



**J.K. SHAH**<sup>®</sup>  
**TEST SERIES**  
Evaluate Learn Succeed

**SUGGESTED SOLUTION**

**CA INTERMEDIATE**

**SUBJECT- LAW**

**Test Code – CIM 8636**

**BRANCH - () (Date :)**

**Head Office : Shraddha, 3<sup>rd</sup> Floor, Near Chinai College, Andheri (E), Mumbai – 69.**

**Tel : (022) 26836666**

## **ANSWER -1**

### **ANSWER –A**

- (i) As per section 141(3)(d)(i), a person is disqualified to be appointed as an auditor if he, or his relative or partner is 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 person may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

In the present case, Mr. Aakash (relative of Mr. Prakash), is having securities of Rs. 70,000 face value in ABC Ltd., which is as per requirement of proviso to section 141(3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

- (ii) As per Section 141(3)(d)(ii) of the Companies Act, 2013 specifies that a person shall be disqualified to act as an auditor if he is indebted to the company for an amount exceeding five lakh rupees.

In the present case, Mr. Ramesh is indebted to MNP Ltd. for Rs. 6 lacs , therefore Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd.

- (iii) As per Section 141(3)(f) a person whose relative is a Director or is in the employment of the Company as a director or key Managerial Personnel will be disqualified to be appointed as an auditor of the company.

In the given case , Mrs. KVJ is a store keeper in PRC Ltd. Hence doesn't fall under the category of Key Managerial Personnel. Therefore Mr. Kumar is not disqualified to be appointed as auditor of PRC Ltd.

**(3\*2 = 6 MARKS)**

### **ANSWER –B**

- (i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is 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 not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheetal about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

- (ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

**(3\*2 = 6 MARKS)**

## **ANSWER –C**

**Surety's right to benefit of creditor's securities [Section 141]:** A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

In given question, 'C' advances to 'B' , Rs. 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth Rs. 2,00,000 without knowledge of 'A'. 'C' cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' sues 'A' on his guarantee.

**Conclusion: Thus A is discharged from liability to the amount of the value of the furniture.**

## **ANSWER –D**

As per Section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

**Explanation—**The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

**(2 MARKS)**

On the basis of above provision, P would succeed to recover Rs. 7,000 only from Q and not the whole amount of the bill because it was accepted for value as to Rs. 7,000 only and an accommodation to P for Rs.3,000.

**(1 MARK)**

## **ANSWER -2**

### **ANSWER –A**

In accordance with the provisions of the Companies Act, 2013 as contained in Section 77(1), is shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertaking whether tangible or otherwise , and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments , if any creating such charge in such form ,on payment of such fees and in such manner as may be prescribed , with the Registrar within thirty days of its creation.

Therefore, XYZ Limited can mortgage the office building of London (UK) according to Rule 3 of Companies (Registration of Charges) Rules , 2014 ; e-form prescribed for the purpose of creating the charge if Form No. CHG-1 and it will be filed within the prescribed period.

**(4 MARKS)**

### **ANSWER –B**

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if

the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

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

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

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

**(4 MARKS)**

In view of the above there are only three members personally present.

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

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

**(2 MARKS)**

### **ANSWER –C**

**To conduct the business of agency according to the principal's directions** (Section 211 of the Indian Contract Act, 1872): An agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent act otherwise, if any loss be sustained, he must take it good to his principal and if any profit accrues, he must account for it.

**(2 MARKS)**

In the present case, Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit.

Hence, Mr. Pintu must make good the loss to ABC Ltd.

**(2 MARKS)**

## **ANSWER –D**

As per section 91 of the Negotiable Instruments Act, 1881, a bill may be dishonoured either by non-acceptance or by non-payment.

**Dishonour by non-acceptance may take place in any one of the following circumstances:**

- (i) When the drawee either does not accept the bill within forty-eight hours (exclusive of public holidays) of presentment or refuse to accept it;
- (ii) When one of several drawees, not being partners, makes default in acceptance;
- (iii) When the drawee makes a qualified acceptance;
- (iv) When presentment for acceptance is excused and the bill remains unaccepted; and
- (v) When the drawee is incompetent to contract.

**(3 MARKS)**

## **ANSWER -3**

## **ANSWER –A**

In accordance with the provisions of the Companies Act, 2013 as contained in section 129 read with section 133 financial statements of a company shall be prepared in compliance with the accounting standards.

Section 129(5) states that where the financial statements of the company do not comply with accounting standards , such companies shall disclose in its profit and loss account and the balance sheet –

1. The deviation from the accounting standards
2. The reasons for such deviation
3. The financial effects , if any arising out of such deviation.

The Board of directors is required under Section 134 of the Companies’ Act, 2013 to include , in Board’ Report , a Director’s responsibility statement , the applicable accounting standards have been followed along with proper explanation relating to material departures.

As per the provision the directors need to endure that the financial statements are prepared in accordance with the accounting standards.

The statutory auditor of the company has a duty to state if, in his opinion , the financial statements are not in compliance comply with accounting standards.

**(5 MARKS)**

## **ANSWER –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 date of closing of its first financial year.

The first financial year of EFG Ltd is for the period 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2018, the first annual general meeting (AGM) of the company should be held on or before 31<sup>st</sup> December, 2018.

The section further provides 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.

**(4 MARKS)**

Thus, the first AGM of EFG Ltd. should have been held on or before 31<sup>st</sup> December, 2018. Further, the Registrar does not have the power to grant extension to time limit for the first AGM.

**(1 MARK)**

### **ANSWER – C**

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

On applying the above provision in the given cases—

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

**(4 MARKS)**

### **ANSWER – D**

**Mischieve Rule:** Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed. This is known as 'purposive construction' or 'mischieve rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.

It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning.

It enables consideration of four matters in construing an Act:

1. What was the law before the making of the act.
2. What was the mischief or defect for which the law did not provide
3. What is the remedy that the act has provided, and
4. What is the reason for the remedy

**(3 MARKS)**

#### **ANSWER -4**

#### **ANSWER –A**

As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

**(2 MARKS)**

In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.

**(2 MARKS)**

#### **ANSWER –B**

Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case.

Hence, Mr. Andrew will have no remedy against the company.

**(2 MARKS)**

**Circumstances when an expert is not liable:** An expert will not be liable for any mis- statements in the prospectus under the following situations:

- (i) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or
- (ii) Under section 35 (2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
- (iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;
- (iv) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an

expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

**(4\*1 = 4 MARKS)**

### **ANSWER –C**

As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

- (i) **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30<sup>th</sup> day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).
- (ii) **Transfer of unpaid or unclaimed dividend:** As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28<sup>th</sup> October, 2018 to 3<sup>rd</sup> November, 2018 (both days inclusive).

**(2\*2 = 4 MARKS)**

### **ANSWER –D**

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

**(3 MARKS)**

### **ANSWER -5**

### **ANSWER –A**

According to sub - section (5) of section 128 of the companies act, 2013 the books of accounts , together with vouchers relevant to any entry in such books are required to be preserved for a

period of not less than eight financial years immediately preceding a financial year . Where the company had been in existence for a period less than eight years, the books of account in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. The provisions of the Income tax Act, 1961 shall also be complied with in this regard . As per proviso to sub section (5) of Section 128 , where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit and give directions to that effect.

The decision taken by the board of directors of Anil Limited is not in accordance with the provisions of the law and the company cannot do so.

**(5 MARKS)**

### **ANSWER –B**

**Restrictions on purchase by company or giving of loans by it for purchase of its share:** As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a Key Managerial Personnel;
- (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- (c) The shares to be subscribed must be fully paid shares

In the given instance, Human Resource Manager is not a Key Managerial Personnel of the K Ltd. He is drawing salary of Rs. 30,000 per month and loan taken to buy 500 partly paid up equity shares of Rs. 1000 each in K Ltd.

**(3 MARKS)**

Keeping the above provisions of law in mind, the company's (K Ltd.) decision is invalid due to two reasons:

- i. The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to Rs. 1.8 Lakh.
- ii. The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

**(2\*1 = 2 MARKS)**

### **ANSWER –C**

Section 124 of the Indian Contract Act,1872 says that "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person", is called a "contract of indemnity".

Section 126 of the Indian Contract Act says that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default." is called as "contract of guarantee".

The conditions under which the guarantee is invalid or void are stated in section 142,143 and 144 of the Indian Contract Act are :

- (i) Guarantee obtained by means of misrepresentation.
- (ii) creditor obtained any guarantee by means of keeping silence as to material circumstances.

When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

**(4 MARKS)**

**ANSWER –D**

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

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

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

**(2 MARKS)**

The facts of the question are similar to a decided case law, wherein it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

**(1 MARK)**

**PART- B (MCQs)**

**ANSWER – 1**

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