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SUBJECT- LAW

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DIVISION A

Answer 1:

1. B
2. D
3. C
4. A
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.C
- 20.B
- 21.C
22. D

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)

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases—

- (i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.
- (ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.
- (iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.
- (iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.
- (v) No, B is not a holder because he is in wrongful possession of the instrument.

(5 marks)

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)

According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

- (i) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- (ii) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of Rs. 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

(5 marks)

(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)

Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Y's shop, when A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

(4 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)

Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent. The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction. On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction. Hence in the first instance, though Pankaj had given his consent to Shruti permitting the latter to act on his own account in the business of agency, Pankaj may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.

In the second instance, Pankaj had knowledge that Shruti was acting on her own account and also that the mine was in existence; hence, Pankaj cannot repudiate the transaction under section 215. Also, under Section 216, Pankaj cannot claim any benefit from Shruti as he had knowledge that Shruti was acting on her own account in the business of the agency

(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) In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

(3 marks)

(D) Dictionary Definitions: First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries. **(3 marks)**