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SUGGESTED SOLUTION

CS EXECUTIVE JUNE '19

SUBJECT- COMPANY LAW

Test Code - CSE 2048

BRANCH - () (Date :)

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ANSWER : 1**(A)**

Exceptional Situations, prospectus is not required to be issued	Section 26(2) of Companies Act, 2013 states that Section 26(1) of Companies Act, 2013 does not apply to
	<p>a) The issue to existing members or debenture holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub – clause (ii) of clause (a) of sub – section (1) of section 62 in favour of any other person; or</p> <p>b) To the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time dealt in or quoted on a recognised stock exchange.</p>

(2 marks x 2 = 4 marks)**(B) Where subscriber to the memorandum is a foreign national residing outside India :**

- (a) In a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.
- (b) In a country which is a party to the Hague Apostille convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.
- (b) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in Section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10), or in any Act amending the same;
- (d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Explanation : For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

(6 marks)**Answer : 2****(A)**

When a member ceases to be a member of a company	<p>a) A person ceases to be a member of a company when his name is deleted / removed from its register of members, which may occur in any of the following situations :</p> <p>(i) On transfer of shares;</p> <p>(ii) For feature of shares;</p> <p>(iii) His shares are sold by the company to enforce a lien;</p> <p>(iv) On death of a shareholder;</p> <p>(v) He is adjudged insolvent and the official assignee disclaims his shares;</p> <p>(vi) Redemption of redeemable shares</p> <p>(vii) He rescinds the contract of membership on the ground of fraud or misrepresentation or a genuine mistake;</p>
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	<p>(viii) His shares are purchased under Section 242 of Companies Act, 2013;</p> <p>(ix) the member is a company which is being wound up in India, and the liquidator disclaims the shares;</p> <p>(x) the company is wound up;</p> <p>(xi) share warrants have been issued in exchange of fully paid shares.</p>
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(6 marks)

(B) 'Debentures' and 'shares'

Basis	Debentures	Shares
1. Status	Debenture holder is only a creditor of the company.	A Shareholder or a member is an owner of the company.
2. Voting right	They do not have any voting rights.	They enjoy voting rights.
3. Income	Interest on debenture is payable even if no profit is available.	Dividend on shares is to be paid only out of profit and not otherwise, if declared.
4. Repayment	Debentures are repayable/ redeemable as per terms of the issue.	Share, are not refundable unless the company goes into liquidation.
5. Repurchase	A company may purchase its own debentures unless they are perpetual or irredeemable.	Whereas it is not open to a company to purchase its own shares as per Section 67 of Companies Act, 2013.
6. Discount on issue	Debentures can be issued at a discount.	Shares cannot be issued at a discount.
7. Security	Debentures are generally secured and carry a charge on the asset of the company.	Shares have no charge.

(4 marks)

Answer : 3

(A)

1.	Authenticity of the statement	The statement is not true.
2.	Separate Legal Entity	<ul style="list-style-type: none"> ➤ A company is an artificial person. It is formed and registered under the Companies Act. It has distinct legal entity. Its personality is separate and distinct from its members. ➤ The company's money and property belong to the company and not to the of members of company. Similarly, the members' personal property cannot be held liable to pay the creditors of the company.
3.	Characteristics of company	<p>In some cases company is treated as a natural person.</p> <p>(a) It can make contracts. (b) Open a bank account. (c) Can sue and be sued by others. (d) It can also own property.</p>
4.	Analysis of Case Law : Saloman Vs. Saloman Company Ltd.	This point has clearly established the principle that once a company has been validity constituted under the Companies Act, 2013, it becomes a legal person distinct from its members and for this purpose, it is immaterial whether any member has a

		large or small proportion of the share capital, and whether he holds those shares beneficially or as a mere trustee.
5.	Conclusion	Hence, shareholders <u>can not be held liable</u> for the acts of the company.

(6 marks)

(B)

No.	Preference share	Equity Share
1.	Preference shares are entitled to a fixed rate of dividend.	The rate of dividend on equity shares depends upon the amount of profit available and the funds requirements of the company for future expansion etc.
2.	Dividend on the preference shares is paid in preference to the equity shares.	The dividend on equity shares is paid only after the preference dividend has been paid.
3.	In case of winding – up, preference shareholder get preference over equity share holders with regard to the payment of capital.	In case of winding – up, equity share holder get payment of capital after the payment of capital to preference share – holders.
4.	Dividend on preference share may be cumulative.	The dividend on equity shares is paid only after the preference dividend has been paid and it is not cumulative.
5.	No, bonus shares/ right shares are issued to preference share holders.	A company may issue rights shares or bonus shares to the company's existing equity shareholders.
6.	Redeemable preference shares may be redeemed by the company.	Equity shares cannot be redeemed except under a scheme involving reduction of capital or buy back of its own shares.
7.	Voting right of a preference shareholders on a poll shall be in proportion to his share in the paid – up preference share capital of the company.	Voting right of an equity shareholders on a poll shall be in proportion to his share in the paid – up equity share capital of the company.

(any four points)

(1 mark x 4 = 4 marks)

ANSWER : 4

(A)

Provisions of Companies (Acceptance of Deposits) regarding premature repayment of deposits, Rule 2014.		
1.	Repayment after 6 months but before the expiry period of the deposit	The said rule states that a company may, on the request of the depositor, repay its deposits, <u>after the expiry of a period of six months from the date of such deposit</u> but before the expiry of the period for which such deposit was accepted.
	1. Interest	<u>The rate of interest payable on such deposit shall be reduced by one per cent.</u> From the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced.

		2. Exception	Nothing contained in this rule shall apply to the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of – (a) Complying with the provisions of rule 3; or (b) Providing war risk or other related benefits to the personnel of the naval, military or air force or to their families, on an application made by the association or societies formed by such personnel, during the period of emergency declared under article 352 of the Constitution.
		3. Renewal on higher rate of interest	<ul style="list-style-type: none"> • Where a company referred to in under sub – section (2) of section 73 or any eligible company. • Permits a depositor to renew his deposit, • Before the expiry of the period for which such deposit was accepted by the company. • For availing of a higher rate of interest, • The company shall pay interest to such depositor at the higher rate • If such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit.

(B)

(5 Marks)

• **Share holders' Democracy**

- The concept of shareholders' democracy in the present day corporate world denotes the **shareholders' supremacy in the governance of the business and affairs** of corporate sector either directly or through their elected representatives.
- Under the Companies Act the **powers have been divided between two segments**: one is the Board of Directors and the other is of shareholders.
- The directors exercise their powers through meetings of Board of directors and shareholders exercise their powers through General Meetings.
- Although **constitutionally all the acts relating to the company can be performed in General Meetings** but **most of the powers in regard thereto are delegated to the Board of directors** by virtue of the constitutional documents of the company viz. the Memorandum of Association and Article of Association.
- Proviso to this section restricts the power of the Board of directors to do things which are specifically required to be done by shareholders in the General Meetings under the provisions of Companies Act or Memorandum of Association or the Articles of Association.
- Thus the **Companies Act has tried to demarcate** the area of control of directors as well as that of shareholders. Basically all the business to be transacted at the meetings of shareholders is by means of an ordinary resolution or a special resolution or by postal ballot.

(5 marks)

ANSWER : 5

(A)

Provisions of Sec. 31 of Companies Act regarding Shelf Prospectus		
1.	Meaning	Shelf Prospectus means a prospectus issued by the companie(s) as prescribed by SEBI (Public Financial Company etc) for subscription in one or more issues over a certain period (one year from the date of 1 st issue) without the issue of a further prospectus at every stage of offer of securities.
2.	Validity	Shelf Prospectus will be valid for a period of one year , from the date of first issue of securities.
3.	Information Memorandum	A company filing a shelf prospectus shall be required to file an information memorandum along with the shelf – prospectus.
4.	Update of Information Memorandum	An update of information memorandum shall be filled, every time an offer of securities is made. Such memorandum together with the shelf prospectus shall constitute the prospectus.

(5 marks)

(B)

No.	Heading	Description
1.	Perpetual Succession	<ul style="list-style-type: none">➤ Perpetual Succession, therefore, means that the membership of a company may keep changing from time to time, but that does not affect its continuity.➤ A company, being a separate legal person is unaffected by death or departure of any member and remains the same entity, despite total change in the membership.
2.	Death only on winding of the company	<ul style="list-style-type: none">➤ An incorporated company never dies except when it is wound up as per law.
3.	Change in membership	<ul style="list-style-type: none">➤ The membership of an incorporated company may change either because one shareholder has transferred his shares to another or his shares devolve on his legal representatives on his death or e ceases to be a member under some other provisions of the Companies Act.➤ Thus, perpetual succession denotes the ability of a company to maintain its existence by the constant succession of new individuals who step into the shoes of those who cease to be members of the company.
4.	Survival of company even after death of all the members during war	<ul style="list-style-type: none">➤ A company's life is determined by the terms of its Memorandum of Association. It may be perpetual or it may continue for a specified time to carry on a task or object as laid down in the Memorandum of Association.

(5 marks)