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SUGGESTED SOLUTION

FINAL MAY 2019 EXAM

SUBJECT- LAW

Test Code – FNJ 7090

BRANCH - () (Date :)

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Answer 1:

(A)

Section 4 of the Prevention of Money Laundering Act, 2002 provides for the punishment for Money – Laundering. Whoever commits the offence of money – laundering shall be **punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine.** But where the proceeds of crime involved in money – laundering relate to **any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.** (2 marks)

Paragraph 2 of Part A of Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 Whereby, embezzlement of opium by cultivator (section 19) is covered under paragraph 2 of Part A. (2 marks)

In the present case, Sohan Lal, a farmer, who was involved in embezzlement of opium cultivated by him **shall be liable for the rigorous imprisonment** for a term which may extend to **10 years** and shall also be liable to fine. (1 mark)

(B)

Sub – section (4) of section 13 of SARFAESI Act, 2002, provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt : (1 mark)

- (i) Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (ii) Take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset :
Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt :
Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;
- (iii) Appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor.
- (iv) Require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified. (4 marks)

Answer 2:

(A)

(A) The term ‘agreement’ as defined in section 2 (b) of the Competition Act, 2002, **includes** any arrangement or understanding or action in concert.

- (i) whether or not such arrangement, understanding or action is formal or in writing, or
- (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

Thus agreement between X Ltd. and Y Ltd. satisfies the above ingredients of an agreement as per section 2 (e) of the Act.

Further, Those Agreements which disturb the improvement of competition in the market by exercising control over the quantity of production and supply are presumed to be have Appreciable Adverse Effect over competition.

In the Given Case, since X Ltd. and Y Ltd. have entered into an agreement which control production and supply and market, they have presumed to be Appreciable Adverse Effect over competition. Form of Agreement doesn't matter here.

(2 marks)

(B) Factors to be considered:

- (1) creation of barriers to new entrants in the market.
- (2) driving existing competitors out of the market.
- (3) foreclosure of competition by hindering entry into the market.
- (4) accrual of benefits to consumers.
- (5) improvements in production or distribution of goods or provision of services

(2 marks)

(C) Orders of CCI: If after enquiry by the Director General, **the Commission finds the agreement entered into by X Ltd. and Y Ltd. are in contravention of section 3, it may pass all or any of the following orders:**

- (1) direct X Ltd. and Y Ltd. to discontinue and not to re-enter such agreement.
- (2) impose such penalty as it may deem fit which shall not be more than 10% of the average of the turnover for the last 3 preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse;
- (3) direct that agreement shall stand modified to the extent and in the manner as may be specified in the order by the commission;
- (4) direct X Ltd and Y Ltd. to abide by such other orders as the commission may pass and comply with the directions including payment of cost, if any.
- (5) pass such other orders or issue such directions as it may deem fit.

(2 marks)

(B)

The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment ordinarily a proviso is not interpreted as it stating a general rule.

(2 marks)

It is a **cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.** It carves out an exception to the provision to which it has been enacted as a proviso and not to the other. (*Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax., A.I.R., 1995 SC 765*).

(1 mark)

An explanation is at times appended to a section to explain the meaning of the text of the section. An explanation may be added to include something within the Section or to exclude something from it. An explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

(1 mark)

Answer 3:

(A)

Requirements as to Capital: As per the Insurance Laws (Amendment) Act, 2015, section 6 of the Insurance Act, 1938, has been amended. According to which the requirements as to **capital for**

registration of the insurer has been modified. No insurer (not being an insurer as defined in sub-clause (d) of clause (9) of section 2) carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has minimum paid up equity capital as prescribed below-

Type of Insurance Business	Minimum Paid-up equity capital required (with a provision for further enhancement & Paid-up equity excludes preliminary expenses incurred during formation and registration)
Life insurance or general insurance	Rs.100 crore
Health insurance (exclusively)	Rs.100 crore
Re-insurer (exclusively)	Rs. 200 crore (besides re-insurer shall not be registered unless he has net owned funds of not less than Rs.5,000 crore)

(3 marks)

In the given case, X an insurance company is an insurer carrying business of Life insurance. For registration as per the above provision, minimum paid-up equity capital required for conduct of business of health insurance is Rs. 100 crore. **Since paid up equity capital of X insurance company is more than 100 crore, so it can be registered for carrying of the insurance business.**

(2 marks)

(B)

Section 6 of the Banking Regulation Act, 1949 provides a list of activities which a banking company may engage in addition to the business of banking.

From among them, General Utility Services, which can be provided by a bank are as follows:

- (1) Providing safe-custody facility to its customers for keeping their valuables;
- (2) Providing the facility of Safe Deposit Vault (Locker) under lease agreement to its customers for keeping their valuables;
- (3) Technology based general utility services like Tele-banking, Phone-banking, On-line banking, Home banking, Single window banking, Demat services for security trading, ATM services, Credit Card services etc.,
- (4) Consultancy services;
- (5) ECS services for payment of different dues of the people
- (6) Payment of pension;
- (7) Payment of salaries of employees of schools etc.;
- (8) Payment of salaries etc.;
- (9) Many other services.

(5 marks)

Answer 4:

(A)

Offence of Money Laundering : Section 2(i) (y) of the prevention of Money Laundering Act, 2002 defines the term “**Scheduled offence**”, which accordingly means –

- (i) the offences specified under Part A of the Schedule ; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more

(iii) The offences specified under Part C of the Schedule.

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A. **(3 marks)**

Punishment :

Section 4 of the said Act provides for the punishment for Money – Laundering. Whoever commits the offence of money – laundering shall be punishable with **rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years** and shall also be liable to fine. But where the proceeds of crime involved in money – laundering relate to **any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.** **(2 marks)**

(B)

Cancellation of Certificate of Registration (Section 4 of the securitisation & reconstruction of financial assets & enforcement of Security Interest Act, 2002)

As per the section 4 of the Securitisation & Reconstruction of Financial Assets & Enforcement of security Interest Act, 2002, Reserve Bank may cancel a certificate of registration granted to a securitization company or a reconstruction company, if such company –

- (i) ceases to carry on the business of securitisation or asset reconstruction; or
- (ii) ceases to receive or hold any investment from a qualified institutional buyer; or
- (iii) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
- (iv) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub – section (3) of section 3; or
- (v) fails to –
 - (a) comply with any direction issue by the Reserve Bank under the provisions of this Act; or
 - (b) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - (d) obtain prior approval of the Reserve Bank required under sub – section (6) of section 3.

(5 marks)

Answer 5:

(A)

Section 2(i) of Competition Act, 2002 defines ‘goods’ as follows:

‘Goods’ means goods as defined the Sale of Goods Act, 1930 and includes –

- (a) products manufactured, processed or mined;
- (b) debentures, stock and shares after allotment
- (c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

(3 marks)

Hence, debentures and shares can be considered as ‘goods’ within the meaning of section 2(i) of Competition Act, 2002 only after allotment and not before allotment. **(1 mark)**

(B)

Power of Reserve Bank of India to inspect banks (Section 35 of the Banking Regulation Act, 1949): RBI is empowered to conduct inspection of any bank and to give them direction as it deems

fit. **All banks are bound to comply with such directions.** Every directors or other officer of the bank shall **produce all such books, documents as required by the inspector.** The **inspector may examine on oath any director or other officers.**

RBI shall supply the bank a copy of such report of the inspection. RBI submits report to Central Government and the latter, on scrutiny, if is of the opinion that the affairs of the bank are being conducted detrimental to the interest of its depositors, it may, after giving an opportunity of being heard, to the bank, **may order in writing prohibiting the bank from receiving fresh deposits, direct the RBI to apply section 38 for winding up of the bank.** (4 marks)

Power of RBI to appoint Directors (Section 36AB of the Banking Regulation Act, 1949): RBI is empowered to appoint additional Directors for the banking company with effect from the date to be specified in the order, **in the interest of the bank or that of depositors. Such additional directors shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time.** (2 marks)