

Test-4

Total Marks = 34

Date _____
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Your overall performance is good. Revise all your previous topics at least once in a week rather allocate a day in a week for revision and evaluating your performance. This will help you memorize topics and find out shortcomings in your preparation.

5 marks

1. (i) ~~some applicants consented to become shareholders of a company on the condition that their suggestions should be included in MoA & AoA. Their suggestions, however, were not carried out by the promoters but the applicants signed usual applications for shares allotted to them and thereby become shareholders of the company.~~

You have good conceptual understanding of this question

It was held in a decided case law, that ~~the shareholders cannot object subsequently to their becoming shareholders~~ ^{of the Co.} on the ground that the condition has not been met.

(ii)

workmen's portion of security

$$= 100000 \times 100000$$

$$= \text{Value of Security} \times \frac{\text{Amt of Workmen's due}}{\text{Workmen's due} + \text{Secured loan}}$$

$$= 100000 \times \frac{100000}{100000 + 300000} = ₹ 25000$$

If liquidator incurs ₹ 10000 for preservation of security, then,

Expenses ~~is~~ workmen's portion
value of Security

$$= 10000 - \frac{10000 \times 25000}{100000}$$

$$= 10000 - 2500$$

$$= 7500 \text{ to be borne}$$

\therefore , ₹ 7500 is ~~to~~ be borne
by Secured Creditors.

Q2(A) As per Section 2(e) of FEMA, a capital account transactions means a transaction which alters:

- Assets or liabilities including contingent liabilities outside India of PRI, or
- Assets or liabilities in India of PROI

5 marks

As per Schedule II of Capital Account Transaction Regulations, **You have correctly described this** investment in immovable property in India by PROI is permitted subject to condition mentioned in regulations.

Payment of commission to persons other than individual is covered under IIIrd Schedule of FEMA (Current A/c transactions) Rules, 2000. & For withdrawing foreign exchange exceeding

- USD 125000 OR
- 5% of Inward Remittance

whichever is more, for payment of commission to agent abroad for sale of immovable property in India prior approval of RBI is reqd.

B. Maximum Amt of Commission that can be paid to each broker =

$$= \frac{150,00,000 \times 5 \times 50\% \times 5\%}{2}$$

$$= ₹ 9,37,500 \text{ per broker}$$

Q3.

(1) 'contracting state' means any ~~str~~ country or place outside India in respect of which ~~arrangements~~ have been made ~~by~~ the Central Govt. with the Govt. of such country through treaty or otherwise.

3 marks

(2) As per section 5B, where a letter of request is recd by Central Govt. from a Court or Authority in contracting state for investigating investigation into an offence or proceedings under this Act and

You have good conceptual clarity of this question

forward ~~any~~ evidence to such Court or Authority, connected to the offence or proceeding,

The Central Govt. may forward such letter of request to ~~Grand~~ Special Court or any Authority under this

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Act, for execution of such request in accordance with this Act or any other law for the time being in force.

Q4. As per section 38 of PMLA Act, if any Bench consisting of two members differs in opinion on any point, the shall state the point or points on which they differ and make reference to chairman who shall hear the point/points himself or refer the case for hearing on such point/points by 3rd member of Appellate Tribunal. Such point/points shall be decided according to opinion of majority of members who heard this case including those who first heard it.

3 marks

well attempted answer

In the given, Mr. Rajan's property was attached on the basis of decision by majority member. Hence, the contention of Mr. Rajan that the matter should be decided by chairman by his deciding vote is invalid.

Section 7

Q5. As per FEMA Act and regulations made thereunder, the amount representing full value of export of goods / software / services shall be realized and repatriated to India within 9 months from the date of export or within such time as may be specified by RBI in consultation with Govt. from time to time, provided:

4 marks

You have attempted this answer very nicely.

(a) Where goods are exported to warehouse outside India with permission of RBI, the amount representing export value of goods shall be paid to authorised dealer as soon as it is realized, and in any case within 15 months from date of shipment or any within such time as may be specified by RBI in consultation with Central Govt.

(b) Provided further that the RBI or the guide subject to guidelines issued by it, the authorised dealer may, for a reasonable and

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sufficient cause shown, extend the said period, as the case may be.

Sunita Gyarmants has to follow the forementioned provisions

Q6) As per section 279 of the Companies Act, 2013 where a winding up order has been passed or provisional liquidator has been appointed, no suit or legal proceeding shall be commenced or if pending at the date of winding up order shall be proceeding with by or against the company, except with leave of Tribunal and subject to conditions Tribunal may impose.

4 marks

You have good conceptual understanding of this question

Any application to the Tribunal for seek leave under this section shall be disposed off by Tribunal within 60 days.

However, the above provision shall not apply to proceeding pending in appeal before HC or SC.

Further, in the winding up of the company under this Act,

the workmen's dues shall be paid in priority to all other debt ranking in ~~pari passu~~ with secured creditors.

In the Given case, the order of winding up has already been passed by HC, the workmen can appeal ~~can~~ against the order only with leave of tribunal. Further, the dues of workmen shall be paid in priority ranking ~~pari passu~~ with ~~secured~~ creditors.

Q7

1. (d) ✓

2. (a) ✓

3. (c) ✓

4. (d) ✓

5. (d) ✓

6. (b) ✓

7. (b) ✓

10 marks

well attempt