

LAW NOV 08 FINAL

Roll No..... ~~XXXX~~ WWW.CAC/UBINDIA.COM

Total No. of Questions—9]

[Total No. of Printed Pages—8

Time Allowed—3 Hours

Maximum Marks—100

TVS

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi medium. If a candidate who has not opted for Hindi medium, answers in Hindi, his answers in Hindi will not be valued.

Question Nos. 1, 2 and 3 is compulsory.

Answer any **four** from the rest of the questions.

Marks

1. Answer any **two** of the following :

- (a) Mountbay Company Limited decided to terminate the services of Mr. Gopal who was employed as Sales Manager. The Company, however, feels that the Sales Manager may not vacate the company's flat at Delhi. What action can be taken by the company under the Companies Act, 1956 to regain possession of the flat ? Is it necessary to take such action before terminating the services of Mr. Gopal ? Will it make any difference, if the flat is not owned by the company, but taken on lease ? 5
- (b) The Executive Committee of a recognized stock exchange desires to transfer certain duties and functions of a clearing house to a recently set up clearing corporation, incorporated as a company under the Companies Act, 1956, examining the provisions of The Securities Contract (Regulation) Act, 1956. State the purposes for which such transfer of duties and functions can be made to clearing corporation. 5

What is the procedure to be adopted for such transfer of duties and functions ?

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(c) ✓ Mr. Bansal holds certain securities on 31st March, 2008, issued in his favour under the "Collective Investment Scheme." For a consideration, Mr. Bansal transferred the said securities in favour of another person. One month after the date on which the income on these securities became due, the transferee lodged the instrument of transfer. Decide in the light of the provisions of the Securities Contracts (Regulation) Act, 1956.

(i) ✓ Whether in the given case Mr. Bansal is entitled to receive and retain the income on these securities for the financial year ended 31st March, 2008 ?

(ii) ✓ What would be your answer in case the transferee lodged the instrument of transfer 10 days after the date on which the income on these securities became due ?

2. Answer any two of the following :

(a) ✓ Mr. Guilt an Indian National realizes that a penalty may be imposed upon him for violation of the provisions of the Foreign Exchange Management Act, 1999. He therefore desires to compound his offences. Advise Mr. Guilt about the process and procedure of compounding of the offence.

(b) ✓ Mr. Amit, a citizen of India, left India for employment in Australia. On 1st June, 2007. Mr. Amit purchased a flat at New Delhi for Rs. 15 lakhs in September, 2008. His brother, Mr. Sumit employed in New Delhi, also purchased a flat in the same building in September, 2008 for Rs. 15 lakhs. Mr. Sumit's flat was financed by a loan from a housing finance company and the loan was guaranteed by Mr. Amit. Examine with reference to the provisions of Foreign Exchange Management Act, 1999, whether purchase of flat and guarantee by Mr. Amit are capital account transactions and whether these transactions are permissible.

(c) The Competition Commission of India has received a complaint that M/s. XYZ company has been abusing its dominant position in the food processing industry. Explain briefly the factors that will be considered by the commission to ascertain whether M/s. XYZ company enjoys a dominant position in the industry.

3. Answer any **two** of the following :

- (a) Mr. DB is a member of RPA Ltd. He obtains an order against the company for redressal of his grievances against the company. But the company fails to redress the grievances of DB within the time fixed by the SEBI. The Board thereafter imposed penalty upon the company U/s 15C of the SEBI Act. RPL Ltd. seeks your advice whether it has any remedy against the order of SEBI. Advise. 8
- (b) The promoters of ABC Ltd. an unlisted company decide to go for a public issue. They seek your advice in respect of the following matters : 8
- (i) Whether equity shares can be reserved in a firm allotment category for promoters at a price different from the price at which shares are offered to the public.
 - (ii) Circumstances in which the equity shares can be issued in denomination of Rs. 2 per share.
 - (iii) Need for past track record of distributable profits.
 - (iv) Requirement of net tangible assets in the previous years.
- (c) The analysis of the language of Section 292 and Section 372A of the Companies Act, 1956 apparently discloses a conflict because the former provision permits the Board of Directors to delegate its powers to make loans whereas the latter provision requires approval of loan by a resolution passed at a board meeting with the consent of all the directors present at the said meeting. To what extent the rule of "Harmonious construction" can be applied for the purpose of interpreting these two provisions of the Companies Act, 1956. 8
4. (a) The Articles of Association of Sunrise Ltd. provide that the qualification of a director shall be holding of at least 10 shares in the company. Mr. Rao has been appointed as a director in the said meeting on 1st May, 2008. Mr. Rao applied for 10 equity shares of the company on 30th July, 2008. The said shares were allotted to him on 20th August, 2008 when the Board meeting was held. 8

Discuss the relevant provisions of the Companies Act, 1956 in the matter of share qualification requirements and the consequences of non-compliance thereof. Also state whether Mr. Rao has complied with the requirements in this regard.

- (b) Mr. Wilson was appointed in ABC Ltd. as a director and he was to retire by rotation on 1st September, 2008. On account of some unavoidable reasons the annual general meeting of the company could not be held on the said date, nor the vacancy caused by retirement could be filled up at the adjourned meeting. State the relevant provisions of the Companies Act, 1956 and decide whether Mr. Wilson shall be deemed to be retired on 1st September, 2008 when the meeting was scheduled to be held or it will become a case of deemed reappointment. 7
5. (a) M/s X Ltd. and its two directors have received a show cause notice from the Registrar of Companies Mumbai as to why prosecution proceedings should not be launched against them for violation of the provisions of Section 297 of the Companies Act, 1956 in not obtaining the previous approval of the Central Government in respect of a contract entered into by the company with a firm in which one of the directors of the company is interested as a partner. The company seeks your help. Advise the company the steps that should be taken to avoid prosecution proceedings, assuming that they have committed the offence. 8
- (b) Sunrise Company Limited was merged with Moonlight Company Limited on account of amalgamation. Some workers of Sunrise Company Limited refused to join as workers of Moonlight Company Limited and claimed compensation on the ground of premature termination of their services. Moonlight Company Limited resists the claim of the workers on the ground that their services have been transferred to Moonlight Company Limited in view of the order of amalgamation and merger and hence the workers must join the service of Moonlight Company Limited and cannot claim any compensation. 7
- State the powers of the court about the matters that would be considered while sanctioning the scheme of amalgamation under the provisions of the Companies Act, 1956. Decide whether the contention of the workers is justified.

6. (a) The Board of Directors of M/s. ABC Limited, an unlisted company having a paid up capital of Rs. 6 crores consisting of equity share capital of Rs. 5 crores and preference share capital of Rs. 1 crore and also 1100 small shareholders holding equity shares seeks your advice on the following : 8

- (i) Is it necessary for the company to appoint a director to represent the 'Small Shareholders' ?
- (ii) In case the company decides to appoint such a Director, the procedure to be followed by the company for such appointment and the period for which such appointment can be made.
- (iii) Can such a Director be removed by the company before the expiry of his period of appointment without the consent of the 'Small Shareholders' ?

Advise explaining the relevant provisions of the Companies Act and the rules.

- (b) Ashes Ltd. is a company incorporated outside India. 50% of its preference share capital and 20% of its equity share capital is held by companies incorporated in India. It issued prospectus inviting subscriptions in India for its shares but did not state the country in which it is incorporated. Examine 7

- (i) Is the prospectus of the company valid ?
- (ii) What is none of the shares (preference and equity) were held by Companies Incorporated in India ?
- (iii) What other disclosures and required to be made by a Foreign Company ?

7. (a) Supra Limited, a private company, has been converted into a public company and under the provisions of the Companies Act, 1956. The company proposes to constitute an audit committee. Taking into account the provisions of the Companies Act, 1956 draft a board resolution covering the following matters : 8

- (i) Member of the audit committee.
- (ii) Chairman of the audit committee.
- (iii) Quorum for meetings of the said committee.
- (iv) Any two functions of the said committee.

- (b) M/s Continuous Conflicts Ltd. is a company controlled by two family groups. The first family group has four directors namely Mr. A, Mr. B, Mr. C and Mr. D on the Board of Directors. The second group has two representatives Mr. X and Mr. Y on the board. Both the groups hold shares in the company according to their directorships viz., the first group of 4 directors hold 67% of the share capital and the second group of 2 directors hold 33% of the share capital. Because of internal family troubles, the first group, by virtue of its majority shareholding removes both Mr. X and Mr. Y as the directors of the company. Aggrieved by this action, the second group is planning to move an application before the Company Law Board. You have been approached for advice.

Advise as to the eligibility restrictions regarding filing the application and the chances of getting relief from the Company Law Board, assuming that there is no other material on record in support of oppression of the minority group.

8. (a) As per the terms of the agreement of service between NOC Ltd. and its employees, an amount equal to 12.5% of the salary shall be transferred to the recognized Provident Fund and shall be payable to the employee either on retirement or termination, as the case may be. An amount equal to 12.5% of the salary shall be contributed by the company to the recognized provident fund.

Mr. A earning Rs. 3,000 p.m. has been working with the company since the last four years. Due to some personal reasons Mr. A is in need of Rs. 100,000 and wants to obtain as advance the amount standing to the credit in the fund. With reference to the provisions of the Companies Act advice as regards the following :

- (i) When and where should the money so collected by the company be deposited?
- (ii) Can Mr. A obtain the advance from his accumulated contribution to recognised Provident Fund?

- (b) Mars India Limited, a company incorporated under the Companies Act, 1956 is being wound up by the Court. After realisation of the assets of the company, the official liquidator has an amount of Rs. 70,00,000 at his disposal towards payment of creditors of the said company. The details of creditors are as follows :

(i) Unsecured creditors	50,00,000
(ii) Taxes and duties payable to Government	5,00,000
(iii) Dues to workers	30,00,000
(iv) Dues to secured creditors	40,00,000

The available amount with the liquidator, obviously, is not sufficient to meet the claims of all the creditors. Moreover, the company had already created a charge on all the assets of the company in favour of the secured creditors. Explain the procedure to be followed by the liquidator for payment of dues as provided in the Companies Act, 1956.

9. (a) The Board of Directors of ACE Limited having a paid up share capital of Rs. 70 lakhs reappointed Bre Ltd. As sole selling agent for a period of 5 years W.E.F. 2 May, 2007. The Directors of BRE Ltd. were holding fully paid up shares of face value of Rs. 3 lakhs. In ACE Ltd. the reappointment was approved by the company in the next AGM held on 30th September, 2007 but Central Government approval was not obtained until 31st December, 2007. Give your opinion explaining the relevant provision of the Companies Act, 1956.

- (i) Is the reappointment of the sole selling agent in order ?
- (ii) Will your opinion be different if the directors of BRE Ltd. do not hold any shares in ACE Ltd ?
- (iii) If the reappointment is valid. When will the reappointment take effect from ?

(b) Mr. X is a director of several companies. He has approached the following companies in which he is a director for financial help to start his own personal business. 6

- (i) Expandable Industries Ltd.
- (ii) Expensive Gadgets Private Ltd.
- (iii) Easy Finance Ltd.

The first named company has agreed to grant a loan of Rs. 50 lakhs. The second company also offered another loan of Rs. 50 lakhs. The third company has agreed to provide guarantee for the repayment of a loan sanctioned to Mr. X by a Private Bank to the tune of Rs. one crore. Advise Mr. X about the legal provisions that should be complied with under the Companies Act, 1956 and the consequences if there is a non-compliance.

(c) The Board of Directors of M/s. PQR Ltd. have a practical problem. The registered office of the company is situated in a classified backward area of Maharashtra. The Board wants to keep the account books of the company at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advise. 3