



J.K. SHAH[®]
TEST SERIES

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SUGGESTED ANSWERS

CA FINAL

Test Code – JK-ECO-21

Date – 06-09-2020

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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. (d)
3. (b)
4. (b)
5. (a)

Descriptive Answers**Q.1**

The property so purchased in the name of Mrs. Kalyani, whether a 'Benami Property' or not, will depend upon the facts/motive/intention of Mr. Manish Jain for purchasing property in such a way.

The property **would be considered** as benami property-

- If the intention to purchase property was only to save stamp duty; and
- It was intended not to give any ownership benefit to his wife.

Additionally, it is also to be proved in case of benami property that the owner of the property was not aware of, or, denied knowledge of such ownership.

(2 Marks)

The property **would not be considered** as benami property-

- If the intention was to give ownership rights to Mrs. Kalyani i.e. gifting of property to her; and
- his wife was fully aware of purchase of property in her name by her husband.

(2 Marks)

In this case, as per the facts, the payment of lesser stamp duty is consequential to purchase of property in the name of a woman. Hence, the property purchased on the name of Mrs. Kalyani is not a Benami Property.

(1 Mark)

Q.2

Section 5 of the Prevention of Money Laundering Act, 2002(PMLA) deals with the provision of attachment of property involved in money laundering.

As per Section 5(1) of the PMLA, Where the Director or any other officer not below the rank of Deputy Director authorised by the Director, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that

- any person is in possession of any proceeds of crime; and
- such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

It may be noted that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173

of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country.

(2 Marks)

Further, notwithstanding anything contained in above , any property of any person may be attached , if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of Section of the PMLA has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately, the non-attachment of the property is likely to frustrate any proceeding under the Act.

For the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under Section 5 of PMLA is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.;

Section 5(2) states that the Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(2 Marks)

Section 5(3) provides that every order of attachment made under sub-section(1) shall cease to have effect after the expiry of the period specified in sub-section(1) or on the date of an order made under sub-section (3) of section 8, whichever is earlier.

As per Section 5(4) of PMLA, nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

It may be noted that person interested, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Section 5(5) states that the Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

(1 Mark)

Q.3

Offence of money-Laundering and Punishment for money-Laundering are specified under Section 3 and 4 of the Prevention of Money Laundering Act, 2002 respectively.

Section 3 of the Prevention of Money Laundering Act, 2002 provides that 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.

It may be further noted that 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

According to Section 4 of the Prevention of Money Laundering Act, 2002, whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

It may be noted that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule to the PMLA, shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine.

(3 Marks)

The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

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 or fact arising out of such order. Thus appeal can be filed before High Court on any question of law or fact. High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

(2 Marks)

Case Study 4

Multiple Choice Questions

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

Descriptive Answers

Q.1

The thresholds for the combined assets/turnover of the parties to a combination prescribed under the Competition Act, 2002 are as follows:

At Enterprise level: The value of combined assets of the combining enterprises exceeds INR 2,000 crores or the combined turnover of the combining enterprise exceeds INR 6,000 crores, in India. In case either or both of the combining enterprises have assets / turnover outside India also, then the combined assets of the combining enterprises value exceeds US\$ 1000 million, including at least INR 1000 crores in India, or combined turnover exceeds US\$ 3000 million, including at least INR 3000 crores in India.

At Group level: The group to which the combining enterprise whose control, shares, assets or voting rights are being acquired, would belong after the acquisition, or the group to which the combining enterprise remaining after the merger or amalgamation, would belong has either assets of value of more than INR 8000 crores in India or turnover more than INR 24000 crores in India. Where the group has presence in India as well as outside India then the group has assets more than US\$ 4 billion including at least INR 1000 crores in India or turnover more than US\$ 12 billion including at least INR 3000 crores in India. **(2 Marks)**

The term 'Group' has been explained in the Act. Two enterprises belong to a "Group" if one is in position to exercise at least 26 per cent voting rights or appoint at least 50 per cent of the directors or controls the management or affairs in the other.

The above thresholds are presented in the form of a table below:

	APPLICABLE TO	ASSETS		TURNOVER	
In India	Individual Parties	₹ 2,000 cr.		₹ 6,000 cr.	
	Group	₹ 8,000 cr.		₹ 24,000 cr.	
In India and outside		ASSETS		TURNOVER	
		Total	Minimum Indian Component out of Total	Total	Minimum Indian Component out of Total
	Individual parties	US\$ 1 bn.	₹ 1,000 cr.	US\$ 3 bn.	₹ 3,000 cr.
	Group	US\$ 4 bn.	₹ 1,000 cr.	US\$ 12 bn.	₹ 3,000 cr.

(3 Marks)

Q.2

The Competition Act, 2002 envisages appreciable adverse effect on competition in the relevant market in India as the criterion for regulation of combinations. In order to evaluate appreciable adverse effect on competition, the Act empowers the Commission to evaluate the effect of Combination on the basis of factors mentioned in Section 20(4) of the Competition Act, 2002.

Factors to be considered by the Competition Commission of India while evaluating appreciable adverse effect of Combinations on competition in the relevant market, are as under:

- Actual and potential level of competition through imports in the market;
- Extent of barriers to entry into the market;
- Level of concentration in the market;
- Degree of countervailing power in the market;
- Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- Extent of effective competition likely to sustain in a market;
- Extent to which substitutes are available or are likely to be available in the market;
- Market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- Likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- Nature and extent of vertical integration in the market;
- Possibility of a failing business;

- (l) Nature and extent of innovation;
- (m) Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- (n) Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

(Every 3 Points consist of 1 Mark)

Q.3

- a) Extent and Application [Sections 1 of FEMA, 1999]

FEMA, 1999 extends to the whole of India. In addition, it shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

Accordingly, FEMA does not apply to citizens of India who are outside India unless they are resident of India. The scope of the Act has been further extended to include branches, offices and agencies outside India. The scope is thus wide enough because the emphasis is on the words "Owned or Controlled". Even contravention of the FEMA committed outside India by a person to whom this Act applies will also be covered by FEMA.

(2 Marks)

- b) Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals [Regulation 5 of Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000]: A Person being an individual resident in India shall surrender the received/realised/unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be.

(2 Marks)

- c) Exemption from realisation and repatriation in certain cases [Section 9 of FEMA, 1999]

The provisions of sections 4 and 8 shall not apply to the following, namely:

- (a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;
- (b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;

- (c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing there on which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;
- (d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from;
- (e) foreign exchange acquired from employment, business, trade, vocation, service, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and
- (f) such other receipts in foreign exchange as the Reserve Bank may specify.

(1 Mark)

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)