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CS EXECUTIVE J' 19 EXAM

SUBJECT- ECO, BUSI & COMM. LAW

Test Code - CSE 2029

BRANCH - () (Date :)

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ANSWER : 1

- (A) Money laundering is commonly defined as happening in three steps : the first step involves introducing cash into the financial system by some means (placement); the second involves carrying out complex financial transactions to camouflage the illegal source (layering); and the final step entails acquiring wealth generated from the transactions of the illicit funds (integration).

Offence of money – laundering [Section 3] : Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money – laundering.

Punishment for money – laundering [Section 4] : Whoever commits the offence of money – laundering shall be punishable with rigorous imprisonment for 3 years which may extend to 7 years and shall also be liable to fine.

Where the proceeds of crime involved in money – laundering relates to offence specified under paragraph 2 of Part A of the Schedule, then imprisonment may extend to 10 years instead of 7 years.

[5 Marks]

- (B) It was held by the Supreme Court that mens rea or guilty mind is an ingredient of the offence punishable under the Essential Commodities Act, 1955 i.e., an intentional contravention of an order made u/s 3, is an essential ingredient of an offence u/s 7. [Nathulal v. State of Madhya Pradesh AIR 1966 SC 43]

In other words, if the dealer did believe bona fide that he could store the foodgrains, without infringing any order u/s 3, there could be no contravention u/s 7.

Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the Statute would otherwise be defeated. The nature of mens rea that would be implied in a Statute creating an offence depends on the object of the Act and the provisions thereof.

In Hariprasad Rao v. State (AIR 1951 SC 264), it was observed that unless a Statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime, an accused cannot be found guilty of an offence against the criminal law unless he has got a guilty mind. Therefore, mens rea is an essential ingredient of an offence under section 7 of the Act.

Section 10 C provides for a presumption of culpable mental state, which includes intention, motive, knowledge of a fact and the belief in a fact. It is now provided that in any prosecution for an offence under the Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of mental state. Of course, it is open to the accused to prove that he had no such mental state with respect of the act committed by him.

[5 Marks]

ANSWER : 2

(A) **Defect [Section 2(1)(f)]**: **Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard** which is required to be maintained by or under any law for the time being in force or under any contract express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

It is clear from the above definition that **non – fulfillment of any of the standards or requirements laid down under any law for the time being in force or as claimed by the trader in relation to any goods fall under the ambit of defect.** Therefore, contravention of any of the provisions of following enactments will be treated as a defect under the Act :

- The Drugs & Cosmetics Act, 1950
- The Prevention of Food Adulteration Act, 1955
- The Indian Standards Institution (Certification Marks) Act, 1952
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Contravention of the conditions or implied warranties under the Sale of Goods Act, 1930 in relation to any goods has also been treated as a defect under the Act.

Fault, imperfection or shortcoming in quality, quantity, potency, purity or standard in relation to goods is to be determined with reference to the warranties or guarantees expressly given by a trader.

[5 Marks]

(B) Where a person transfers his property so that his creditors shall not have anything out of the property, the transfer is called a fraudulent transfer. A debtor in order to defeat or delay the rights of a creditor, may transfer his property to some person, who may be his relative or a friend. The law does not allow this. Section 53 embodies the principle.

Fraudulent Transfer [Section 53]: Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Thus, where an owner of the property contracts a debt and then transfers his property to someone so that the creditor cannot proceed against the property to realize his debt, such a transfer is voidable at the option of the creditor. The transfer is valid so long as the creditor does not challenge it in a Court of law and gets a declaration that the transfer is invalid.

A suit instituted by a creditor to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transfer or shall be instituted on behalf of, or for the benefit of all the creditors. Once the creditor sues the debtor and says that the debtor has the intention to deceive him, the transfer can be declared invalid by the Court. The creditor has to satisfy the Court that there was an intention on the part of the debtor to defeat his rights.

Example : Suppose a man takes a loan from the creditor. He does not pay the loan. The creditor sues him in a Court to get back his debt. On seeing this, the debtor transfers his property to his friend or some other person who simply holds the property on behalf of the transferor. Again, the debtor may make a gift of his property to his wife or sell it to a friend who will afterwards retransfer the same to the transferor. Under these circumstances, we

can easily say that the debtor's intention was to prevent the creditor from taking the property by a suit in the Court and to realize his debt.

But suppose the debtor has several creditors and he transfers his property to one of his creditors in satisfaction of his whole debt to him. This is not a fraudulent transfer. A mere preference of one creditor over the others is not fraudulent, even if the whole property is so transferred and nothing is left for the other creditors. But the other creditors may file a petition in the Court within three months of the transfer praying that the debtor be declared insolvent. If the debtor is adjudicated an insolvent, their interest will be protected and the transfer will be declared as fraudulent preference. The transfer will be set aside and the property will be distributed among all the creditors.

However, the rights of a transferee in good – faith and for consideration are protected. It says nothing shall affect or impair the rights of a transferee in good – faith and for consideration.

[5 Marks]

Answer : 3

(A)

Declarations on pre – packaged commodities [Section 18]: No person shall manufacture, pack, sell, import, distribute, deliver, offer for sale any pre – packaged commodity unless such package is in standard quantities or number and bears prescribed declarations and particulars.

Any advertisement mentioning the retail sale price of a pre – packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in prescribed form and in prescribed manner.

Penalty for selling of non – standard packages [Section 36] : Whoever manufactures, packs, imports, sells, distributes, delivers any pre – packaged commodity which does contain the required declarations on the package then he shall be punished as follows :

- For the first offence with fine up to Rs. 25,000
- For the second offence up to Rs. 50,000
- For the subsequent offence above Rs. 50,000 to Rs. 1,00,000 or with imprisonment for a term which may extend to 1 year or with both.

Whoever manufactures or packs or imports with error in net quantity as may be prescribed shall be punished

- For the first offence with fine above Rs. 10,000 but up to Rs. 50,000 and
- For the second and subsequent offence, with fine up to Rs. 1,00,000 or with imprisonment for a term which may extend to 1 year or with both.

[5 Marks]

(B)

The term **current account transaction has been defined to mean a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments, remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.**

Under the FEMA freedom has been granted for selling and drawing of foreign exchange to or from an authorized person for undertaking current account transactions. However, the Central Government has been vested with powers in consultation with RBI to impose reasonable restrictions on current account transactions. The Central Government has framed **Foreign Exchange Management (Current Account Transactions) Rules, 2000** dealing with various aspects of current account transactions.

[5 Marks]

Answer : 4

(A) Prohibition to accept foreign contribution [Section 3]: Following person or organization cannot accept foreign contribution :

- (a) Candidate for election
- (b) Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper
- (c) Judge, Government servant or employee of any corporation or government company or any other body controlled or owned by the Government.
- (d) Member of any Legislature (i.e. MP & MLA)
- (e) Political party or its office – bearer
- (f) Organization of a political nature
- (g) Association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form
- (h) Correspondent or columnist, cartoonist, editor, owner of the association or company covered in clause (g).

Person resident in India, and citizen of India resident outside India, shall not accept any foreign contribution or acquire or agree to acquire any currency from a foreign source, on behalf of any political party or any person referred to Section 3(1).

Person resident in India shall not deliver any currency which has been accepted from foreign source to any person if he knows or has reasonable cause to believe that such other person intends or is likely to deliver such currency to any political party or any person referred to in Section 3(1).

Citizen of India resident outside India shall not deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to –

- (i) Any political party or any person referred to in Section 3(1) or-
- (ii) Any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in Section 3(1).

Person receiving any currency from a foreign source on behalf of any person or class of persons, referred to in Section 9, shall not deliver such currency –

- (a) To any person other than a person for which it was received, or
- (b) To any other person, if he knows or has reasonable cause to believe that such other person intends or is likely to deliver such currency to a person other than the person for which such currency was received.

[5 Marks]

(B) Rights and duties of allottees

Section 20 provides for the various rights and duties of the allottees.

- (1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other

- information as provided in the Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.
- (2) The allottee shall be entitled to know stage – wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.
 - (3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter.
 - (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under the Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.
 - (5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.
 - (6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.
 - (7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub – section (6).
 - (8) The obligations of the allottee under sub – section (6) and the liability towards interest under sub section (7) may be reduced when mutually agreed to between the promoter and such allottee.
 - (9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.
 - (10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.
 - (11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub – section (1) of section 17 of this Act.

[5 Marks]

Answer : 5

(A) The Sailer Features of the Benami Transactions (Prohibition) Act, 1988 are as under :

- It defines **a benami transaction and benami property and also provides for exclusions and transactions which shall not be construed benami.**
- It provides the consequences of entering into a prohibited benami transactions.
- It lays down the procedure for determination and related penal consequences in the case of a prohibited benami transaction.
- It also provides that the powers of civil court shall be available to authorities under the said Act.
- Miscellaneous Provisions have been provided for service of notice, protection of action taken in good faith, etc.

- Central Government empowers to make rules for the implementation of the provisions of the Bill.
- It enables the Central Government in consultation with the Chief Justice of the High Court to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Bill.
- It provides penalty for entering into benami transactions and for furnishing any false documents in any proceeding under the Bill.
- It provides for transfer of any suit or proceeding in respect of a benami transaction pending in any court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal.

[5 Marks]

(B) State Permissible source of funding under Overseas Direct Investment.

- Drawal of foreign exchange from an AD bank in India
- Swap of shares (refers to the acquisition of the shares of an overseas JV/WOS by way of exchange of the shares of the Indian party)
- Capitalization of exports and other dues and entitlements
- Proceeds of External Commercial Borrowings Foreign Currency Convertible Bonds.
- In exchange of ADRs – GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and the guidelines issued by Government of India in the matter.
- Balances held in Exchange Earners Foreign Currency account of the Indian Party maintained with an Authorized Dealer
- Proceeds of foreign currency funds raised through ADR – GDR issues

[5 Marks]