Corporate & Allied Law - November 2013 - CA Final.
Level of paper - Average.

Paper has total seven questions out of which question no 1 was compulsory. Along with option, paper was of 120 Marks, out of which 80 marks of questions were from company law and 40 marks questions were from allied law.

Question-1(a)
The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share capital of the company as recommended by Board of Directors on 30th April, 2013. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, up to 30'h June, 2013. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 1956, whether Mr. Ranjan would succeed? Also state the directors' liability in this regard under the Act. (5 Marks)

> Analysis of Question no -1 (a)
> Question is from dividend. Most of students reading dividend focus on provision of dividend like transfer to reserve, process of declaration of dividend and declaration of dividend out of reserve. But question was on % of penalty which is required to be paid on default to pay dividend within stipulated time. Most of students were not aware about %. It is very routine tactics on part of ICAI to keep tricky question as first question. More over question demands directors' liability in this regard. I observed that majority of students fail to remember consequences in such case. Number of coaching class and faculties are omitting to teach on dividend. Students will cost only 5 marks......

Answer -1(a)

Rajan will not succeed in claiming interest @ 20% for default period. If company do not pay dividend or do not dispatch dividend warrant within 30 days from its declaration, it constitute an offence and 18% simple interest is payable for default period – Sec 207.

Consequences:
In addition to payment of simple interest, director in default is punishable with simple imprisonment upto 3 years and fine of Rs. 1000 per day till default continue.

Question – 1 (b)
The Board of Directors of XYZ Limited decided to pass a resolution to purchase 35,000 equity shares of '100 each of PQR Limited at a meeting. Draft a specimen Board Resolution to be passed at the said meeting. (4 Marks)

> Analysis of Question no -1 (b)
> Question demand drafting aspect. Question is designed to test drafting skill of students. Most of students never thought that they can be asked such question. Moreover students get confused that whether they should draft resolution under Sec 293(1) or Sec 372A......Students can't make gossip here while writing answer.

Answer -1(b)

XYZ Ltd
Board Resolution

"RESOLVED THAT pursuant to provisions of Sec 372A of Companies Act, 1956, the Company be and is hereby authorised to purchase 35,000 Equity shares of Rs. 100 each of PQR Ltd".

"RESOLVED FURTHER THAT Shri AB, Director of company be and is hereby authorised to sign, execute prepare, and file necessary papers, forms and documents in this connection"

Question 1 (c)

What is Director Identification Number (DIN) ? Mr. Mohan, a newly appointed director of RST Limited applied for DIN. Advise him about the list of scanned documents required to be attached with DIN-1. (5 Marks)

> Analysis of Question no -1 (c)
> Cracking question. Never thought of asking list of documents required for DIN. But those who are doing and who have done work of DIN (i.e. Practical knowledge) can write answer. Do not be surprised if you find question like – what are common grounds for rejection of DIN application in subsequent attempt...

Answer -1(c)

Director identification number is unique identification number allotted by Central government (MCA) to an individual who is an existing director or proposed to be appointed as director of company. DIN contain personal information regarding director.

Following scanned documents are required to be attached with DIN-1 form:
1. Good resolution photograph
2. PAN
3. Document indicating Resident proof
4. Passport – in case of Foreign national
5. Annexure – 1 as per format specified by ministry.

Question -1(d)

A recognized stock exchange proposes to make bye-laws for the regulation and control of contracts relating to the purchase and sale of securities. State the legal requirements under the Securities Contracts (Regulation) Act, 1956 to give effect to the proposal. Explain the powers of the Securities and Exchange Board of India to amend the bye-Laws of a recognized stock exchange. (6 Marks)

> Analysis of Question no -1 (d)
> Question on SCRA. Most of students wrote on Sec 9. But provisions regarding Sec 10 is also mentioned. Question in last two line asked about power of SEBI....Students who are clearly understanding difference between Sec 9 and Sec 10 of SCRA can write perfect answer otherwise mark will be written off in proportion.

Answer 1(d)

POWER OF RECOGNIZED SE TO MAKE BYE-LAW—SEC 9
SE shall make Bye-Laws only after obtaining the previous approval of SEBI. Approved Bye-Laws should be published in the Gazette of India and in the Official Gazette of the State in which the principal office of the RSE is situated. SEBI may dispense with requirement of publication of Bye-Laws in official Gazettee.

POWER OF SEBI TO MAKE OR AMEND BYE-LAWS OF RECOGNIZED SE—SEC 10
SEBI can make amendment in Bye-Laws of RSE on written request from RSE or on its own. Before doing so, SEBI should consult the governing body of the SE. SEBI should be satisfied that it is necessary to do so. SEBI shall record its reasons for making or amending the Bye-Laws. Amended in Bye-Law shall be published in the Gazette. Bye-Law shall be effective on the publication in the Gazette. In the interest of the trade or in the public interest SEBI can made Bye-Laws applicable immediately. Where SEBI makes or amends the Bye-Laws of a SE on its own motion, the governing body may object to it within two months of its publication in the Gazette of India.

Question 2 (a)

Mr. Raman, brother of Mr. Rahul, a director of VMR Limited, was appointed as Chief Accounts Officer on a monthly salary ’2,80,000 without the knowledge of Mr. Rahul. Referring to the provisions of the Companies Act, 1956, state the time limit in which the Company may complete the necessary legal formalities for the said appointment. Also explain the consequences in case the Company fails to do so. (8 Marks)

> Analysis of Question no -2 (a)

> Question from director - Sec 314. If limit and procedure are remembered, it can be attempted. Again ICAI in last line of question asked about consequences which can be attempted only if you are having through knowledge of Sec 314.

Answer -2(a)

Relative of director can't be appointed to any office or place of profit where monthly remuneration is exceed than Rs. 2.5 lac without prior approval of shareholders by passing of special resolution and consent of Central government – Sec 314(1B)

In the given case, Mr. Raman, Brother of Mr. Rahul, a director of company was appointed as chief accountant on monthly salary of Rs. 2.8 lac without knowledge of Rahul and without prior consent of shareholder by way of special resolution and approval of central government.

If any person (relative) is appointed without getting consent of shareholders and central government, he is liable to refund the remuneration so received. Therefore Mr. Raman, Chief accountant is liable to refund remuneration received under office or place of profit he has held. Company can't waive its right to recover except it is permitted by central government.

Question- 2(b)

The Board of Directors of Raj Steels Limited consists of one Managing Director, one Technical Director and three ordinary Directors. Mr. Sriram, an ordinary Director sent his resignation in writing to the Company. Mr. Raj, the Managing Director also sent his resignation to the Chairman of the Board of Directors and requested that he shall be relieved immediately. When does the resignation take effect ? Is it possible for a Director to resign orally or withdraw the resignation? (8 Marks)

> Analysis of Question no -2 (b)
> Again ordinary question from Director Chapter regarding resignation of director and MD. Most of students know that in case of director it can take place immediately. Most of students fails to add provisions that resignation will take effect subject to agreement, provision of AOA and resignation letter. Every information on resignation asked in single question. Clever drafting of question. I am loving it....

Answer -2(b)

Companies act, 1956 do not contain any provision on resignation of director. If article of company or resignation letter clearly state procedure and provision about its effect, resignation will take effect according to provision of AOA or resignation letter. When resignation letter state that it will take effect on its acceptance, resignation will take effect from the time of acceptance.

Accordingly Mr. Sriram, an ordinary director ceased to director of Raj Steel Ltd from the time he tendered resignation. Acceptance is not required as AOA or its appointment agreement is silent on this issue. (SS Lakshmana Pillai Vs. ROC)

MD can't resign simply by giving notice. In his case, acceptance is required to relieve him from his duties. Mr. Raj, MD of company is deemed to be resign from the time it is accepted by company. (Achuta Pai Vs. ROC)

Ordinary director of company can resign orally too even if AOA provides for resignation in writing. It has been held in the landmark judgment Latchford Premier Cinema Ltd Vs Ennion that verbal resignation by director made at general meeting is also effective even if AOA require resignation in writing. Director can't withdraw his resignation without consent of company – Glossop Vs. Glossop)

Question 3 (a)

One-fourth of the subscribed capital of AMC Limited was held by the Government of Raiasthan. Mr. Neeraj a qualified Chartered Accountant was appointed as an auditor of the Company at the Annual General Meeting held on 30th April 2013 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company objects to the manner of appointment of Mr. Neeraj on the ground of violation of the

Companies Act 1956. Decide, whether the objection of Mr. Sanjay is tenable ? Also examine the consequences of the above appointment under the said Act. (8 Marks)

> Analysis of Question no -3 (a)
> Routine question on audit. Sec 224(1). Question also trigger about consequences. Same type of question was asked in past. No comment. Students happy....

Answer – 3(a)

If public financial institutions, Government companies, Central Government, State Governments, State Financial Institutions, Nationalized bank, Nationalized General Insurance Company, either singly or together hold 25% or more shares in a company, the appointment of auditors should be made by a special resolution. If such an appointment is not made by special resolution, it is deemed that no auditors have been appointed. In such case, Central Government will appoint the auditors.

As per above provision of Sec 224, contention of Mr. Sanjay is tenable. Appointment of Auditor should be made by passing special resolution and not by ordinary resolution because 25% of subscribed capital of company is held by government. Appointment is not valid. It is understood that no appointment is made at all and therefore as per Sec 224(3) central government should appoint auditor.

Question 3(b)

NCP Limited, a listed company proposes to issue equity shares under the "Institutional Placement Programme". Explain the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 on the following aspects;
(i) Conditions for institutional placement programme.
(ii) Minimum number of allottees
(iii) Restrictions on size of the offer.
(iv) Transferability of eligible securities. (8 Marks)

> Analysis of Question no -3 (b)
> Students who are reading old books and handbook (which never hold your hand in exam) missed question. It is about SEBI (ICDR) IIP guideline. Those who read from bulky book never understood it. 8 Marks at stake....

Answer 3(b)

NCP Ltd should consider Reg 91A to 91L for institutional placement programme.

Conditions:
- ✓ Company is required to pass special resolution under Sec 81 for issue of shares in preferential manner to institutional placement programme.
- ✓ There would be simultaneous filing of red herring prospectus or prospectus with SEBI, ROC and stock exchanges. Soft copy of offer document should be filed with SEBI Board.
- ✓ Institutional placement programme is managed by merchant banker. Merchant banker should issue due diligence certificate that issue is in accordance with provisions of this guideline.
- ✓ The aggregate demand schedule shall be displayed by stock exchanges.
- ✓ No partly paid-up securities shall be offered.
- ✓ Issuer shall obtain in-principle approval from stock exchange.

Minimum number of allottees:
- ✓ There shall be at least 10 allottees in every IPP issue. No single investor shall receive allotment for more than 25% of the offer size.
- ✓ QIB belonging to same group or under same management control is considered as single allottee.

Restrictions
- ✓ Offer would be made only to QIBs. There would be a reservation of minimum 25% to MFs and insurance companies.

- ✓ If MFs and insurance companies do not subscribe to minimum subscription, allocation may be made to other QIBs.
- ✓ Allocation or allotment should not be made to any QIB who is promoter or any person related to promoters of issuer.
- ✓ Bid should be accepted only using ASBA facility.
- ✓ The bids made by the applicants can't be revised downwards or withdrawn.
- ✓ The issue should be kept open for at least one day or maximum of two days.

Transferability of eligible securities:

Securities allotted under IPP shall not be sold for period of one year from date of allotment except on recognized stock exchange.

Question 4(a)

The board of directors of Quality Forgings Ltd having paid up share capital of Rs. 80 Lakhs appointed Ram Marketing Ltd as sole selling agent for a period of 5 years with effect from 1st January, 2012. The directors of Ram Marketing Ltd were holding fully paid up shares of face value of Rs. 3.5 lakh in Quality forgings Ltd. Special resolution approving the appointment of sole selling agent was passed in general meeting held on 20th may, 2012. Approval of central government was obtained on 1st October, 2012. Examine with reference to the provisions of companies Act, 1956 whether the appointment of sole selling agent is valid.
What would be your answer if paid up share capital of Quality Forging Ltd was only Rs. 40 lakh on 1st January, 2012 and it was increased to Rs. 80 lakh on 1st January 2013. (8 Marks)

Analysis of Question no -4 (a)

> Question from SSA. Sec 294. Need assumption about government approval. I think it is last time ICAI asked question about SSA. Under New Companies Act, 2013, provisions relating to SSA is omitted. 8 Marks easy question, students were comfortable and enchased mark.

Answer 4(a)

Company shall not appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as Sole Selling Agent without previous approval of the CG. Company having a paid-up share capital of rupees 50 lakh or more shall appoint a sole selling agent by a Special Resolution and with the approval of the CG.
'Substantial interest' in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid up on which exceeds 5 lakh of rupees or 5% of the paid-up share capital of the company, whichever is the lesser.

The paid up capital of Quality Forgings Ltd is Rs. 80 Lakhs. The director of Ram Marketing Ltd holds shares of Rs. 3.5 Lakh in Quality Forgings Ltd which is less than 5% paid up capital. Hence Ram Marketing Ltd is not holding any substantial interest in Quality Forgings Ltd and therefore prior approval of Central Government is not required to be taken. But paid up capital of Company is more than Rs. 50 Lakh, appointment of SSA should be made by passing special resolution and approval of Central Government. In aforesaid matter, company has obtained permission by way of special resolution on 20th May 2012 and consent of CG on 1st October, 2012. Appointment is in order.

In second case i.e. if Quality forging Ltd has paid up capital of Rs. 40 lakh on date of appointment (1st January, 2012), holding share of Rs. 3.5 lakh would amount as having substantial interest (5% of Rs. 40 Lakh = Rs. 2 Lakh) and hence Prior approval of CG is required. If CG approval is obtained on 1st October, 2012 after date of appointment (1st January, 2012) of SSA, appointment can't be said to be valid.

Question 4(b)

Explain the provisions of Banking Regulations Act, 1949 relating to audit of accounts of banking company, appointment of auditor and the auditor's report. State whether the provisions of the Companies Act, 1956 relating to powers, duties and functions of an auditor of a company are applicable to the statutory auditors of a banking company. (8 Marks)

Analysis of Question no -4 (b)
Question from Banking Reg. Act. Sec 30. It is theoretical question. Most of students forget to mention that auditor of bank has extra duty to follow direction of RBI and submit his report to RBI in addition to normal duty, liability and functions.

Answer 4(b)

Banking company can't appoint or re-appoint or remove auditor without prior approval of RBI. RBI may also provide for special audit if it is of the opinion that it is in the public interest or in the interest of the depositors. The auditors shall comply with the directions given by the RBI and shall submit a report of the audit to RBI and also to the bank.

The auditor has same powers and exercises those functions as specified in Sec 227 of the Companies Act, 1956. Auditor/special auditor should comply with direction of RBI.

In addition to the matters for which auditor is appointed, he is required to state in his report:

- ✓ Whether or not the information and explanation required by him have been found to be satisfactory.
- ✓ Whether transactions of the bank is within the powers of the bank or not.
- ✓ The return received from branch offices have been found adequate for the purpose of his audit.
- ✓ Whether the profit and loss account shows a true balance of profit or loss for the period covered by such account.
- ✓ Any other matter which he considers should be brought to the notice of the shareholders of the company.

Question 5(a)
Modern Textiles Ltd incurred huge losses during the last three financial year and its financial position was bad. The company created a legal mortgage on some of its immovable properties in favour of bank on 1st September, 2012 in the hope that by keeping good faith with the bank it could get further advances from the bank and the same could be utilized to revive company. Some creditor filed winding up petition in the court on 15th January, 2013. The court passed an order of winding up on 1st august, 2013. Answer the following with reference to the provisions of Companies Act, 1956:

I. What is meant by 'fraudulent preference' ? state the effect of 'fraudulent preference' ?
II. Whether the creation of legal mortgage by the company in favour of the bank would amount to fraudulent preference ? (8 Marks)

Analysis of Question no -5 (a)
Question from winding up. Mixed question where students need to write on theory portion (4 marks) and about legal mortgage (4 marks). Every time ICAI in its RTP write that only provision of 5.3 in module will be applicable for winding up in exam but asking anything else. Students should read all provision of winding up....otherwise you won't be able to wind up 8 marks in your account.

Answer 5(a)

I. It means giving an improper benefit or favourable treatment to some creditors. Fraudulent preference leads to inequality between them. With reference to winding up, fraudulent preference means transfer of property or payment made by a person who is unable to pay his/her debts in favour of creditor with a view to give him/her preference over other creditors.

   To establish a case of fraudulent preference two conditions must be satisfied:
   - ✓ That transaction took place within 6 months before the commencement of the winding up.
   - ✓ That transaction was with motive to prefer one creditor in preference to other creditors.
   - ✓ It was voluntary act relating to transfer of property, money, delivery of goods, etc.
   - ✓ It was with dominant motive to commit an act of dishonesty.

According to Sec 531A any transfer of property movable or immovable or any delivery of goods made by company within period of one year before the commencement of its winding up shall be void against the liquidator. However, the following are not included:

- ✓ Transfer of property or delivery of goods made in ordinary course of business.
- ✓ Transfer of property or delivery of goods in favour of purchaser or charge holders in good faith and for consideration.

II. Creation of legal mortgage on immovable properties with bank for getting advance or loan in good faith is not fraudulent preference. The transaction is carried out in good faith for carrying out business of company.

Question 5(b)

Examine the merits of the following petitions made under Sec 397-398 of the Companies Act, 1956 in the light of judicial pronouncements made in this regard:

I. A group of shareholders holding 12% of the issued share capital of Unique products Ltd have filed a petition before the CLB alleging various acts of illegal, invalid and irregular transactions entered into in the name of company.

II. Speciality Chemicals Pvt. Ltd is controlled by two groups of members. The group holding majority of shares made an application to CLB alleging oppression by the majority group. (8 Marks)

> **Analysis of Question no -5 (b)**
> Good practical question on Oppression - mismanagement. Most of students are aware about basic provision. sub-question ask about majority complaining against minority. Those students who had read case law and judgments on above issue could write down in nut shell.

Answer 5(b)

I. Any one or more shareholders holding more than 10% of issued capital of company can file an appeal to CLB under Sec 397-398 for oppression or mis-management provided that all call money and other dues on shares are paid and there is act alleged to be oppressive is continuous in nature. To evoke remedy under Sec 397-398, complainant has to prove before CLB that alleged act is oppressive to shareholder or prejudicial to interest of company or prejudicial to public interest. It has been held by court in the matter of Seth Mohanlal Ganpatram Vs. Shri Sayaji Jubilee Cotton & Jute Mills that mere illegal, invalid or irregular transactions are not oppressive unless it is proved. Shareholders will not succeed.

II. Petition under section 399 can be filled not only by minority of shareholders. If the majority of shareholders are oppressed by minority or by other group of shareholders, they may also file an appeal under Sec 397-398 for getting relief against oppression and mis-management. It has been held in case of V Sebastian Vs. City Hospital Ltd that where majority is prevented from protecting itself by controlling directors at general meetings, the majority becomes an artificial minority, entitled to claim protection u/s 397-398. Therefore applicant may be successful in seeking relief provided other condition for making an appeal are satisfied.

Question 6(a)

NKM Producer Company passed a resolution at its general meeting on 30th April 2013 to reconvert the producer company into inter-state co-operative society under the Provisions of the Companies Act, 1956. Advise the Company, as a professional, regarding the method to be followed for re-conversion of Producer Company to inter-state co-operative society under the above Act.

> **Analysis of Question no -6 (a)**
> Very ordinary theory question. Excellent opportunity to create reserve fund for mark…

Answer 6 (a)

Producer company which was earlier an Inter-state co-operative society can reconvert itself. For this purpose, following steps are taken:

I. Resolution is passed in the general meeting by not less than two-third of its members present and voting or on request by its creditors representing three-fourth value of its total creditors.
II. Application to High Court is made. The High Court directs to hold meeting of its members and creditors.
III. If a majority in number representing three-fourth in value of the creditors, or members, as the case may be, present and voting in person at the meeting conducted in pursuance of the directions of the High Court, agree for re-conversion, if sanctioned by the High Court, be binding on all the members and all the creditors, as the case may be, and also on the company which is being converted.
IV. The Court passes order for re-conversion when it is satisfied that the company or applicant has disclosed all material facts.
V. Certified copy of order of High Court shall be filled with ROC.
VI. After sanction by the Court, the producer company shall within six months, make an application for registration thereof with Registrar of multi-State co-operative societies or co-operative society as the case may be.
VII. Thereafter, it shall file a report to High Court and ROC and registrar of multi-State co-operative society or registrar of societies to the effect.

Question no. 6 (b)

Premier Technologies Limited proposes to takeover Modern Solutions Limited, an unlisted company, by making an offer to the members of Modern Solutions Limited to purchase all their shares. At present, Premier Technologies Limited are not holding any shares in Modern Solutions Limited. Explain briefly the steps to be taken under the Companies Act, 1956 to give effect to the proposed takeover. (8 Marks)

> Analysis of Question no -6 (b)
> Most of students were not knowing exact steps to be taken for takeover. Writing steps is pure theory question...Most of faculty do not cover this kind of procedure in class room teaching because they themselves have never read take over code or take over offer document. In my opinion this question can really take over students marks...

Answer 6 (b)

Take over is method by way of which one company acquire business and control of another company by acquisition of majority of shares in that company. In this method, provisions of Sec 391–394 are not applicable. Shares are sold and registered in the name of the purchasing company. The selling shareholders receive either compensation or shares in the acquiring company. Acquiring company means purchasing company. Take over method is followed only when creditors are not involved in reconstruction and their interest are not affected. In case of listed company, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 should be complied. Following steps are followed:

I. Offer to shareholders

Transferee company makes an offer to the shareholders of transferor company to acquire their shares at stated price. Offer must be made to all shareholders of company. Usually take-over offer is made to the director of transferor company. Directors of transferor company should inform in turn to shareholders of company. Separate offers may be made to separate class of shares. When transferee company makes offer to shareholders of transferor company, the offer shall contain following information:

- ✓ Offer or circular of such offer should contain recommendation by directors of transferor company to its shareholders to accept offer in prescribed form (Form No. 35A)
- ✓ Offer should contain statement by transferee company how cash will be available for payment.
- ✓ Copy of offer/circular should be filled with ROC before it is send to shareholders. If registrar refuse to register it, an appeal can be made to the court.

II. Approval of Shareholders

- ✓ If the proposal is approved by holders of at least 90% of value of shares of transferor company, the transferee company can compulsorily acquire shares of dissenting shareholders.
- ✓ While calculating 90% value of shares, shares already held by transferee company will be excluded.
- ✓ Offer has to be approved by the shareholders concerned within four months.
- ✓ If the offer is approved, the transferee company may, at any time within two months of the expiry of the said four months give a notice to the dissenting shareholders that it desires to acquire their shares.
- ✓ If the transferee company already holds 90% or more shares in that company, then the above provisions will not apply. In this case transferee company can acquire the shares if:
  - o it offers the same terms to all the shareholders of the same class.
  - o the shareholders who approve of the scheme, besides holding not less than nine-tenths in value of the shares other than those already held by the transferee-company by not less than three-fourth in number of the holders of those shares.

III. Application to Court by Dissentient Shareholders

- ✓ Dissentient shareholders mean those who have not given consent to scheme or who have refused to transfer shares. Mere inaction can't mean assent.
- ✓ Dissentient shareholders may make application to court praying acquisition of their shares shall not be permitted. Appeal should be made within one month. Court may order after hearing both parties.
- ✓ To succeed, dissenting shareholders should prove before court that offer is unfair or price of shares offered is inadequate.
- ✓ If the application of dissenting shareholders is allowed, transferee company can't acquire shares of dissenting shareholders. But if the application of dissenting shareholders is rejected, Transferee Company is required to acquire shares of dissenting shareholders.

IV. Extinguishing the Transferor Company

- ✓ After transfer of shares existence of transferor company remain in records of ROC. There are following two methods to dissolve the existence of transferor company.
  - o Declaration by transferor company as defunct company and strike off name by ROC.
  - o Dissolution of company by the Court by voluntary winding up.

Question 7(a)

Examine with reference to the provisions of FEMA, 1999 and the rules thereunder whether foreign exchange can be drawn for the following purpose:

I. Mr. Gopal a cine artist in india proposes to organise a cultural programme at dubai and requires to draw foreign exchange US $ 1,00,000 for this purpose.

II. Mr. Shah proposes to visit USA on a business tour and for this purpose he wants to draw foreign exchange US $ 40,000 for meeting expenses (4 Marks)

> Analysis of Question no -7 (a)
> Practical question on FEMA. Those students who had remembered limit on various transaction could write down it. Others are in search of it....yet...continuous...hahaha...

Answer 7 (a)

I. Foreign exchange for cultural tour can be withdrawn by person after permission from GOI, Ministry of HRD as per Current account transaction rules 2000. Mr. Gopal in given case can withdraw US $ 1,00,000 after obtaining permission of Government.

II. Person can withdraw foreign exchange upto US $ 25,000 for business travel abroad. Withdrawal beyond US $ 25,000 require prior approval of RBI as per current account transaction Rules, 2000. Hence, Mr. Shah, is required to obtain prior approval of RBI to withdraw US $ 40,000.

Question 7(b)

A truck manufacturing company proposes to enter into distributorship agreements requiring the dealers not to sell trucks of other manufacturers and also not to sell the trucks outside the territories assigned to them. Examine with reference to the provisions of the Competition Act, 2002 whether the proposed agreements will be considered as anti-competitive agreements and void in case the company enter into such agreements. (4 Marks)

> Analysis of Question no -7 (b)
> Very good practical question from Competition Act. Question is based upon case of Telco ...which was decided when MRTP Act was in application. I like this question from entire paper. Most of students could not understand it and those who understood could not write correct answer. Expert take note that answer would be different under erstwhile MRTP Act and competition Act.

Answer 7(b)

Agreement in question restrict the dealer to deal in goods of other manufacturers and restrict to sell the goods outside the territory assigned to them. This kind of an agreement is anti-competitive agreement and void.

Any agreement which restrict in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in goods other than those of seller or any other person is exclusive supply agreement and is anti-competitive.

At the same time, any agreement which limit, restrict or withhold the output of goods or supply of goods or allocate any area or market for disposal or sale of goods is an exclusive distribution agreement and is anti-competitive.

Question 7 (c)

PTM Ltd a banking company maintained the record of all transactions for a period of 5 years from the date of cessation of the transactions between the clients and the company. Decide whether the company has fulfilled its obligation under the provisions of the preventive of money laundering Act, 2002. (4 Marks)

> Analysis of Question no -7 (c)
> Very good Question from Sec 12 of AMLA. Sec 12 is recently amended. Updated students could write it to the point...

Answer 7 (c)

As per Sec 12 of AML Act, Every banking company, financial institutions and intermediaries of securities market shall:

- ✓ maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions is a single transaction or a series of transactions.
- ✓ furnish information of the above transactions to the director within the prescribed time.
- ✓ verify and maintain the records of the identity of all its clients, in the prescribed manner (KYC Norms).
- ✓ maintain all records for a period of 10 years from the date of completion of the transactions.

PMT Ltd has maintained records only for 5 years instead of 10 years. Company has not followed the provision of Act.

Question 7 (d)

Mr. Krishna wants to nominate Mr. Ram, his 10 years old son, as nominee for his life insurance policy. Advise him under the provisions of the Insurance Act, 1938. (4 Marks)

> Analysis of Question no -7 (d)
> Past question again asked from Insurance Act regarding Nomination provision. Students did well for this question.

Answer 7 (d)

Life insurance policy holder at the time of taking policy or before maturity nominates any person as nominee. Where minor is nominee, policy holder should appoint major person in prescribed method. Nomination should be in writing.
Issuer should acknowledge about registration of nomination or change or cancellation with fee of not exceeding Rs. 1. (Sec 39 of Insurance Act, 1938).

Accordingly Krishna can appoint his minor son ram as nominee for his life insurance policy after complying above provision of Sec 39.

Question 7 (e)

The definition of a word in a statute may be either restrictive or extensive. Elaborate this with reference to the definitions of 'Managing director' in the Companies Act, 1956. (4 Marks)

> Analysis of Question no -7 (e)
> Good question from Interpretation of statue in which students are good in rote and poor in understanding. Those who can connect the interpretation with definition of MD could write it.

Answer 7(e)

When the definition use word like "mean", it is restrictive definition. But when the definition use words "means" and "includes", definition is exhaustive.

Sec 2(26) of Companies Act define managing director means director who by virtue of an agreement with company or resolution passed by GM or BM or by virtue of M/A or A/A is entrusted with substantial power of management.
Includes any director occupying position of managing director by whatsoever name called.

The above definition of managing director use both words, "means" and "includes" which makes it exhaustive definition. It is possible here to expand the meaning of word "managing director". It not only include director who is appointed as managing director but it also include director who is performing or acting like managing director even though he is not appointed as MD.

At the outset I can suggest to May 2014 students that:

1. Do not just focus on director and Board meeting provision.
2. Do winding up provision in details
3. Students can't omit FEMA, SEBI and SCRA at all.
4. Questions are triggered from corner. Minute details about penalty, consequences, compounding possibility and validity should be kept in mind....
5. Practice new application oriented questions.

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