**(J)2008- Mortgage and charge**

**(J)2013- Mortgage and charge**

**Ans:** The distinction between Mortgage and Charge are as follows:

(i)Mortgage is created by act of parties. But, charge may be created by act of parties or by virtue of law.

(ii)Mortgage is transfer of an interest in a specific immovable property. But a charge only gives a right to receive payment out of charged property.

(iii)A mortgage is good against subsequent transferees. But, charged is good against subsequent transferees with notice.

(iv) A mortgage is for a fixed term. But, a charge may be in perpetuity.

(v)Mortgage requires registration prescribed under Transfer of Property Act.But, charge created by act of parties required registration.

(vi)Simple mortgage carries personal liability unless excluded by express contract. But, in case of charge, no personal liability is generally created.

**(D) 2014-Oppression' and 'Mismanagement'.**

**Ans:** The words Oppression' and 'Mismanagement' are not defined in the Act. The meaning of these words for the purpose of Company Law should be used in a broad generic sense and not in any strict literal sense.

Oppression' is a situation which prejudices someone to be oppressed due to that situation in dealing with any one under certain circumstances. It cannot be said that any situation which purport someone to be oppressed is oppression. The whole phenomenon depends upon the circumstances of the situation.

Mismanagement is a concept which shows some unfair abuse of power by the persons in charge of management of the company.

The meaning of the term "oppression" as explained by Lord Cooper in the Scottish case of Elder V.Elder & western Ltd.(1952) Scottish Cases 49,which has been cited with approval by Wanchoo, J (afterwards C.J.) of the Supreme Court in Shanti Prasad v. Kalinga Tubes, (1965) 1 Comp .L.j. 193 at 204 is as under.

" The essence of the matter seems to be that the conduct complained of should at the lowest, involve a visible departure from the standards of fair dealing, on which every shareholder who entrusts his money to the company is entitled to rely.

**(D)2013- Members voluntary winding up and creditors voluntary winding up.**

**Ans:** Distinction between members and creditors voluntary winding up:

| | |
|---|---|
| i. Before convening the general body meeting, declaration of solvency is to be filed with the Registerer of Companies. | No such decleration is required to be filed. |
| ii.Members do not participate directly. | Control remains in the hands of the creditors. |
| iii. Liquidator is not appointed by the members. | Liquidator is appointed by the creditors. |
| iv. Liquidator can exercise some of the powers with sanction by special resolution. | Liquidator can do so with sanction of the court or committee of inspectors or of meeting of creditors. |

**(D)-2013- Limited liability partnership and partnership'.**

| | |
|---|---|
| Unlimited personal liability of each partner for dues of the partnership firm. Personal property of each partner also liable. | No personal liability of partner, except in case of fraud. |
| Written agreement not essential | Incorporation document essential. |
| Partnership can be registered under Partnership Act. Registration is not mandatory. | LLP is incorporated under LLP Act. Incorporation is mandatory. |
| Not a legal entity separate from its partners | It is a legal intity separate from its partners, having perpetual succession. |
| Property cannot be held in name of partnership firm. | Property can be held in name of LLP. |

| | |
|---|---|
| Partnership deed/ agreement is executed.Even verbal agreement is valid. | 'IncorpoartionDocument is required to be executed. In addition, LLP Agreement is required in almost all cases, though such LLP agreement is not mandatory. |
| Documents are required to be filed with Registrar of firms (of respective State. | Registrar of Companies (ROC) is the administrating authority. |
| Death of partner dissolves a firm, in absence of agreement | Death of partner does not dissolve LLP. |
| Minimum two and Maximum twenty partners | Minimum two partners. No limit on maximum numbers of partners. |
| Each partner can take part in business of firm. | Each partner can take part in business of firm ,But LLP Agreement can provide to the contrary. |
| All partners are liable for statutory compliances under Partnership Act | Only designated partners are liable for statutory compliances as are required under LLP Act(not necessarily in respects of others Acts. |
| Partner cannot inter into business with firm, though he can give loan to firm | Partners of LLP can enter into business with LLP .He can also give loans to LLP. |
| Every partner of firm is agent of firm and also of other partners. He can bind partnership firm as well as other partners by his acts. | Every partner of LLP is agent of LLP but not of other partners. Thus, He can bind LLP by his Acts but not others partners.However, LLP agreement can restrict powers of individual partner. |
| Filing of accounts statement of solvency and annual return not required. | Filing of accounts, statement of solvency and annual return not required. |
| Partnership can be 'at will i.e. any partner can resign or dissolve firm. | Individual partner can resign but cannot dissolve the LLP. |
| Death of partner dissolves partnership unless there is contract to contrary. | Death of partner does not dissolve LLP. |
| Public notice is required for retirement of a partner. | Filing of return of retirement of partner with ROC is required, but no provision for public notice of retirement of partner. |
| Partnership firm can be dissolve. | LLP can be would up. |
| No specific provision to enter into compromise, arrangement, amalgamation, reconstruction etc. This can be done only under civil laws. | LLP can enter into compromise, arrangement, amalgamation, reconstruction etc. |
| Minor can be admitted to benefit of partnership. | There is no specific provision to admit minor to benefit of partnership. It is doubtful if this can be done. |

**[J]2014 – A promoter is neither an agent nor a trustee of the company, but he occupies a fiduciary position in relation to the company. Discuss.**

**Ans:** The concept of promoter plays the role before incorporation of the Company. Therefore, he is not an agent of the company as there is no existence of the company.

the concept of promoter plays the role before incorporation of the Company. Therefore, he is not a trustee of it as there is no existence of the company. A promoter occupies a fiduciary position in relation to the company he promotes. He is required to disclose fully on his part as soon as the company comes into existence. In Lagunas Nitrate Co. V. Lagunas Syndicate(1899) 2ch 392 it was observed that 'promoters' stand in a fiduciary relation to the company they promote and to those persons whom they include to become shareholders in it.

**[D]2014 – A,B,C and D developed a business plan to implement the plan , it was decided that A and B will incorporate a company and C, a Chartered Accountant will provide them his professional services for the same. It was also decided that D will provide loan to the company. The loan to be provided by D was essential to start the business of the company. Advice, out of C and D, who shall be regarded as promoter of the Company**

**Ans:** Section 2(69) of the Companies Act,2013 defines the term ' promoter' as a person –

a. who has been named as such in a prospectus or is identified by the company in the annual return; or
b. who has control over the affairs of the company, directly or indirectly whether as a shareholder , director or otherwise; or
c. in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

However, sub-clause (c) shall not apply to a person who is acting merely in a professional capacity. In the given case, C providing professional service as a CA will not be treated as promoter.

D will provide Loan to the company essential to start the business is deemed to be promoter of the Company.

**[D]2011- Well- done Ltd. wants to make a first call of Rs.30 on equity share of nominal value of Rs.100 each on 16th October, 2011. Can it do so? Further if the Company proposes to make second call on 7th November, 2011, will it be permitted to do so?**

**Ans:** As per regulation 13 to Table F the Board may, from time to time, make calls upon the members in respect of any monies unpaid on their shares(whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times. No call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

Therefore, Well-done is not permitted to make first call of Rs.30 on equity share of nominal value of Rs.100 each which is more than 25%. Further the second call cannot also be made on 07.11.2011 since one month has not elapsed from the date of 1st Call. This is however subject to the Articles of Association of the Company.

**[J]2013 – The registered office of a company was shifted from one State to another. A labour litigation was pending before the court. So, the employees objected to the transfer. Whether the objection of the employees is sustainable?**

**Ans:** Change of registered office from one state to another state is a complicated procedure. however, if the conditions stipulated in Section 13 of the Companies Act, 2013 are satisfied, one can change the registered from one state to another subject to Compliance of the legal procedures. In the given case, the registered office was shifted from one State to another. A labour litigation was pending before the court. So, the employees objected to transfer. the objection is not sustainable. Similar observation was made in Kwality Ice Creams (Inida) (P) Ltd., in Re [(2009)148 COMP CAS 631.

**[D]2010,[J]2011 – 'Rights issue' and Bonus Issue (REFER BLUE BOOK)**

**[D]2010 – 'Sweat Equity' and 'employees' 'stock purchase scheme'. (REFER BLUE BOOK)**

**[J]2015 – 'ESOP' and 'Sweat Equity Shares'.**

**[D]2002 – How is the term 'employees stock option scheme' (ESOS) defined in the Companies Act, 1956? Is it different in the SEBI's Guidelines on 'Employees Stock Option Scheme' (ESOS) and 'Employee Stock Purchase Scheme' (ESPS) issued in 1999? Answer should be backed by brief reasons.**

**[J]2012 – The Board of directors of Nav Avtar Ltd. passed a resolution for issue of right shares. However, certain shareholders of the company raised an obligation as to whether the company needed additional capital. Discuss the validity of the counter – move taken by the shareholders and resolutions passed by the Board.**

**Ans:** As per Section 62 of the Companies Act 2013 where at any time, a company having a share capital increases its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company by sending a letter of offer.

Such shares may be offered to any persons , if it is authorized by a special resolution.

As provided in Section 179 of the Act, issue of shares by a company shall be made by passing resolution at a general meeting.

As per Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 if authorized by a special resolution, shares may be issued by any company on preferential basis.

Therefore, the Company cannot issue the shares through Board Resolution.

**[J]2012 – The Board of directors of Aakash Ltd. a listed company, at its meeting held on 1st April announced a proposal for issue of bonus shares to all equity shareholders of the company at 1:1 ratio. On 1st May,2011, the directors at another meeting passed a resolution to reverse the proposal of bonus issue announced on 1st April, 2011. Discuss the validity of the proposal and the reversal.**

**Ans:** As per Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014 the company which has once announced the decision of its board recommending a bonus issue, shall not subsequently withdraw the same. In the given case, the Board of directors of Aakash Ltd. a listed company, at its meeting held on 1st April, 2011 announced a proposal for issue of bonus shares to all equity shareholders of the company at 1:1 ratio. On 1st May, 2011, the directors at another meeting passed a special resolution to reverse the proposal of bonus issue announced on 1st April,2011. It cannot reverse its decision.

**[J]2014 – 'Statement in lieu of advertisement' and 'statement in lieu of prospectus'.**

**Ans:** **Statement in lieu of advertisement –** Where a company intends to accept deposits without inviting or allowing or causing any other person to invite, such deposit, shall , before accepting deposits deliver to the Registrar for registration a statement in lieu of advertisement containing all the particulars required to be included in the advertisement. A statement delivered shall be valid until the expiry of 6 months from the date of closure of the financial year in which it is so delivered.

**Statement in lieu of prospectus –** A company having a share capital , which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures shall before the first allotment of either shares or debentures, deliver to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in part I of Schedule III this concept of statement in lieu of prospectus is not in the 2013 Act.

**[D]2012 – 'Brokerage' and 'underwriting' commission.**

**Ans:** **Brokerage:** It is the commission paid by an investor to the brokers for the purchase and sale of securities on his behalf.

**Underwriting commission:** underwriting means a contract by a person or company in case of any issue of securities with the conditions that in case the securities are not fully subscribed by the public within a specified time, he or it would take the unsubscribed securities and pay for them. It is payment which is given by company

to underwriters for their services of underwriting. Actually, contract of underwriting is same as the contract of insurance Company gives maximum 5% commission to underwriter for selling his shares. Underwriter will take the risk of takeover the shares which will not be subscribed by public.

**[J]2009 – A company can mortgage or charge any part of its ' reserve capital'.**

**Ans:** A company can charge only its uncalled capital and that too only if its Articles and Memorandum of Association gives an express power to the Company to do so. An exception to this rule can be the case of wide general authority given under the Articles and Memorandum. Like in the case of Newton V Debenture holders of Anglo Australian Investment Co. the Memorandum authorized the company to borrow upon any security of the company and it was held that the power was wide enough to include a charge on uncalled capital. However, a company cannot mortgage or charge any part of its 'reserve capital' . Reserve Capital is that part of the uncalled capital of a company which the limited company has decided by special resolution not to call except in the event and for the purpose of the company being wound up. (section 65 of the Companies Act, 2013)

**[D]2014 – On receipt of 85% of the minimum subscription stated in the prospectus, Little Stars Ltd. allotted 200 shares to Ranjit and the money was deposited in a scheduled bank. Later on, it was revealed that 40% of the amount withdrawn was for acquisition of fixed assets for the company. Ranjit, knowing these facts, refused to accept the allotment contending that the allotment was irregular under the Provisions of the Companies Act, 2013. As an expert on company law advise Ranjit**

**Ans:** Section 39 of the Companies Act, 2013 provides that no allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instruments.

**[J]2011 – Rahees , who is member of Vivek Ltd. a public company has every recently become an insolvent. Can the insolvent Rahees continue as a member of the company?**

**Ans:** On being declared insolvent and the papers are deposited to the company the shares held by Rahees shall vest on the insolvency Officer receiver or Assignee and Rahees cannot be a member of the Company.

**[J]2015 – Due to inadequacy of profits the Board of Directors of Rise Ltd. decided not to recommend any dividend for the financial year ended 31st March,2015.**

**Ans: hints: Section 241 read with Section 244.**

**[J]2015 – An employee of a company purchased certain shares of his company through a member of a stock exchange and lodged with a company an application for transfer of shares in his (employee's)name. The company refused to execute the transfer on the suspicion that the employee, if admitted as a member of the company, will create nuisance in general meetings and seek access to the records of the company. Decide giving reasons**
**(i) whether the company's contention shall be tenable; and**
**(ii) What is the remedy available to the employee in the given case?**

**Ans:**

i. An employee of a company purchased certain shares of his company through a member of a stock exchange and lodged with the company an application for transfer of shares in his (employee's) name. The company refused to execute the transfer on the suspicion that the employee, if admitted as a member of the company, will create nuisance in general meetings and seek access to the records of the company. It was held in Nirmal Kumar v. Jaipur Metal and Electrical Limited (Appeal to the CLB No.27, of 1975) that refusal to register share transfer on suspicion that the employee if admitted as a member will attend general meetings of the company and may create nuisance by raising irrelevant issues and also obtain access to the records to the company as a shareholder is not a valid reason. Therefore, the company's contention is not valid.

ii. Section 58(4) of the Companies Act, 2013 provides that is a public company without sufficient cause refuses to register the transfer of securities within 30 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be , is delivered to the company , the transferee may, within 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Company Law Board(Tribunal). Therefore, the employee may appeal to the Company Law Board(tribunal) against the refusal order of the company.

**[J]2006- Vinay was appointed as an additional director by the Board of Directors of prudent Ltd. in its meeting held on 20th July, 2005. Further Vinay was appointed as a director by members of the company in its annual general meeting held on 2nd September,2005. Comment whether Vinay is again required to file consent to act as a director.**

**[J]2008 – Explain 'Independent director' and 'inside director'. Does inside director and interested director connote the same meaning?**

**Ans:** Independent director includes the following person:

a. who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience
b. who is or was not a promoter of the company or its holding subsidiary or associate company.
c. who is not related to promoters or directors in the company its holding, subsidiary or associate company;
d. who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters , or directors, during the two immediately preceding financial years or As per during the current financial year

Inside directors are those who are in the whole-time employment of a company which includes the Managing Director, Executive Director; Whole-time director, technical Director etc.

Interested director means any director whose presence cannot by reason of Section 184, count for the purpose of forming quorum at a meeting of the Board at the time of discussion or vote on any matter in which such director is interested or not interested. The interest should be specifically indicated at the meeting before the related matter is taken up.

In view of the above, it can be concluded that inside director and interested director connote two different aspects and generally do not mean the same thing.

**[J]2014- in order to enhance the quality of professional services being rendered by Practicing Company Secretaries peer review has been introduced. Discuss**

**[J]2010 – State whether a Board Meeting of a company can be held at any place.**

**[J]2013 – The directors report of Ayush Ltd. for the financial year ended 31st March, 2012 has been dated 15th May, 2012, whereas the Auditor's Report for the same period is dated 16th May,2012. Is this in order? Explain.**

**Ans:** The directors report of Ayush Ltd. was signed on 15th May, 2012, whereas the Auditor's Report was signed on 16th May, 2012. therefore, this is not in order.

**[D]2004- "the investor education and protection fund shall be utilized for promotion of investor awareness and protection of interests of investors. "Explain what are the sources of its funds?**

**[D]2014- Pioneers Ltd. convened a Board Meeting on 1st September, 2013. During the course of meeting, the date of next annual general meeting was discussed but no decision was taken. However, the Company Secretary issued the notice for annual general meeting without any specific authorization from the Board of Directors. Decide the validity of notice of annual general meeting.**

**Ans:** The Companies Act, 2013 provides provisions for notice of calling general meeting but does not provide any specific provisions as to who will call the general meeting. The articles of association may provide provisions for this purpose. However, it is the Board oF directors of the company who has the ultimate control for the management and administration. They can call the meeting and authorize any person to call the meeting. The company Secretary is not legally empowered to call the annual general meeting. He can issue the notice only by order of the Board. Therefore, the meeting called by the Company secretary is not valid.

**Q. Difference between ESOP and ESPS? ans as per loose sheet**

**Q. Explain rules related to declaration of dividend out of reserves? Ans as per black book Chap 1**

**DIFFERENCE BETWEEN MANAGING DIRECTOR AND WHOLE TIME DIRECTOR**

| MANAGING DIRECTOR | WHOLETIME DIRECTOR |
|---|---|
| 1. Substantial powers of Management | 1. Not necessary that WTD will have substantial powers |
| 2. Maximum in 2 companies | 2. Not more than 1 company |
| 3. M.D need not be a whole time employee of the company | 3. W.D. needs to be a whole time employee of the company |
| 4. Can be appointed as M.D in a Public Company for maximum 5 years | 4. there is no restriction on the term of appointment of a Whole time Director |

**DIFFERENCE BETWEEN MANAGING DIRECTOR AND MANAGER**

| MANAGING DIRECTOR | WHOLETIME DIRECTOR |
|---|---|
| 1. M. D has substantial powers of management | 1. Manager is a person who has the management of whole or substantially the whole of the affairs of the Company |
| 2. To become a M.D a person must become a DIRECTOR | 2. Manager need not be a director of the company |
| 3. Grounds for disqualification of M.D. are more stringent | 3. Grounds for disqualification of Manager are less stringent |
| 4. A company may have two or more than two M.D | 4. A company cannot have two or more than two managers |
| 5. Sec. 268 provides that an amendment of any provision relating to the appointment or re-appointment of M.D. shall not be effective unless approved by Central Government | 5. Sec.268 does not apply to manager |