

Name:	 UPES UNIVERSITY WITH A PURPOSE
Enrolment No:	

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
Online End Semester Examination, May 2021

Course: Company Law II **Semester: VI**
Program: B.A., LL.B. (Hons.), B.Com. LL.B. (Hons.), B.Sc., LL.B. (Hons.), B.B.A., LL.B. (Hons.) All Programmes
2018-23
Time 03 hrs.
Course Code: CLCC3006 **Max. Marks: 100**

SECTION A

- 1. Each Question will carry 5 Marks**
- 2. Instruction: Answer in 30-50 words**

S. No.	Questions	CO
Q 1	What is the role of Serious Fraud Investigation Office (SFIO) under the Companies Act, 2013 in protecting investor's interest?	CO2
Q2	What are the conditions subject to which a public company can accept deposits from persons other than its members under Section 76 of Companies Act, 2013?	CO1
Q3	What is the role of the CSR Committee under the Companies Act, 2013?	CO1
Q4	Can a company advance a loan represented by a book debt to its managing director pursuant to a scheme approved by the members?	CO3
Q5	What are the conditions of a fast track merger under Section 233 of the Companies Act, 2013?	CO1
Q6	What is the constitution of the winding up committee under Section 277(4) of the Companies Act, 2013?	CO2

SECTION B

- 1. Each question will carry 10 marks**
- 2. Instruction: Answer in 100-150 words**

Q 7.	<p>Discuss the constitutional challenges faced by NCLT and NCLAT in the aftermath of Justice Eradi Committee Report in 1999.</p> <p>OR</p> <p>“The constitution of the NCLT and NCLAT is a long awaited requirement of the Companies law which has been materialized now to deal with company law matters. It is a welcome move to various stakeholders in the industry. The industry expects a speedy and efficient disposal of the company law matters through NCLT and NCLAT. In addition, it will also relieve the various High Courts from burden of dealing with company law matters once the NCLT will be fully operational.” – Discuss the role of NCLT and NCLAT under the Companies Act, 2013 in the light of the statement.</p>	CO3
Q 8	What is moratorium and what is its effect on the surety of a corporate debtor under IBC 2016?	CO2
Q 9	<p>Comment on the legalities of the following fact situations with supporting legislative provisions or case-law precedents as applicable (5*2):</p> <p>(i) A company has created a fixed charge in favour of a creditor over one of its assets. The charge has not yet been registered after a year. Meanwhile, the company has sold part of this asset to a third party who bought it in good faith. On insistence by the creditor, the company is trying to get the charge registered now. How can the company do so and what effect would it have on the rights of the third party?</p>	CO4

	(ii) A floating charge has been created by a company in favour of a creditor over all the assets that it has stored in a warehouse. The company has failed to pay two consecutive instalments of the loan. The creditor has made an oral inquiry about it, but has not taken any other step so far. Meanwhile, another creditor whom the company has not paid for the last six months obtains a garnishee order over the contents of the warehouse. The company had taken the loan from the second creditor later than the one from the first creditor. Can the first creditor argue priority in terms of his charge?	
Q 10	Is there a limitation of the power of NCLT under Section 231 of the Companies Act, 2013 while it supervises the implementation of an approved scheme of arrangement under Section 230? – Justify with cases.	CO4
Q 11	What is the role of the Nomination and Remuneration Committee in determining the remuneration of directors and key managerial personnel in a company? Is the constitution of such a committee mandatory for every class of company registered under the Companies Act, 2013?	CO3
Section C		
<p>1. Each Question carries 20 Marks. Each sub question carries 10 marks. Instruction: Answer in 250-300 words</p>		
Q.12	<p>Mr. A and Company B India Private Limited entered into a joint venture agreement by which they each held 50% of equity stake in Company C. C was appointed as the primary franchisee for B for a period of 25 years and was given the right to manage all of B's franchises in north India. The agreement specified that the board of directors would have four people of which each party got to nominate two members. The board was to appoint a managing director for a period of two years. The conditions to be fulfilled for the role as per clause 7(e) was.</p> <ol style="list-style-type: none"> 1. He had to be a resident of the national capital region; and 2. He had to have at least 50% of the shares of the joint venture. <p>Clause 32 of the agreement further stated that if Mr. A was not the MD, then B would have the option to purchase his shares as per fair market value determined by the formula specified in the Joint Venture Agreement they had entered into. In 2007-08, B offered to buy his shares at \$5 million. However, on the basis of the fair market value, Mr. A demanded \$100 million. This led to Mr. A's termination (blocking of his re-appointment as Managing Director of C) in 2013 for allegations of diversion of funds and mismanagement. Mr. A disputed the facts and the basis on which such allegations were made. He stated that the actions by the nominee directors of company A to oust him as Managing Director was oppressive and done with the malafide intention of purchasing his shares in the Company. Hence, Mr. A approached the NCLT.</p> <p>Mr. A's main argument relied on the fact that there was a history of prejudice and oppression shown against him by the respondents. The respondent's main argument was that the NCLT lacked jurisdiction in the present case as it is an issue of a private contract. The respondents also further argued on facts that B (and its nominee directors) had the right to block such re-appointment as Mr. A had violated the provisions of the Joint Venture Agreement by acting against the interests of C and B. They further mentioned that the private contract provides for arbitration as the means of dispute settlement. It was found on investigation that B and C were both financially healthy companies and Mr. A continued to receive emails from B even after his termination in 2013.</p> <p>How would you decide the liabilities of parties under the Companies Act, 2013, in the light of established jurisprudence?</p> <p>OR</p> <p>(a) A meeting of the members of a company was convened under the order of the tribunal to consider a scheme of compromise and arrangement. The meeting was attended by 200 members holding 500000 shares in aggregate. 70 members holding 400000 shares voted for the scheme. The remaining members voted against the scheme. Examine with reference to the relevant provisions of the Companies Act 2013 whether the scheme is approved by the required majority.</p> <p>(b) M & S ltd was incorporated under Companies Act 2013, by 3 brothers namely A, B, C. All the three</p>	CO5

<p>were promoter- directors named in the Articles of Association and subscribed 100 shares each in the company through the memorandum of association. Thereafter from time to time further shares were allotted in proportion of one third to each of them and in due course, the company started earning substantial profits. Due to greed of money, the two brothers A and B joined hands to assume complete control of the company, leaving C, both of them got further shares allotted to themselves, thereby joint shareholding increased to 90 percent while the C's shareholding reduced to 10 percent. No notice of any board meeting was sent to C, and C was also removed as the director. C seeks your legal advice for the same.</p>	
--	--