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INTERMEDIATE N' 2019 EXAM

SUBJECT- LAW

Test Code – PIN 5068

BRANCH - () (Date :)

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DIVISION A

Answer 1:

1. **C**
2. **D**
3. **A**
4. **D**
5. **B**
6. **C**
7. **C**
8. **C**
9. **D**
10. **C**
11. **B**
12. **A**
13. **D**
14. **B**
15. **B**
16. **B**
17. **A**
18. **C**
19. **D**
20. **B**
21. **C**
22. **B**

DIVISION B

Answer 1:

(A)

Rights of Indemnity- holder when sued (Section 125): The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) **all damages** which he may be compelled to pay in any suit in respect of **any matter** to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as **it would have been prudent for him to act in the absence of any contract of indemnity**, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the **compromise was not contrary to the orders of the promisor**, and was one which it would have been prudent for the promisee to make **in the absence of any contract of indemnity**, or if the promisor authorized him to compromise the suit.

It may be understood that the **rights contemplated under section 125 are not exhaustive**. The indemnity holder/ indemnified has other rights besides those mentioned above. If he has

incurred a liability and that liability is absolute, he is entitled to call upon his indemnifier to save him from the liability and to pay it off. **(4 marks)**

(B)

According to Section 46(1) of the Companies Act, 2013, a **share certificate once issued** under the common seal, if any, of the company or **signed by two directors** or **by a director and the Company Secretary**, wherever the company has appointed a Company Secretary", specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares. **(2 marks)**

However, **a forged transfer is a nullity**. It **does not give** the transferee (Y) **any title to the shares**. Similarly any transfer made by Y (to Z) will also **not give a good title to the shares** as the title of the buyer is only as good as that of the seller. **(1 mark)**

Therefore, if the **company acts on a forged transfer and removes the name of the real owner** (X) from the Register of Members, then the company is bound to restore the name of X as the holder of the shares and to pay him any dividends which he ought to have received. **(1 mark)**

In the above case, 'therefore, X has the right against the company to get the shares recorded in his name. However, neither Y nor Z' have any rights against the company even though they are bona fide purchasers.

However, since **X seems to be the perpetrator of the forgery**, he will be **liable both Criminally and for compensation** to Y and Z. **(1 mark)**

(C)

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-

Order of demand for poll by the chairman of meeting: Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

(a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having **not less than one-tenth of the total voting power** or holding shares on which an **aggregate sum of not less than five lakh rupees or such higher amount** as may be prescribed has been paid-up; and

(b) in the case of any other company, by any member or members present in person or **by proxy**, where allowed, and having **not less than one tenth of the total voting power.**

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand. **(3 marks)**

Hence, on the basis on the above provisions of the Companies Act, 2013:

(a) The **chairman cannot reject the demand for poll as poll can be demanded by the members** present in person or by proxy. subject to provision in the articles of company.

(b) The chairman cannot reject the request of the members for withdrawing the demand

of the Poll. **(2 marks)**

(D)

According to section 40 of the Negotiable Instruments Act, 1881, where the **holder** of a negotiable instrument, **without the consent of the endorser**, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the **intentional cancellation** of his signature by the holder. **(2 marks)**

In the given question, E is the holder of a bill of exchange of which F is the payee and it contains the following endorsement in blank:

First endorsement, 'F'
Second endorsement, 'G'
Third endorsement, 'H'
Fourth endorsement, 'I' **(1 mark)**

'E', the holder, may intentionally strike out the endorsement by 'G' and 'H'; in that case the liability of 'G' and 'H' upon the bill will come to an end. But if the endorsements of 'G' and 'H' are struck out without the consent of 'I', 'E' will not be entitled to recover anything from 'I'. The reason being that as between 'H' and 'I', 'H' is the principal debtor and 'I' is surety. If 'H' is released by the holder under Section 39 of the Act, 'I', being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder. **(2 marks)**

Thus, if 'E' strikes out, without I's consent, the endorsements by 'G' and 'H', 'I' will also be discharged.

Answer 2:

(A)

Prohibition on declaration of dividend: Section 123(6) of the Companies Act, 2013, specifically provides that a **company which fails to comply with the provisions of section 73** (Prohibition of acceptance of deposits from public) **and section 74** (Repayment of deposits, etc., accepted before the commencement of this Act) **shall not**, so long as such **failure continues**, declare any dividend on its equity shares. **(2 marks)**

In the given instance, the Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. So according to the above provision, declaration of dividend by the ABC Limited is not valid. **(2 marks)**

(B)

Change in the name of company : In the first instance, Mars Textile India Ltd., should ascertain from the Registrar of Companies whether the proposed name viz. National Textiles and Industries Ltd. is available or not. For this purpose, the company should file the prescribed **Form No.INC.24** with the Registrar along with the necessary fees. The Registrar after examination will inform whether the **new name is available or not for registration**.

In case the name is available, the company has to pass a special resolution approving the change of name to National Textiles and Industries Ltd.

Thereafter the **approval of the Central Government** should be obtained as provided in Section 13(2) of the Companies Act, 2013. The power of Central Government in this regard has been delegated to the Registrar of Companies. Thus, the company has to file an application along with the prescribed filing fee for change of name. The **change of name shall be complete and effective only on the issue of a fresh certificate of incorporation by the Registrar**. The Registrar shall enter the new name in the Register in place of the former name 13(3). The change of name shall not affect any rights or obligations of the company and it shall not render defective any legal proceedings by or against it. **(5 marks)**

(C)

"**Eligible company**" means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits : **(2 marks)**

However, an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may **accept deposits by means of an ordinary resolution**.

An eligible company shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds **ten per cent. of the aggregate of the Paid-up share capital, free Reserves and securities premium** account of the company. **(2 marks)**

ABC Limited is having a net worth of 120 crore rupees. Hence, it can fall in the category of eligible company.

Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. **(1 mark)**

(D)

Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. **If there is some ambiguity in the provisions** of the main section, the **explanation is inserted to harmonies and clear up and ambiguity** in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section. **(3 marks)**

Answer 3:

(A)

Quorum: In this case the **quorum for holding a general meeting is 7 members to be personally present**. For the purpose of quorum, only those **members are counted who are entitled to vote** on resolution proposed to be passed in the meeting.

Again, only members present in person and **not by proxy are to be counted**. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a **company is a member of another company**, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the **President of India or Governor of a State**, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present. **(3 marks)**

In view of the above there are only three members personally present.
'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies ' Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting. **(3 marks)**

(B)

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company. **(2 marks)**

It can be noted that Section 13 of General Clauses Act, 1897 provides that **the word 'singular' shall include the 'plural'**, unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law. **(2 marks)**

(C)

According to section 151 of the Indian Contract Act, 1872, in all cases of bailment, the **bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence** would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. **(1 mark)**

According to section 152 of the Indian Contract Act, 1872, the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Thus, Barn is liable to compensate Ashley for his negligence to keep jewelry at his residence. Here, Ashley and Barn agreed to keep the jewelry at the Bank's safe locker and not at the latter's residence. **(3 marks)**

(D)

As per the section 2(45) of the Companies Act, 2013, the **holding of 25% shares of AMC Ltd. by the government of Rajasthan does not make it a government company**. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an **ordinary resolution** only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013. **(3 marks)**

Answer 4:

(A)

According to Section 139 (2) of the Companies Act, 2013,

I. **Listed companies** and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for **more than two terms of 5 consecutive years**.

II. An **audit firm** which has **completed its term** (i.e. two terms of five consecutive years) **shall not be eligible for re- appointment** as auditor in the same company for five years from the completion of such term.

III. Further, as on the date of appointment **no audit firm having a common partner** or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.

IV. For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held off as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be. **(4 marks)**

Applying the above provisions,

(1) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.

(2) The cooling- off period shall be of 5 years.

(3) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.

However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period.

As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.

(4) Accordingly, M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors. **(1 mark x 4 = 4 marks)**

(B)

The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

(1) Repudiate the transaction; if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.

(2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover ` 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction. **(4 marks)**

(C)

(i) In accordance with the provisions of the Companies Act, 2013, as contained under section **129(3) and (4):**

Where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own. **The consolidated financial statements shall also be laid before the AGM** of the company along with the laying of its own financial statement. The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiaries in **Form AOC-1**. For the purpose of consolidated financial statements, 'subsidiaries' shall include associate company and joint venture. **(2.5 marks)**

(ii) According to *Companies (Accounts) Rules, 2014*, the consolidation of financial statements of the company shall be made in accordance with the provisions of **Schedule III** to the Act and the **applicable accounting standards**. However, for a company which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions of consolidated financial statements

provided in Schedule III to the Act. The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements. **(2.5 marks)**

Answer 5:

(A)

Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred **without consideration**, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and **every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto**. **(3 marks)**

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration. **(1.5 marks)**

(ii) As regards to the second part of the problem, the prior parties before D i.e., A, B, and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration. **(1.5 marks)**

(B)

The prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the **Registrar within 30 days after the date of the creation of charge** [Section 77 (1)]. In this case particulars of charge have not been filed within the prescribed period of 30 days.

However, the **Registrar is empowered** under proviso to section 77 (1) to **extend the period of 30 days up to 300 days** on payment of such additional fee as may be prescribed. Taking advantage of this provision, MNC Limited, should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

There will be no change in the situation if the charge was created on 12th February, 2017.

(5 marks)

(C)

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then **unless a different intention appears**, the service shall be deemed to be effected by:

1. properly addressing,
2. pre-paying, and
3. posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by '**registered post acknowledgement due'**, then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of *In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181*: A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law. **(6 marks)**