



J.K. SHAH[®]
TEST SERIES

Evaluate Learn Succeed

SUGGESTED ANSWERS

CA INTER

Test Code – JK-LAW-12

Date – 21-09-2020

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

Tel: (022) 26836666

Answers

Part I - Multiple Choice Questions

Case Scenario 1

- i. (a)
- ii. (b)
- iii. (c)

Case Scenario 2

- i. (d)
- ii. (b)
- iii. (a)
- 3. (c)
- 4. (d)
- 5. (a)
- 6. (c)
- 7. (b)
- 8. (b)
- 9. (b)
- 10. (a)
- 11. (a)
- 12. (d)
- 13. (d)
- 14. (b)
- 15. (c)
- 16. (b)
- 17. (c)

18. (d)

19. (a)

20. (a)

21. (b)

22. (a)

23. (c)

24. (b)

25. (d)

J.K.SHAH CLASSES

Part II**Q.1****(a)**

The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company. The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.

Such other person may be given the right to withdraw his consent.

The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.

Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one financial year)-

- a) Shall be eligible to incorporate a OPC;
- b) Shall be a nominee for the sole member of a OPC.

(3 Marks)

- (i) Yes, it is mandatory for Namita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

(1 Mark)

- (ii) Yes, Namita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

(1 Mark)

(b)

Construction of the word 'may'

Directory force: The word 'may' is generally construed to have a directory force only.

Mandatory force: The word 'may' has a mandatory force in the following cases:

- (a) Where the subject involves a discretion coupled with an obligation, i.e., when a power is given, there is duty to discharge the obligation.
- (b) Where a remedy will be advanced and mischief will be suppressed.
- (c) Where giving a directory significance to the word 'may' will defeat the very object of the Act or cause material danger to the public or result in denial of benefit to the public.

(2 Marks)

Construction of the word 'shall' or 'must'

Mandatory force: The word 'shall' is ordinarily construed to have a mandatory force. Where a provision in the Statute provides for a specific penalty, the Court has no discretion to determine whether such provision is directory or mandatory. It is to be taken as mandatory provision.

Directory force: The word 'shall' has a directory force

- (a) where it has been used against the Government, unless a contrary intention is manifest in the Statute; or
- (b) where the intention of the legislature so demands; or
- (c) where giving it a mandatory interpretation would result in absurd results.

(2 Marks)

(c)

Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

(5 Marks)

(d)

Cheque payable to order

According to Section 85 of the Negotiable Instruments Act, 1881.

- (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

As per the given facts, cheque is drawn payable to —Mr. Vikram or order. It was lost and Mr. Vikram was not aware of the same. The person found the cheque and forged and endorsed it to Mr. Parag, who encashed the cheque from the drawee bank (HDFC Bank). After few days, Mr. Vikram intimated about the theft of the cheque, to the HDFC bank, by which time, the HDFC bank had already made the payment.

(3 Marks)

According to above stated section 85, the HDFC banker is discharged when it has made a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the signature is forged, the banker is protected and is discharged. The true owner, Mr. Vikram, cannot recover the money from the HDFC bank in this situation.

(2 Marks)

Q.2**(a)**

Capacity to be employed as agent: Between the principal and the third person, any person can become an agent, irrespective of whether he has contractual capacity or not. But a person who is not of the age of majority and of sound mind cannot be agent so as to be responsible to his principal (Section 184).

Where the agency cannot be terminated, it is irrevocable agency. An irrevocable agency may be in the following cases

- (a) Where the agent has incurred personal liability: When an agent incurs personal liability, the agency becomes irrevocable. The principal in such case cannot revoke the agency so as to leave the agent to bear the liability and the losses in the contract.
- (b) Where the agent has partly exercised the authority: The agency cannot be revoked if the agent has himself, exercised-his action for performance of agency function and obligations have arisen.

(3 Marks)**(b)**

Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:

- (i) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
- (ii) The notice required under the Companies Act must have been duly given of the general meeting;
- (iii) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

(2 Marks)

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

Accordingly, in the given problem, the votes cast in favour (200) being more than 3 times of the votes cast against (50), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.

(2 Marks)

(c)

As per the provision of section 127 of Companies Act, 2013 where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of 18 % p.a. during the period for which such default continues.

Provided that no offence under this section shall be deemed to have been committed:-

- (a) Where the dividend could not be paid by reason of the operation of any law;
- (b) Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (c) Where there is a dispute regarding the right to receive the dividend;
- (d) Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- (e) Where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

(3 Marks)

In the given case Aarush Limited declared Dividend on 29th May 2020. However due to operation of law dividend was not paid to one of the member Mr. Zohaib till 29th July 2020. Similarly, dividend of Mr Rakesh was lawfully adjusted by the company against sum due from Rakesh. Mr Zohaib and Mr Rakesh cannot file a complaint against directors of Aarush Limited under the provision of Sec 127 of Companies Act, 2013 as it falls under exceptions case of section 127 of Companies Act, 2013.

(1 Mark)

(d)

The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are as follows:

Payment of commission: A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Conditions for the payment of commission:

- the payment of such commission shall be authorized in the company's articles of association;
- the commission may be paid out of proceeds of the issue or the profit of the company or both;
- Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
- Disclosure of particulars: the prospectus of the company shall disclose the following particulars –
 - the name of the underwriters;
 - the rate and amount of the commission payable to the underwriter; and
 - the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
- No commission to be paid: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
- Copy of contract of payment of commission to be delivered to registrar: a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Hence the above stated provisions shall be followed by Karan Ltd in order to appoint Underwriter for getting the securities subscribed.

(6 Marks)

Q.3**(a)****Duties of NFRA**

- **Make recommendations to the Central Government** on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be.
- **Monitor and enforce the compliance** with accounting standards and auditing standards in such manner as may be prescribed.
- **Oversee the quality of service of the professions** associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- Perform such other functions relating to clauses (a), (b) and (c) as may be prescribed. **(2 Marks)**

Powers of NFRA

- **Power to investigate, either suo moto or on a reference** made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:
- Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;
- **NFRA shall have the same powers as are vested in a civil court** under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-
 - Discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
 - Summoning and enforcing the attendance of persons and examining them on oath;
 - Inspection of any books, registers and other documents of any person referred to at any place;
 - Issuing commissions for examination of witnesses or documents;

- **Where professional or other misconduct is proved, have the power to make order for-**
 - imposing penalty of Minimum one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;
 - Debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the NFRA.

(3 Marks)

(b)

- (i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

In the present case, Mr. Amish (relative of Mr. Rajesh, an auditor), is having securities of Ashok Leyland Ltd. having face value of Rs. 65,000 (market value Rs. 1,20,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i).

Therefore, Mr. Rajesh will not be disqualified to be appointed as an auditor of Ashok Leyland Ltd.

(2 Marks)

- (ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 Lacs.

In the instant case, Mr. Modi will be disqualified to be appointed as an auditor of MRF Ltd. as he indebted to MRF Ltd. for Rs. 8 lacs.

(2 Marks)

(iii) As per section 141(3) (h) – A person who has been convicted by the court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction.

Hence Mr Shashank is Disqualified to get appointed as an Auditor till 01/01/2025.

(1 Mark)

(c)

Immovable Property [Section 3(26) of the General Clauses Act, 1897]: ‘Immovable Property’ shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or
- (iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

(3 Marks)

In the instant case, Mr. Anand sold Land along with timber (obtained after cutting trees) of 40 tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

(1 Mark)

(d)

According to section 170 of the Indian Contract Act, 1872, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them. Thus, in accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the

right to sue. Where the bailee delivers the goods without receiving his remuneration, he has a right to sue the bailor. In such a case the particular lien may be waived. The particular lien is also lost if the bailee does not complete the work within the time agreed.

(2 Marks)

In the given case Mr. Ghanshyam delivers a rough diamond to a jeweller Mr. Ashok, to be cut and polished. Mr. Ashok carries out the job accordingly. However, now Mr. Ghanshyam refuses to make the payment and wants his diamond back. The jeweller denies the delivery of goods without payment.

Hence, in the given situation the jeweller Mr Ashok is entitled to retain the stone till he is paid for the services he has rendered to Mr Ghanshyam.

(1 Mark)

Q.4

(a)

A company may, subject to the passing of a **resolution in general meeting** and subject to such rules as may be prescribed in **consultation with the Reserve Bank of India**, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely

- Issuance of a **circular to its members** including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- Filing a copy of the circular along with such statement with the Registrar within **30 days** before the date of issue of the circular;
- Depositing such sum **by 30th April** each year which shall not be less than 20% of the amount of its deposits **maturing during the following financial year**, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

- Certifying that the company has not committed any default in last 5 years in repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits;
- Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as unsecured deposits“ and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.
- **Repayment of deposit:** Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement.
- **Failure on the repayment of deposit:** Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.
- **Application of the amount of deposit repayment reserve account:** The deposit repayment reserve account shall be used by the company only for the purpose of repayment of deposits.
- A private company can accept 100% (Paid up share capital + Free Reserves + Securities Premium)

Hence above provisions shall be followed by Aman Ltd in order to accept deposits from its own members

(5 Marks)

(b)

Following provision shall be followed by Zarna Ltd for issuing Equity share with differential rights as to dividend, voting or otherwise:

As per the Companies (Share Capital and Debentures) Rules, 2014, no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

- the **articles of association of the company authorizes** the issue of shares with differential rights;
- the issue of shares is authorized by an **ordinary resolution** passed at a general meeting of the shareholders. Provided that where the equity shares of a company

are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot.

- the shares with differential rights **shall not exceed 74 percent** of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- The company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- The company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
- The company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
- The company has not been penalized by Court or Tribunal during the **last three years** of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.
- **Restriction on conversion of equity share capital with voting rights into equity share capital carrying differential voting rights:** The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.
- **Rights to the holders of the equity shares with differential rights:** The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.
- **Particulars of shares to be maintained in the register of members:** Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

(5 Marks)

(c)

Dishonour of bill of exchange by non-acceptance (Section 91):

In the following circumstances bill shall be considered as dishonoured by non-acceptance:

- 1) When the drawee does not accept it within 48 hours from the time of presentment for acceptance.
- 2) When presentment for acceptance is excused and it remains unaccepted. Presentment for acceptance is excused under the following circumstances:
 - (i) Where the drawee cannot, after reasonable search, be found (Section 61).
 - (ii) Where the drawee is a fictitious person.
 - (iii) Where though presentment is regular, the acceptance is refused on some other ground.
- 3) Where drawee is incompetent to contract, e.g., minor or lunatic.
- 4) Where the acceptance is qualified.
- 5) Where one or more of the several drawees (not being partners) refuse to accept the bill.

(3 Marks)

(d)

Change from one State to another State [Sec.13]

- **A special resolution** has to be passed in the general meeting of the company.
- Apply to Central Government for approval. Central Government shall communicate within a period of 60 days from the date of receipt of application. The Central Government, before passing its order, may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debt and obligations or that adequate security has been provided for such discharge.
- **File following documents with Registrar of both states:**
 - A certified copy of the order of the Central Government approving the alteration for change.
 - Altered copy of MOA
- The ROC of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration. Also prescribed forms

shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Also within **30 days** of the change of the registered office, a notice to the Registrar should be given of the new location of the office in **Form No. INC.22**.

- A State Government cannot oppose shifting of the registered office of a company from one state to another on the ground that by this change the State would be deprived of its revenue. The question of loss of revenue to one state would have to be considered in the context of total revenue of the Republic of India and in the interest of the country as a whole.
- It was held that employees' union, which is a registered body and which represents quite a number of the employees employed at a registered office of the company, has the right to appear and to oppose the application made to the Central Government u/s 13 on the ground that their interests would be likely to be prejudicially affected if such special resolution would be confirmed by the Central Government
- **This change of registered office INVOLVES alteration of memorandum.**

(4 Marks)

Q.5

(a)

Sources for declaring dividend

(a) Out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of section 123(2),

Or

(b) Out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed,

Or

(c) Out of both (a) and (b);

Or

(d) Out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded.

(2 Marks)

Mode of Payment of dividend

- Cash
- Cheque
- Warrant
- Any electronic mode

Dividend can be payable to

- Registered shareholder.
- To his order
- To his banker

(2 Marks)

(b)

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the closing of its first financial year. Also, if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation. It also provide that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

In the given case, taking the first financial year of Swaraj Ltd is for the period 1st April 2018 to 31st March 2019, the first annual general meeting of the company should be held on or before 31st December, 2019.

(2 Marks)

According to section 99, if any default is made in holding a meeting of the company in accordance with section 96, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Even though the Registrar of Companies is empowered to grant extension of time for a period not exceeding 3 months for holding the annual general meetings, such power does not apply in the case of the first annual general meeting. Thus, the company and its directors will be liable under section 99 of the Companies Act, 2013 for the default if the annual general meeting was not held on or before 31st December, 2019.

(2 Marks)

(c)

Definition: Section 2(70) of the Companies Act, 2013 defines a prospectus as "any document described or issued as a prospectus and includes a red herring prospectus, shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate".

(1 Mark)

As per Section 23 (1), a public company may issue securities-

- a) to public through prospectus (herein referred to as —public offer) by complying with the provisions of this Part; or
- b) through private placement by complying with the provisions of Part II of this Chapter; or
- c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made there under

(1 Mark)

As per Section 23(2), a private company may issue securities-

- a) By way of rights issue or bonus issue in accordance with the provisions of this Act; or
- b) Through private placement by complying with the provisions of Part II of this Chapter.

(1 Mark)

(d)

Section 23 – Provisions applicable to making of rules or bye-laws after previous publications

Where, by any Central Act or Regulation, a power to make rules or bye laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

- a. The authority having power to make the rules or bye-laws shall publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby.
- b. The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes.
- c. A notice shall be published with the draft specifying a date on or after which the draft will be taken into consideration.
- d. The authority having power to make the rules or bye-laws shall consider the objections and suggestions of the authority whose sanction, approval or concurrence is required with respect to the draft before the date so specified.
- e. The publication in the Official Gazette of a rule or bye-law shall be conclusive proof that the rule or bye-laws has been duly made.

(3 Marks)

(e)

Read the Statute as a Whole

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.

(1.5 Marks)

Use of Foreign Decisions:

Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

(1.5 Marks)