

CA Inter law

Full test-1

Answers

Part I - Multiple Choice Questions

Case 1:

a) (ii)

b) (iv)

c) (i)

Case 2:

a) iii

b) iv

c) ii

3. (c)

4. (d)

5. (c)

6. (c)

7. (a)

8. (b)

9. (a)

10. (d)

11. (c)

12. (b)

13. (d)

14. (b)

15. (d)

16. (a)

17. (a)



- 18. (d)
- 19. (d)
- 20. (c)

Part II

Q.1

(a)

- (i) As per Section 2(85), small company means a company, other than a public company,-
- (i) Paid-up share capital of which does not exceed 50 lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
 - (ii) Turnover of which as per as per profit and loss account for the immediately preceding financial year does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

(1 mark)

In the given case Sushant Ltd is a Company registered under the provisions of Companies Act 2013 with a Paid-up share capital of 30 lakhs and turnover of 1.5 crores.

Hence from the above provision it is clear that Sushant Ltd is not a Small Company as it is a Public Company and in order to be termed as Small company it has to be other than Public Company

If the Turnover of the company is 1.75 crores then also it shall not be termed as Small Company

(1 mark)

(ii) Subsidiary company not to hold shares in its holding company:

Section 19 of Companies Act,2013 deals with the restrictions on the subsidiary company with respect to holding of shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiaries companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions -

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

(2 marks)

In the above case Rakhi Ltd is a Company Incorporated under the provision of Companies Act 2013. Rakhi Ltd is a Subsidiary company of Akash Ltd. However, certain shares of Akash Ltd was held by Rakhi Ltd as a Legal representative of deceased member of Akash Ltd. One of the Shareholder of Akash Ltd contended that shares of Holding Company cannot be held by a Subsidiary Company.

Hence from the above provision it is clear that the contention of member is not correct as it is falling under exception case wherein a subsidiary company is allowed to hold shares in Holding Company.

(1 mark)

(b)

According to section 9 of the Negotiable Instrument Act, 1881, "Holder in due course" means-

- any person
- who for consideration
- becomes the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee thereof, (if payable to order),
- before the amount mentioned in it became payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

(2 marks)

In the given case Mr. Rajesh draws a cheque of 49,000/- and gives it to his wife by way of gift wherein it is clear that wife of Rajesh is a holder but not holder in due course since she did not get cheque for value consideration.

However, her title is good and Bonafide as a holder she can receive 49,000/- from the bank upon whom cheque is drawn.

(2 marks)

(c)

Definition under General Clauses Act 1897

Good Faith Sec 3(22)

A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. **(2 marks)**

Immovable Property 3(26)

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

(2 marks)

Person Sec 3(42)

'Person' shall include:

- i) any company, or
- ii) association, or
- iii) body of individuals, whether incorporated or not

(1 mark)

(d)

Acceptance of deposit from public: According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe. Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

(3 marks)

Since, IKEA Ltd. has a net worth of ` 30 crores and turnover of ` 10 crores, which is less than the prescribed limits. Hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfil the eligibility criteria of Net worth or Turnover or both and then the other conditions as stated above.

(1 mark)

Q.2

(a)

According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members. As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled.

(2 marks)

In the given case The Board of Directors of Maya Ltd called an Extra Ordinary general Meeting upon the Requisition of members. However the meeting was adjourned on the ground that the quorum was not present at the meeting.

Therefore, the meeting stands cancelled and the stand taken to adjourn it, is not proper.

(1 mark)

(b)

Remedies available to an Aggrieved Party against Company in case of Misrepresentation inside Prospectus:

1. Rescind the contract.
2. A person, who takes shares on the faith of a prospectus containing false statements, may apply to the Court for the contract to be set aside, and his name to be struck off from the register of members.
3. He may also claim his money back.
4. Sue the company for damages for deceit.

But the allottee must act within reasonable time, before any proceedings to wind up the company have been commenced. He will lose his right to rescind if he attempts to sell the shares or attends a general meeting of the company, or receives dividends.

This right is available only to those persons who subscribe the shares. The word 'subscribed' denotes that the shares were acquired directly from the company by allotment. A subsequent purchase of shares in the open market has no remedy against the company or the directors or promoters. [Peek v. Gurney]

(5 marks)

(c)

Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

(2 marks)

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss

(2 marks)

(d)

Public Company Refuses to register the Transfer of Shares

The shares or debentures and any interest therein of a company shall be freely transferable. The Board of Directors and the concerned depository has no discretion to refuse or withhold transfer of any security on any ground, except on the ground of sufficient cause.

Company shall within a period of **30 days from the date on which the instrument of transfer was delivered to the company**, send notice of the refusal to the transferor and the transferee

or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

Transferee may appeal to the NCLT against the refusal within a period of **60 days** from the date of receipt of the refusal notice. **In case no notice** has been sent by the company, then appeal may be made within a period of **90 days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company. **(3 marks)**

Power of National Company Law Tribunal (NCLT):

The tribunal, while dealing with an appeal both in respect of private and public company, may, after hearing the parties, either:

- Dismiss the appeal.
- Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order **within a period of 10 days** of the receipt of the order;
- Direct rectification of the register and also **direct the company to pay damages, if any,** sustained by any party aggrieved.

In the given case Rajesh transferred 500 shares of Zaika Ltd to Mr. Jayesh. Zaika Ltd did not register such transfer of shares and did not send any notice of refusal to Mr. Rajesh or Jayesh within the prescribed time.

Applying the above provision the aggrieved party in the given case can apply to tribunal and also claim Damages from Company

(2 marks)

Q.3

(a) According to section 96(2) of the Companies Act, 2013, every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some

other place within the city, town or village in which the registered office of the company is situate. Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

(3 marks)

Thus, in the first case, the company is rightful in calling the Annual General meeting at an Auditorium in Andheri Mumbai.

In the second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Hence, if consent is given in writing or by electronic mode by all the members in advance, the AGM can be called at Goa, otherwise not.

(2 marks)

(b)

A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the free reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage of profits to be transferred to reserves is to be decided at the discretion of the company.

Dividend shall be declared or paid by a company only from its free reserves. No other reserve can be utilized for the purposes of declaration of such dividend. **(2 marks)**

Where a company, owing to inadequacy or absence of profits in any financial year, proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made only in accordance with following prescribed rules.

(a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.

(b) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(c) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

(d) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

(3 marks)

(c)

Notice of dishonor is not required in the following cases (Section 98):

There are certain situations where we do not require a notice of dishonor, which are:

- When it is dispensed or waived by the entitled party. For e.g., if the endorser writes along with the instrument- 'notice of dishonor waived'.
- When the drawer himself cancels (countermands) the payment.
- In a situation where the charged party would not suffer damages for the want of notice.
- When we cannot find the party entitled to notice after a due search.
- When omission is a result of unavoidable circumstances. For example, in the case of the holder being critically ill.
- In the case of an acceptor is a drawer.
- If the promissory note is non-negotiable.
- When the party entitled to notice agrees to pay unconditionally.

(4 Marks)

(d) Discharge of surety by variance in terms of contract: The problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 133. The section provides that any variance made without the surety's consent in the terms of the contract

between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

(2 marks)

In the given problem, 'M' and 'S' entered into arrangement by entering into a new contract without knowledge of the Surety 'A'. Since, the variance made in the contract is without the surety's consent in the existing contract, as per the provision, 'A' is not liable on his guarantee for the fruits supplied after this new arrangement. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there now and he is not liable on the altered contract because it is different from the contract made by him.

(1 mark)

Q.4

(a)

Conditions for buyback: For buy - back purpose, the following conditions must be fulfilled:-

(i) Buy - back is authorized by the articles of association of the Company.

(ii) A company may, by a Board Resolution, Buy - back up to 10% of (paid up equity capital+ free reserves). This Board resolution must be passed at a Board Meeting only and not by circulation. If the company wants to buy-back more than 10% of the aggregate of paid up equity capital and free reserves but up to 25% of the aggregate of the paid - up capital and free reserves, then a Special Resolution in the general meeting is required. The aforesaid limits are to be applied to the amount required for buyback of such shares/ securities.

(iii) In the case of buy - back of equity shares only, the buy - back in any financial year shall not exceed 25% of its total paid - up equity capital in that financial year. The aforesaid limit is to be applied to the number of shares to be bought back.

In the given case Sohan ltd wants to buy back shares from its members. Sohan ltd wanted to buy back 21% total equity paid up capital. Company is of the view to pass Board Resolution for same.

Contention of company is not correct as they need to pass a Special Resolution in above case.
(2 marks)

Purpose of Buy Back of Securities: A company would opt for buy - back for the following reasons:

- (i)** To improve shareholder value - Buy back generally results in higher earnings per share (E.P.S.)
- (ii)** As a defence mechanism - Buy back provides a safeguard against hostile take - overs by increasing promoters' holding.
- (iii)** To provide an additional exit route to shareholders when shares are undervalued or thinly traded.
- (iv)** To return surplus cash to shareholders.

(2 marks)

Sources of buyback: Following are the important provisions of Section 68:- A company may purchase its own shares or other specified securities out of:

- (i)** Its free reserves;
- (ii)** The securities premium account; or
- (iii)** The proceeds of an earlier issue of shares or other specified securities.

However, no buy - back can be done out of proceeds of an earlier issue of same kind of shares/ securities.

(1 mark)

(b)

A Company is required to constitute CSR committee:

Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having

(1) Net worth of rupees 500 crore or more, or

(2) Turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

(2 marks)

Duties of CSR Committee:

(a) Formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) Recommend the amount of expenditure to be incurred on the activities referred to in the CSR Policy of the company from time to time.

(1 mark)

Exceptions to CSR Activities:

The Companies (CSR Policy) Rules, 2014 provides for some activities which are not considered as CSR activities:

(1) The CSR projects or programs or activities undertaken outside India.

(2) The CSR projects or programs or activities that benefit only the employees of the company and their families.

(3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.

(2 marks)

(c) Removal of auditor before expiry of his term

The auditor appointed under section 139 may be removed from his office before the expiry of his term

- only by a special resolution of the company,
- after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

- Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Rule 7 of CAAR, 2014. Removal of the auditor before expiry of his term

(1) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

(2) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

(3) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Members of Raman Ltd can remove auditor before the expiry of his term by fulfilling the above procedure.

(3 marks)

(d)

Rule of Eiusdem Generis

For application of the rule, all the following conditions need to be satisfied:

- (a)** There must be an enumeration of certain specific words.
- (b)** The specific words contained in the enumeration must constitute a class or category.
- (c)** The specific words must be of the same kind or nature.
- (d)** The specific words must not exhaust the whole category.

Meaning of Rule

1. The term 'Eiusdem Generis' means of the same class or species'.
2. The rule states that general words following specific words are to be construed with reference to the words preceding them.

Where a Statute uses the words 'such as oxen, bulls, goat, cows, buffaloes, sheep, horses, etc.', the word 'etc' cannot include wild animals like lion and tiger. Also, all domestic animals would not be covered. The illustrations given relate to all four legged animals and hence other

domestic animals like dogs, cats etc. can be included but not cock or hen has no similarity with the illustrations of other domestic animals given.

(4 marks)

Q.5

(a) Section 6 – Effect of Repeal

Where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- a. Revive anything not enforced or prevailed during the period at which repeal is effected or;
- b. Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- c. Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- d. Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- e. Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

(4 marks)

(b) Haydon's Rule of Interpretation

1. Ambiguous words: Haydon's Rule may be applied if the words used in a Statue are ambiguous and are capable of more than one meaning.

2. Literal interpretation defeats the object of the Act: If giving literal meaning to the words would defeat the object of the legislature, the Court may depart from the dictionary meaning and instead give it a meaning which will advance the remedy and suppress the mischief.

3. Extended meaning is required: If the object of a Statue is public safety, words can be given a more extended meaning as compared to their ordinary meaning to give effect to that object.

Similarly, the words in a penal Statute can be given a more extended meaning in order to suppress the mischief

Essence of Rule

1. Consideration of background of the statute: The Court shall consider the historical background of the Statute, common law before the Statute was enacted and the mischief, which the Statute intended to remedy. In particular, the Court shall consider the following four matters:

- (a) What was the law before making of the Act?
- (b) What was the mischief or defect, which the law did not provide?
- (c) What is the remedy that the Act has provided?
- (d) What is the reason for the remedy?

2. Suppress the mischief and advance the remedy: After the Court has considered the above four matters, the rule requires the Court to adopt that construction which will suppress the mischief and advance the remedy.

(4 Marks)

(c)

As per the provision of section 92 of Companies Act, 2013 every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

(2 marks)

Rama Ltd is a Company Incorporated in India. Company for the financial year of 2018-19 did not call AGM due to some reason which were valid under law. Board of Directors of the company

was under an impression that AGM is not called hence company is not under an obligation to file Annual Return to Registrar

Hence contention of Board of Directors is not proper and in such case a penalty would be levied upon such company and every officer who is in default shall be liable to a penalty of ₹50,000 and in case of continuing failure, with a further penalty of ₹100 for each day during which such failure continues, subject to maximum of ₹5,00,000.

(1 mark)

(d)

Alteration of Object Clause (Section 13)

- A special resolution has to be passed in the general meeting of the company. The special Resolution shall be passed by Postal Ballot in case of public company.
- Company shall file to the Registrar of Companies within 30 days of passing the Special Resolution certain prescribed documents
- The ROC shall register the same and certify the registration under his hand within 30 days from the date of filing of such documents.

The effective date of alteration of object clause is the date when the Registrar of Companies registers the alteration.

To protect the minority interest, restriction has been imposed on the change of object clause. Now a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its object for which it raised the money through prospectus unless:

(i) a special resolution is passed by the company,

(ii) An exit option is given to the dissenting shareholders in terms of the regulations prescribed by SEBI and

(iii) Prescribed details are published in one English and one vernacular language newspapers which is in circulation at a place where registered office of the company is situated and also placed on company's website indicating justification for such change.

(3 marks)

(e) Bill drawn in fictitious name: The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious.

Accordingly, in the instant case, Y cannot avoid payment by raising the plea that the drawer (Z) is fictitious. The only condition is that the signature of Z as drawer and as endorser must be in the same handwriting.

(3 marks)

