



J.K. SHAH[®]
TEST SERIES

Evaluate Learn Succeed

SUGGESTED ANSWERS

CA FINAL

Test Code – JKN-ECO-21

Date – 24-08-2020

**Head Office: Shraddha, 3rd Floor, Near Chinai College, Andheri E,
Mumbai – 69**

Tel: (022) 26836666

Answers

Case Study 1

Multiple Choice Questions

1. (b)
2. (b)
3. (b)
4. (c)
5. (b)

Descriptive Answers

Q.1

In the given case, the committee of creditors will be constituted as per section 21 of the Insolvency and Bankruptcy Code, 2016.

The members of the committee will comprise all financial creditors excluding related party who will not have right of representation, participation or voting in the meeting of the committee of creditors.

Accordingly, the committee of creditors and their voting share will be as under:

S. No.	Members	Loan Amount (` Crores)	Voting Share %
1	SBI	700	17.77
2	ICICI	500	12.69
3	HDFC	400	10.15
4	Canara Bank	1300	33
5	Unsecured unrelated financial creditors	1040	26.39
	Total	3940	100

The director Mr. Ravindra who is an unsecured financial creditor with ` 60 crores, since related party of the corporate debtor, shall not have any right of representation, participation or voting in the committee of creditors.

(Every Point Contain 1 Mark each)

Q.2

Total Assets that can be realized by the Liquidator of M/S Anand Limited will be as follows:

Land & Building realized 60% of book value	= ` 9,300 Crore
Less: Cost of realization	= ` 180 Crore
Net value	= ` 9120 Crore

(3 Marks)

Fixtures & Fittings realize 40 % of book value = ` 960 Crore

Stock, debtor & other current assets would realize 55% of book value = ` 968 Crore

Total value realized by liquidator = ` 11,048 Crore.

(2 Marks)**Q.3**

Particulars	Amount (`in Crores)	
Value Realized by Liquidator		11,048.00
Add: Cash		110.00
Total Amount of Funds Available		11,158.00
Less: Section 53(1)(a)		
Insolvency resolution process costs and the liquidation costs.		
(i) Cost of Liquidation	150.00	
(ii) Insolvency Professional related costs*	85.00	235.00
Balance Available		10,923.00
Less: Section (53)(1)(b)		(1 Mark)
(i) Workmen's dues for the period of 24 months preceding the liquidation commencement date	290.00	
(ii) Debt owed to a secured creditors		
(a) Term loans	1600.00	
(b) Working capital loan	1300.00	3190.00
Balance Available		7,733.00
Less: Section(53)(1)(c)		(1 Mark)
Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date		15.00
Balance available		7,718.00
Less: Section(53)(1)(d)		(1 Mark)

Financial debts owed to unsecured financial creditors		1100.00
Balance Available		6618.00
Less: Section(53)(1)(e)		(1 Mark)
Amount due to the Central Government and the State Government		
(i) Government dues	500.00	
(ii) Income Tax Liability	400.00	900.00
Balance Available		5718.00
Less: Section(53)(1)(f)		
(i) Employee liability (340-15)	325.00	
(ii) Operational Creditors	2500.00	
Balance Available		2893.00
Less: Section(53)(1)(g)		
Amount to be given to Preference Shareholders		2893.00
Balance Available		Nil
		(1 Mark)

Case Study 2

Multiple Choice Questions

1. (d)
2. (b)
3. (c)
4. (b)
5. (c)

Descriptive Answers

Q.1

As per section 4(2)(a)(ii), there shall be an **abuse of dominant position**, which is considered as offence under the Competition Act 2002, if an enterprise or a group, directly or indirectly, imposes unfair or discriminatory condition in purchase or sale of goods or services; or price in purchase or sale(including predatory price) of goods or services.

Further, as per explanation b to section 4, "**predatory price**" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce

competition or eliminate the competitors.

(3 Marks)

In given case price is less than comparative market price but not less than cost. Cost of project is INR 5 crores and total price will be INR 6.6 crores (44 apartment x15 Lacs Per flat). Hence, act of Apna Aashiyana Private Limited offering apartment at prices lower than price prevailing in market **shall not** be considered as predatory bidding under the Competition Act, 2002.

(2 Marks)

Q.2

(A) a transaction or an arrangement-

- (a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
- (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by-
 - (i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
 - (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;
 - (iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
 - (iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

- (B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or
- (C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;
- (D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

(2 Marks)

Conclusion

Hence from the above provision it is evident that the transaction is a Benami transaction

(1 Mark)

Penalty For Benami Transaction

1) Section 3

Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

2) Section 53

Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

Whoever is found guilty of the offence of benami transaction referred to above shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty- five per cent of the fair market value of the property.

(2 Marks)

Q.3**Provision**

Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Person accused of an offence under this Act shall not be released on bail or on his own bond unless-

- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Exceptions: In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs.

(2 Marks)

Conclusion:

1. From the Above provision it can be concluded that Mr. Karan Shekhavat can be granted bail after satisfying following conditions:
 - (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
 - (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2 Marks)

2. Mrs. Ranjana being Women can be granted Bail without satisfying above conditions

(1 Mark)

Case Study 3**Multiple Choice Questions**

1. (d)
2. (c)
3. (b)
4. (d)
5. (c)

Descriptive Answers**Q.1**

Prohibition of Benami Property Transactions Act 1988 (PBPT Act) is the applicable Act here. The general belief is that the provisions of the PBPT Act apply only to persons, trying to hide their properties and not to genuine properties acquired out of disclosed funds. But that is not true. Even a property acquired using disclosed funds in a genuine transaction may sometimes be treated as Benami.

“Benami Property” under Sec 2 (8) means any property, which is the subject matter of a Benami transaction and also includes the proceeds from such property. Benami Property means property without a name. Here the person, who pays for the property does not buy it under his own name. The person, who finances the deal, is the real owner of the property. The person in whose name the property has been purchased is Benamidar.

(1 Mark)

As per the provisions of Section 2 (9) a Benami transaction means-

A transaction or arrangement where a property is transferred to or held by one person for direct or indirect, immediate or future benefit of another person, who has provided or paid the consideration, except when-

- (i) An HUF is purchasing a property in the name of a Karta, or any other member from known sources;
 - (ii) A person is holding the property in a fiduciary capacity (e.g. trustee, executor, partner of a partnership firm, director of a company, a depository participant, etc.);
 - (iii) An individual is purchasing a property in the name of his spouse or any child provided the consideration is paid out of the known sources;
 - (iv) Any person is purchasing any property in the name of his brother or sister or lineal ascendant or descendant, where he is one of the joint-owners, provided the consideration is paid out of the known sources; or
1. A transaction or arrangement carried out in a fictitious name; or
 2. A transaction or arrangement where the owner of the property is not aware of or denies knowledge of such ownership;
 3. A transaction or arrangement, where the person providing the consideration is not traceable or is fictitious.

(2 Mark)

Any transaction where possession of any immovable property is taken as a part performance of a contract is not a Benami transaction if the contract is registered and consideration as well as stamp duty has been paid.

Property would include asset of any kind, whether movable or immovable, tangible or intangible, and includes rights or interest as well as proceeds from the property.

(1 Mark)

In the above case study, in one of the cases, Subhash invested Rs. 1.50 Crore in a Bank Fixed deposit in the name of his married daughter, Mangala, who is a UK Resident, without her knowledge. Later during the course of enquiries by Tax officials, Mangala denies ownership of Bank Fixed Deposit. Here, the transaction is Benami, though the FD is generated using disclosed funds in a genuine transaction.

(1 Mark)

Q.2

A. Money Laundering is not an independent crime. It depends upon another crime, which is known as the "Predicate Offence". Every Scheduled Offence is a Predicate Offence.

Offences under Narcotic Drugs and Psychotropic Substances is a Scheduled Offence and as such a predicate Offence too. As such secret drug dealings and then disguising the original source of money by Rajesh and JJPL is a Predicate offence.

Under PMLA, commission of any offence, as specified in the Part A and Part C of the Schedule of PMLA will attract the provisions of PMLA. Some of the Acts and offences, which may attract PMLA, are enumerated herein below:

- Part A enlists offences under various acts such as: Indian Penal Code, 1860 (including but not limited to offences against Property such Cheating, Forgery, Counterfeiting, Fraud, murder etc) Narcotics Drugs and Psychotropic Substances Act, 1985, Prevention of Corruption Act, 1988 SEBI, Customs Act, 1955, Foreigners Act, Arms Act, Antiquities and Art Treasures Act, Copyright Act, 1957, Trademark Act, 1999, Wildlife Protection Act, 1872, Information Technology Act, 2000, amongst others.
- Part B offences (offence under the Customs Act), provided the value of property involved is more than one crore rupees or more;
- Part C deals with trans-border crimes, and reflects the commitment to tackle Money Laundering across International Boundaries.

The Scheduled Offence is called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering.

(2 Marks)

B. Predicate offences are investigated by the agencies such as Police, Customs, SEBI, NCB, CBI etc under their respective Acts. **(1 Mark)**

C. Following actions can be taken against the persons involved in Money Laundering:-

- (a) Attachment of property under Section 5, seizure/ freezing of property and records under Section 17 or Section 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.
- (b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine [Section 4].
- (c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to ten years and shall also be liable to fine.
- (d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

These are the possible actions that can be taken against Rajesh, JJPL or other concerned persons in the above case for their offences.

(4 * 0.5 mark = 2 Marks)

Q.3

(A) The following are the rights of Rajesh and his associates, being searched during search:

- (i) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate.
- (ii) If the requisition is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section.
- (iii) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(iv) Search shall be made in the presence of two or more persons.

(v) No female shall be searched by anyone except a female [Section 18 PMLA]. (3 Marks)

(B) The following are the rights of Rajesh during his arrest, in case arrested : -

(i) The Authorized Officer making arrest shall, as soon as may be, inform the arrestee of the grounds for such arrest.

(ii) Every person so arrested shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction [Section 19 PMLA]. (2 Marks)

Case Study 4

Multiple Choice Questions

1. (d)
2. (b)
3. (b)
4. (c)
5. (c)

Descriptive Answers

Q.1

As per section 3 of the Prevention of Money Laundering Act, 2002, 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 with the **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.

(1 Mark)

Further as per section 2(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a **scheduled offence** or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

(1 Mark)

Further as per paragraph 12 of part A of schedule to the Prevention of Money

Laundering Act 2002, offences under the section 135 of Customs Act, 1962 regarding evasion of custom duty; and as per part B of schedule to the Prevention of Money Laundering Act 2002, offences under the section 132 of Customs Act, 1962 regarding False declaration, false documents, are considered as scheduled offence under the Prevention of Money Laundering Act, 2002.

(1 Mark)

Since baggage item are also subject to duty beyond certain limit and gold and jewelry purchased by Mrs. Radha & Mr. O P Gulati either not permitted as baggage through green channel and not filling declaration leads to evasion of duty. Hence, if no declaration made to custom officer on arrival at airport will constitute as scheduled offence.

(1 Mark)

Hence act of Mrs. Radha & Mr. O P Gulati, on arrival to India; without making any disclosure/declaration to custom authority and pass through green channel along with the article purchased from Manhattan, United States, constitute an offence under the Prevention of Money Laundering Act, 2002.

(1 Mark)

Q.2

As per section 6 of the Insolvency and Bankruptcy Code, 2016, where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under the section 7, 9, & 10 of the Code. Hence, yes 'Power Sun Private Limited' being a corporate debtor can initiate insolvency resolution process against itself as per section 10 of the Code.

(1 Mark)

Initiation of corporate insolvency resolution process 'Power Sun Private Limited': Application shall be filed in form and manner with such fee as may be prescribed for initiating corporate insolvency resolution process with the Adjudicating Authority.

- Furnish the information relating to its books of account and such other documents relating to such period as may be specified; and the resolution professional proposed to be appointed as an interim resolution professional.
- The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order either admit the application, if it is complete; or reject the application, if it is incomplete. Before rejecting an application, give a notice to the applicant to rectify the defects in his

application within seven days from the date of receipt of such notice from the Adjudicating Authority.

- The corporate insolvency resolution process shall commence from the date of admission of the application.

(2.5 Marks)

However, 'Power Sun Private Limited' shall not be entitled to make an application to initiate corporate insolvency resolution process in terms of section 11 of the Code under any of the following situations:

- If already undergoing a corporate insolvency resolution process; or completed corporate insolvency resolution process twelve months preceding the date of making of the application
- If violated any of the terms of resolution plan which was approved twelve months before the date of making of an application
- If a liquidation order already has been made.

(2.5 Marks)

Q.3

As per sub-section 1 to section 4 of the Competition Act, 2002, no enterprise or group shall abuse its **dominant position**.

Further as per explanation (a) to section 4 "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

(2 Marks)

Further as per section 4(2)(a)(ii), there shall be an abuse of dominant position if an enterprise or a group, directly or indirectly, imposes unfair or discriminatory price in purchase or sale of goods or service.

(1 Mark)

In given case, decision by Ms. Alka to attain dominance by acquisition of the another agriculture college operational in state, is not in contravention to provisions of the Competition Act, 2002. But increasing all the fees apart from tuitions fee to double due to monopoly which comes out of dominance over market by killing the competition, is in contravention to provisions of the Competition Act, 2002.

(1 Mark)

[Note – Acquiring dominance is not offence, but abuse of dominance is an offence.]

Case Study 5

Multiple Choice Questions

1. (a)
2. (a)
3. (a)
4. (b)
5. (b)

Descriptive Answers

Q.1

(a)

As per Section 6 of the Insolvency and Bankruptcy Code, 2016, where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under Chapter II of the Part II of the Insolvency and Bankruptcy Code, 2016. It may be noted that in terms of Section 5(20) of the Insolvency and Bankruptcy Code, 2016 operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; **(1 Mark)**

Application to initiate the Corporate Insolvency process may be filed before the Adjudicating Authority. In terms of Section 5(1) of the Insolvency and Bankruptcy Code, 2016, Adjudicating Authority means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013.

According to Section 9 of the Insolvency and Bankruptcy Code, 2016, Application for initiation of corporate insolvency resolution process by operational creditor shall be filed in such form and manner and accompanied with such fee as may be prescribed. The operational creditor shall, along with the application furnish following documents-

- A copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
- An affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
- A copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;
- A copy of any record with information utility confirming that there is no payment

of an unpaid operational debt by the corporate debtor, if available; and

- Any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(2 Marks)

(b)

Adjudicating Authority(National Company Law Tribunal) appoint Interim Resolution Professional in case Resolution Professional is not appointed by the Operational Creditor.

Section 14 of the Insolvency and Bankruptcy Code, 2016 deals with Moratorium.

Section 14(1) provides that subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. **(2 Marks)**

Section 14(2) states that the supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

As per Section 14(3) the provisions of sub-section (1) shall not apply to-

- (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
- (b) a surety in a contract of guarantee to a corporate debtor.

Section 14(4) provides that the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process. It may be noted that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be. **(1 Mark)**

Q.2

Chapter V (Section 16 to 35) of the Foreign Exchange Management Act, 1999(FEMA) deals with the provisions of Adjudication and Appeal as under:

Adjudicating Authority

For the purpose of adjudication under Section 13 of FEMA (dealing with Penalties), the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under Section 13, against whom a complaint has been made. Adjudicating Authority shall not hold an enquiry except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

Appeal to Special Director (Appeals)

Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities. Every appeal shall be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by prescribed fee.

(1 Mark)

Appeal to Appellate Tribunal

Central Government or any person aggrieved by an order made by an Adjudicating Authority, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such prescribed.

(1 Mark)

Appeal to High Court

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

(1 Mark)

Q.3**(a)**

Duty of persons to realise foreign exchange due:

A person resident in India to whom any amount of foreign exchange is due or has accrued shall, save as otherwise provided under the provisions of the Foreign Exchange Management Act, 1999, or the Rules and Regulations made thereunder, or with the general or special permission of the Reserve Bank of India, take all reasonable steps to realise and repatriate to India such foreign exchange, and shall in no case do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing -

- a. that the receipt by him of the whole or part of that foreign exchange is delayed; or
- b. that the foreign exchange ceases in whole or in part to be receivable by him.

(1 Mark)

Manner of Repatriation:

- (1) On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and -
 - a. sell it to an authorised person in India in exchange for rupees; or
 - b. retain or hold it in account with an authorised dealer in India to the extent specified by the Reserve Bank; or
 - c. use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.
- (2) A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.

(1 Mark)

Period for surrender of realised foreign exchange:

A person not being an individual resident in India shall sell the realised foreign exchange to an authorised person, within the period specified below :-

- i. foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, within seven days from the date of its receipt;
- ii. in all other cases within a period of ninety days from the date of its receipt.

(b)

According to Section 42 of the Foreign Exchange Management Act, 1999, where a person committing a contravention of any of the provisions of the Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

It may be noted that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

Where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

For the purposes of section 42 of the Act, “Company” means anybody corporate and includes a firm or other association of individuals; and “director”, in relation to a firm, means a partner in the firm.

(2 Marks)