thus, the company is not accountable for any claims made by any external party.