

## 10. TRANSFER & TRANSMISSION OF SHARES

### QUESTION - WISE ANALYSIS OF PREVIOUS EXAMINATIONS: THEORY QUESTIONS

| No. | ABC | M - 10<br>To<br>N - 10 | M-11 | N - 11<br>To<br>M - 12 | N-12 | M - 13<br>To<br>M - 14 | N-14 | M-15 | N-15 | M-16 | N-16 | M-17 | N-17 | M-18<br>(OLD) | M-18<br>(NEW) |
|-----|-----|------------------------|------|------------------------|------|------------------------|------|------|------|------|------|------|------|---------------|---------------|
| 5.  | A   | -                      | -    | -                      | -    | -                      | -    | 4    | -    | -    | -    | -    | -    | -             | 4             |
| 8.  | B   | -                      | -    | -                      | -    | -                      | -    | -    | -    | -    | -    | -    | -    | 4             | -             |

Shares or debentures of a Company shall be movable property transferable in the manner provided by the articles of the Company [Section 44].

Q.No.1. What is meant by transfer? State the procedure or requirements for transfer of shares? (B) (NEW SM, OLD SM)

**TRANSFER:** It means the voluntary passage of rights and duties

- Of a member who wishes to
  - Cease to be a member or
  - Decrease his number of shares held
- To a person desirous of
  - Becoming a member or
  - Increase his number of shares held.

#### **REQUIREMENT FOR REGISTERING THE TRANSFER OF SECURITIES [SEC 56]:**

1. **Applicant:** Application for registration of transfer of shares or other interest in a company can be made either by the transferor or the transferee.
2. **Applicability:**
  - a) Transfer of securities of a Company having share capital or
  - b) Transfer of the interest of a member in a Company in the case of a Company having no share capital.

*Note: Not applicable to transfer of securities through depository.*

#### **3. Instrument of transfer [Sec 56(1)]:**

- a) An instrument of transfer shall be made for affecting a transfer of securities held in physical form.
- b) **Form:** Every instrument of transfer shall be in the prescribed form (Form no SH-4)
- c) **Contents:** The instrument shall be -
  - Duly stamped, dated and
  - executed (viz. signed) by or on behalf of the transferor and the transferee,
- d) It shall specify the name, address and occupation, if any, of the transferee.
- e) **Delivery:** The instrument shall be delivered to the Company either by transferor or transferee along with –
  - Certificate relating to securities or
  - Letter of allotment, if there is no share certificate.
- f) **Time limit for submission:** Instrument of transfer shall be deposited with company within 60 days from the date of execution of transfer deed.

g) **Instrument of transfer lost / not delivered:** Where the instrument of transfer is

- Lost or
- Not been delivered within the prescribed period (i.e. within 60 days),

Then the Company may register the transfer on such terms as to indemnity as the Board may think fit.

4. **Delivery of share certificate in case of transfer [Sec 56(4)(c)]:** Company shall register the transfer and issue a share certificate to the transferee within 1 month from date of registration.

5. **Exceptions:**

- **Depository:** If the transfer is between persons both of whose names are entered as holders of beneficial interest in the records of a depository.
- **Government Company**

6. **Punishment for Non-compliance [Sec 56(6)]:** Where any default is made in complying with the provisions of sec 56, then

| Who is Punishable               | Punishment                                      |
|---------------------------------|---|
| Company                         | Fine: Minimum: Rs. 25,000 Maximum: Rs. 5,00,000 |
| Every Officer who is in default | Fine: Minimum: Rs. 10,000 Maximum: Rs. 1,00,000 |

**Note:**

1. If any depository or depository participant, with an intention to defraud a person, has transferred shares then it shall be liable u/s 447 of the Companies Act 2013 with the liability mentioned under the Depositories Act, 1996.
2. Unless prohibited by any provision of law or any order of Court, Tribunal or other authority, Every Company shall deliver the certificates of a transfer or transmission of securities within the following limits:

| Different conditions                              | Period of delivering the certificates  |
|---|--|
| In case of subscribers to the memorandum;         | Within 2 months from the date of incorporation   |
| In case of any allotment of any of its shares     | Within a period of two months from the date of allotment   |
| In case of transfer or transmission of securities | Within a period of one month from the date of receipt by the Company of the instrument of transfer or the intimation of transmission |
| In case of any allotment of debenture             | Within a period of six months from the date of allotment   |

Where the securities are dealt with in a depository, the Company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

**SIMILAR QUESTIONS:**

1. Who can make an application for registration of transfer of shares? Discuss the manner of registration of transfer of shares.
  - A. Refer above answer
2. What are the prerequisites for affecting a valid transfer?
  - A. Refer above answer
3. Registration of transfer is optional with the Company. Comment.
  - A. No. In order to give an effect of transfer, valid transfer deed in a prescribed form (Form SH-4) must be registered with the Company (i.e. mandatory).

4. Layman is a holder of a share warrant in on time Fliers Ltd., a public limited company. Unfortunately, Layman is unaware of any of the formalities to be complied with for transferring the said share warrant. Advise him about the formalities to be completed in this regard.
- A. Share warrant is different than share certificate. Share warrant is treated as negotiable instrument and it can be transferred by way of delivery.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 2)

Q.No.2. State the provisions as to registration in respect of partly paid shares? [Sec 56(3)] (B)  
(NEW SM, OLD SM)

**TRANSFER OF PARTLY PAID UP SHARES / TRANSMISSION [SEC 56(3)]:**

- If application for transfer is made by the transferor alone and
- Such transfer relates to partly paid shares

Then company shall register the transfer on satisfaction of following conditions:

- a) **Notice to Transferee:** Company gives the notice of such application to the transferee in a prescribed form and manner (*Form SH-5*).
- b) **No Objection from Transferee:**
- Transferee has given no objection to the transfer within 2 weeks from the date of receipt of notice.
  - If the transferee fails to state his objections within 2 weeks then the Company may thereafter register the transfer.
- c) **Registration of Transfer:** Company shall proceed to register the transfer upon receipt of No-objection from the transferee.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 3)

Q.No.3. What is the punishment for personation of shareholder? [Sec 57] (B)  
(NEW SM, OLD SM)

**PUNISHMENT FOR PERSONATION OF SHAREHOLDER [SECTION 57]**

**Personation of Shareholder:** Any person deceitfully personates as—

- An owner of any security or interest in a company, or
- An owner of any share warrant or coupon issued in pursuance of this Act, and
- Thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or
- Receives or attempts to receive any money due to any such owner

**PUNISHMENT:** Such person shall be punishable with -

- a. **Imprisonment** for a term which shall not be less than 1 year but which may extend to 3 years **and**
- b. **Fine** amount which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000.

Q.No.4. Explain the meaning of “Transmission of Shares” under the Companies Act, 2013. Also State the nomination facility in case of transmission of securities? (A) (OLD PM)

**MEANING [Sec 56]:** Transmission of shares takes place when shares are transferred under the operation of law.

It may happen on -

- a) Death of the registered shareholder
- b) Insolvency of member (or) becoming a person of unsound mind
- c) Shareholder being a Company and it (Company) goes into liquidation.

The Companies Act recognizes the ownership of the shares with the legal representative or official assignee whether registered or not. (Case: *R. W. Key and Sons*)

#### OPTIONS TO NOMINEE, ETC.:

If any person who becomes a legal representative of a member by virtue of the operation of any law then upon the production of evidence as may be required by the Board, he may either

- a) Get himself registered as holder of the securities; or
- b) Transfer the securities, in favour of a third person who shall be entitled to get the securities registered in his name with the Company.

#### PROCEDURE:

- a) If nominee (Legal Representative) elects to be registered as holder of the securities, he shall deliver or send to the Company,
  - A notice in writing signed by him stating that he intends to become member and
  - Such notice is accompanied with the death certificate of the deceased member.
- b) On receipt of an intimation of transmission of any right to securities (*by operation of law*) from any person to whom such right has been transmitted, Company shall register the same [Sec 56(2)].
- c) The power of a Company to register is not effected even though the requirements of Sec 56(1) have not been complied with.
- d) *In case shares are not registered in the name of the legal representative though his ownership is undisputed, he will not have any voting rights unless the shares are registered in his name.*

#### SIMILAR QUESTIONS:

1. **In case of death of the shareholder who is eligible to become a member of Company. Explain the procedure?**
  - A. Refer the above answer.
2. **Explain the meaning of “transmission of Shares” under the Companies Act, 2013. In what way “transmission of shares is different from transfer of shares”?**
  - A. Refer “meaning” in the above answer and Q.NO.10
3. **How nomination facility shall operate in case of transmission of shares under the provision of the Companies Act, 2013?**
  - A. Refer Sec 56(5) and procedure in the above answer.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 3, 6, 7)**

**Q.No.5. Discuss the provisions relating to Refusal to registration of transfer / transmission of securities. (A)** **(New SM, OLD SM)**

#### REFUSAL TO REGISTRATION OF TRANSFER / TRANSMISSION OF SECURITIES [Sec 58]:

1. **Applicability:** Private companies limited by shares and Public companies.
  - a. The AOA of Private Company may contain a power to refuse registration of transfer or transmission of shares.
  - b. The securities or other interest of any member in a public company are freely transferable, subject to the agreement between two or more persons in respect of transfer of securities.

2. **Notice of Refusal:** In case of refusal, the company shall send a notice indicating reasons for refusal to the -
  - a. Transferee and transferor or
  - b. Person intimating such transmission.
3. **Time Limit:** Such notice shall be sent within 30 days from the date of delivery of instrument or intimation.

### REMEDY AGAINST REFUSAL OF TRANSFER OF SHARES

1. **When:** Remedy arises if the company –
  - Refuses to register transfer of shares, or
  - Fails to reply within 30 days of lodging the documents for registration;
  - Fails to rectify the register of members for wrong inclusion or omission of name
2. **Who:** The transferee may appeal to the Tribunal in case the refusal by -
  - A private Company is not justified.
  - A public Company has without sufficient cause.
3. **Time Limit for appeal:** The time limit for application is -
  - a) **In case of Private Company -**
    - Within 30 days of date of receipt of notice of refusal or
    - If no notice has been received then within 60 days of lodging documents for registration.
  - b) **In case of Public Company –**
    - Within 60 days of date of receipt of notice of refusal or
    - If no notice has been received then within 90 days of lodging documents for registration.
  - c) No time limit for rectification of register of members for wrong inclusion or omission of name.
4. **Proceedings:** On hearing the NCLT may either –
  - a) Dismiss the appeal; or  
By order direct that the transfer or transmission be registered by the company within 10 days of date of receipt of order.
  - b) Direct rectification of register and also direct the company to pay damages (if any) sustained by any party aggrieved.
5. **Contravention:** If a person contravenes the order of the Tribunal u/s 58 then he shall be punishable with -
  - **Imprisonment:** For a term of not less than 1 year but may extend to 3 years and
  - **Fine:** Not less than Rs.1 lakh but which may extend to Rs.5 lakhs.

### **Examples of valid refusal to transfer of shares by company:**

- *Improper transfer deed*
- *If there is stay order granted by the Court / Tribunal.*
- *Transfer in violation of SEBI Takeover code or any other law*
- *If transfer is subject to lock in and there is endorsement on certificate*
- *Transfer of shares in case of private company is not as per AOA.*

### SIMILAR QUESTIONS:

1. Registration of transfer of shares cannot be refused by the Company. If refused, Can a Tribunal compel the Company to register the transfer. Comment.

A. AOA of a Company may specify and empower the Board to refuse to register transfers on certain specific grounds. Tribunal can compel the Company to register the transfer only if refusal is found to be unjustifiable or without sufficient cause.

2. What steps can an applicant take in case of 'delay or refusal' of registration of transfer? What powers does the Tribunal have to protect the interest of the shareholders?

A. Refer above answer

3. A Company refuses to register transfer of shares made by X to Y. The Company does not even send a notice of refusal to X or Y within the prescribed period. Has the aggrieved party any right(s) against the Company for such a refusal? Advice.

(MTP M18 (N), MTP1 M19 (N), MTP N17) (RTP M18 (N), RTP N17) (M18-4M (N), N15 - 4M, M02-4M)

A. Refer the above answer.

**Q.No.6. Discuss the provisions relating to Refusal for rectification of register of members on transfer of securities by a Company and the remedial measures to the aggrieved shareholder.**  
(C) (NEW SM, OLD SM)

### REFUSAL FOR RECTIFICATION OF REGISTER OF MEMBERS [SEC 59]:

#### SITUATION 1: ERRONEOUS INCLUSION / REMOVAL OF NAME OF A MEMBER

a) Reason for appeal:

- Without any sufficient cause, if the name of a person is –
  - Entered in the Register of Members, or
  - After having been entered, deleted therefrom
- Default or unnecessary delay is being made in entering the fact of becoming a member or cessation of membership.

b) Who can appeal:

- The aggrieved person, or
- Any member of the Company or
- The Company may appeal in a prescribed form.

c) Appeal to:

- Tribunal, or
- Competent court outside India, specified by the CG by notification in respect of foreign members or debenture holders residing outside India.

d) Time limit for making application: Application must be filed within reasonable time.

e) Orders of Tribunal: On hearing NCLT may either –

- Dismiss the appeal; or
- By order direct that the transfer or transmission be registered by the company within 10 days of receipt of order.
- Direct rectification of register and also direct the company to pay damages (if any) sustained by any party aggrieved.

#### SITUATION 2: TRANSFER OF SECURITIES IS IN CONTRAVENTION OF APPLICABLE LAWS [Sec 59(4)]

a) Reasons for Appeal: Where the transfer of securities is in contravention of any of the provisions of the

- Securities Contracts (Regulation) Act, 1956,
- The SEBI Act, 1992 or

- This Companies Act, 2013 or
- Any other law for the time being in force.

**b) Who can appeal:**

- Depository
- Company
- Depository participant
- Holder of securities
- SEBI

**c) Application to whom: NCLT**

**d) Time limit for making application** - No time limit has been prescribed.

**e) Order of Tribunal:** The Tribunal may direct the Company or a depository to set right the contravention and rectify its register or records concerned.

**Rights of transferee:**

- Rights of a holder to transfer the shares or debentures are not affected by the above provisions.
- Any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

**Non Compliance with Tribunal Order u/s 59:**

| Who is Punishable  | Punishment  |
|--------------------|---|
| Company            | <b>Fine:</b> Minimum Rs. 1,00,000<br>Maximum Rs. 5,00,000   |
| Officer in Default | <b>Imprisonment</b> for a term extending to 1 year <u>or</u><br><b>Fine:</b> Minimum Rs. 1,00,000<br>Maximum Rs. 3,00,000 <u>or</u><br><b>Both.</b> |

**Q.No.7. Write about nomination facility in respect of shares [Sec 72]? (C)**  
(NEW SM, OLD SM, RTP - M13)

**PROVISIONS' RELATING TO NOMINATION FACILITY IN RESPECT OF SHARES ARE AS FOLLOWS [Sec 72]:**

**1. Meaning:** Nomination is a facility whereby

- A holder of any financial asset (Bank a/c, FD, securities etc.)
- Could nominate the name of another person
- Who would be entitled to that financial asset in case of his or her death.

**2. Effect of nomination:** Generally, such nomination overrides any will. It is a very logical thing to do to avoid legal, procedural issues related to transmission

**3. Applicability:** Applicable to all companies.

**4. Basic Aspects of Nomination:**

- a. Nomination by whom:** Every holder of securities of a Company may nominate any other person to whom his securities shall be assigned in the event of his death.

**Note:**

1. Such nomination shall be made in form no - SH-13.
2. In Case of joint holdings: all joint holders shall together nominate any person as nominee.

b. **Time limit:** The nomination may be made by any holder of securities at any time.

c. **Who can be a nominee:** Any person including minor

If nominee is a minor, the holder of securities may appoint a person, who shall become entitled to the securities in the event of death of the nominee during his minority.

#### 5. Duties of a Company:

a. **Entry:** An entry shall be made by a Company in its register of securities holders

b. **Time:** Within 2 months from the date of receipt of duly filled and signed nomination form.

#### 6. Variation or cancellation:

a. At anytime a nomination may be cancelled or varied by nominating any other person in the place of present nominee.

b. Notice of cancellation or variation shall be in Form SH-14.

c. It shall take effect from the date of receipt of notice by the Company.

#### 7. Process upon death of Shareholder/ Debenture holder:

- **Option by Nominee:** On production of evidence as required by the Board, the nominee can either –

a) Register himself as holder of the share / Debenture, or

b) Transfer such share / debenture, as the deceased shareholder / debenture holder would have done

- **Notice:** If the nominee opts to register as a shareholder / debenture holder, he should send –

a) A notice in writing to the company of his intention to the company.

b) A copy of death certificate of the deceased shareholder / debenture holder.

**Note:** The above notice shall apply as if it were a transfer signed by the previous holder of securities.

#### 8. Rights of Nominee:

a) **Rights of holder:** On the death of the holder or holders, the nominee has all rights as if he was the registered holder of securities.

b) **Exclusive Rights:** The rights of Nominee shall be effective notwithstanding anything contained in –

- Any law for the time being in force, or

- Any disposition, whether testamentary or otherwise (i.e. Will, etc.)

#### 9. Restriction of Nominee's Rights:

a) **No Voting Rights:** Unless Nominee is registered as member, he does not have right to vote in meetings,

b) **Joint Holding:** In case of Joint holding, the nominee's rights shall arise only on the death of all joint holders.

c) **Cancellation:** In case of cancellation or variation of nomination in Form no. SH-14, the previous nominee's rights come to an end.

#### SIMILAR QUESTIONS:

1. Examine the provisions relating to nomination of shares u/s 72 of the Companies Act, 2013?

2. How shall Nomination facility operate in case of transmission of shares? (OLD PM)

3. State the procedure to be followed by a person nominated by a shareholder to get the shares registered in his name or transfers the share in the event of death of the nominator.



Are there any restrictions on the nominee receiving dividends and exercising voting rights in respect of such shares in the event of the Nominator?

4. Mr. Mehra holds 400 shares of Prema Ltd., He intends to nominate these shares to his son Aakash. Discuss the provisions of the Companies Act, 2013 in relation to facility of nomination. (MTP - M18 (NEW))

A. Refer the above answer.

5. Mrs. and Mr. Prem Chand are joint holders in XYZ Ltd. They wish to appoint their minor son Ajay as the nominee. Explain the following:

- a) Is such nomination, subsequent to purchase of shares, feasible?  
b) If so, can the proposed nominee be a Minor?

Can the joint holders appoint a single nominee?

- A. Any person including a minor can be appointed as a nominee at any time. Where the shares or debentures of a Company are held by more than one person jointly, they may together nominate a person (single nominee) to whom all the rights in the shares or debentures of the Company shall vest in the event of his death.

### QUESTIONS FOR ACADEMIC INTEREST ONLY – FOR STUDENTS SELF STUDY

Q.No.8. In what ways is “transmission of shares” different from “Transfer of Shares”? (B)  
(OLD PM) (M18 - 4M)(O)

| BASIS                  | TRANSFER OF SHARES   | TRANSMISSION OF SHARES   |
|------------------------|--|--|
| Creation               | It is affected by a <u>voluntary act</u> of the parties by way of a <u>contract</u> .        | It takes place by <u>operation of law</u><br>Ex: Death, Insolvency or lunacy of a member.      |
| Consideration          | It takes place for <u>consideration</u> .  | <u>No consideration</u> is involved.   |
| Instrument of transfer | The transferor has to <u>execute a valid instrument of transfer</u> .                        | There is <u>no prescribed instrument</u> of transfer. Only intimation to Company is sufficient |
| Liability transfer     | As soon as the transfer is <u>complete</u> , the <u>liability of the transferor ceases</u> . | Shares <u>continue to be subject</u> to the <u>original liabilities</u> .                      |
| Stamp duty             | Stamp duty <u>payable on execution of transfer deed</u> .                                    | <u>Not payable</u> .   |

Q.No.9. What is forged transfer? (A) (OLD SM, OLD PM)

**MEANING:** The term ‘forged transfer’ means transfer of shares made on the basis of transfer deed on which the transferor’s signature is forged.

**Nullity:** A forged transfer is a nullity. It does not give any title of shares to the transferee.

**POSITION OF VARIOUS PARTIES IS AS FOLLOWS:**

1. **Original owner:** By forgery, If the name of the true owner of shares is taken off from the Register of Members then true owner (Transferor) can -
- Compel the Company to restore his name to the register, and
  - Claim any dividend which may not have been paid to him during the intervening period.

**2. Transferee (Obtained shares on a forged transfer deed):****a) Case A:** If shares are with the transferee himself. (i.e. not transferred to others)

- The Company cancel the share certificate issued to the transferee, and consequently the transferee's name will be struck off from the register of members.
- The transferee must take care that he is not getting a certificate from the Company on a forged transfer, because the transferee shall be liable to indemnify the Company against the consequences of the damages which may have to be paid by the Company to the true owner of the shares.

**b) Case B:** Where the transferee has already transferred the shares to an innocent purchaser.

- The Company shall have a right to recover damages from the transferee which were paid to the innocent purchaser for the loss suffered by that person.

**3. Company:** If the Company acts on a forged transfer and removes the name of the real owner from the register of Members then -

- The Company is bound to restore the name of the real owner on the register as the holder of the shares and pay him any dividends which he ought to have received.
- Shall be liable to compensate the innocent purchaser (if any) in so far as the Company had issued a certificate to transfer and was therefore estopped from denying the liability accruing from its own act.

**4. Innocent purchaser** (i.e. ultimate transferee, if shares are transferred by the transferee):

By forgery, if a person obtains a certificate of transfer of shares from a Company and transfers the shares to a purchaser for value acting in good faith, such purchaser -

- Does not get a good title to the shares so transferred, because a forged transfer is a nullity and cannot be a source of a valid transfer of the shares.
- Is eligible for compensation if the ultimate transferee acts in good faith.

**SIMILAR QUESTIONS:**

- “A forged transfer of shares is a nullity.” Comment. (OLD PM)
  - Write short note on forged transfer.
  - A Company registered by mistake a forged share transfer form and issued the share certificate to the transferee. Subsequently it found the fact of the mistake. What is the position of the Company towards the original owner and the innocent transferee?
- A. Refer the above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 4, 5.)

## PRACTICAL QUESTIONS

**Q.No.1.** Before registering transfer of partly paid up shares the Company is required to give a notice to the transferee. Comment

**Transfer of partly paid up shares [Sec 56(3) of Companies Act, 2013]:**

Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless -

- The Company gives the notice of the application, in such manner as may be prescribed, to the transferee and
- The transferee gives no objection to the transfer within 2 weeks from the receipt of notice.

**Q.No.2.** Ramesh, who is a resident of Delhi, sent a transfer deed, for registration of transfer of shares to the Company at the address of its registered office in Mumbai. He did not receive the share certificates even after the expiry of one month from the date of dispatch of transfer deed. He lodged a criminal complaint in the court at Delhi. Decide whether the court at Delhi is competent to take action in the said matter?  
(OLD PM) (MTP2 – M18 (N))

**Provision:** Sec 20 of Companies Act, 2013 – Service of documents

Sec 56(4) (c) of Companies Act, 2013 – Limitation of time for issue for certificates

**Relevant case law:** ICICI Vs H.V. Jayaram

As per sec 56(4)(c), Every Company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of a transfer or transmission of Securities Within a period of 1 month from the date of receipt by the Company of the instrument of transfer or the intimation of transmission.

However, where the securities are dealt with in a depository, the Company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

The share certificates are to be delivered either personally or by registered post.

The cause of action for failure to deliver the share certificates within prescribed time would arise at a place where registered office of the Company is situated. So, a petition can be lodged only where the registered office is situated [*Mumbai in the given case*].

*Further, any default made in complying with the provisions of sec 56(1) - (5) leads to punishment as specified u/s 56(6) of the Companies Act, 2013.*

**Analysis:** In the given case, it was given that Ramesh did not get the share certificate even after expiry of 1 month from the date of dispatch of transfer deed. However, Ramesh filed the petition at Delhi which is not the registered office of the Company.

**Conclusion:** Delhi court is not competent to take the action.

**Q.No.3.** Instrument of transfer is not required to be executed in case of transmission. Comment.

**True.** When the shares are transferred under the operation of law, either on the death of the shareholder or on his becoming insolvent or when the shareholder is the Company and such Company goes into liquidation. For this transfer deed and payment of stamp duty is not required u/s 56(2) of the Companies Act, 2013.

**Q.No.4.** 'A' commits forgery and thereby obtains a share certificate for transfer of shares from a Company and transfers the shares to 'B' for value, acting in good faith. Company refuses to transfer the shares to 'B'. Whether the Company can refuse? Decide the liability of 'A' and of the Company towards 'B'.  
(OLD PM)

**Relevant case law:** *Barton vs. North Strafford shire Railway Company.*

**Provision:** A forged transfer is a nullity. It does not give the transferee any title to the shares. Since the forgery is an illegality, therefore it cannot be a source of a valid transfer of a title.

If as a result of the forged transfer, the name of the true owner of shares is taken off the Register of Members, he can compel the Company to restore his name to the register.

The Company is bound to restore the name of the real owner on the register as the holder of the shares and pay him any dividends which he ought to have received. It shall also be liable to compensate the innocent purchaser (if any) in so far as the Company had issued a certificate to transfer and was therefore estopped from denying the liability accruing from its own act.

Although the innocent purchaser acting in good faith could validly and reasonably assume that the person named in the certificate as the owner of the shares was really the owner of the shares represented by the certificate.

**Analysis and Conclusion:**

- a) Therefore, the Company has right to refuse transfer of the shares in the name of the transferee, i.e. Mr. B.
- b) Here, as regards to the liability of A against 'B', A does not stand directly responsible under the provisions of the Company law as he has already committed forgery which is illegal. But A is liable to compensate the Company as he has lodged the forged transfer and the Company has suffered the loss.
- c) As regards to the liability of the Company towards B, the Company shall be liable to compensate to B in so far as the Company had issued a certificate to transfer and was, therefore, stopped from denying the liability accruing from its own act. Further, as the Company has refused to register him as a shareholder, Company has to compensate B.
- d) However, in this case the interest of the original shareholder will be protected.

**Q.No.5.** X, a registered shareholder of Y Limited left his share certificates with his broker. The broker forged the transfer deed in favour of Z and lodged the transfer deed alongwith the share certificates with the Company for registration. The Company Secretary, who had certain doubts, wrote to X informing him of the proposed transfer and in the absence of a reply from him (X), within the stipulated time, registered the transfer of shares in the name of Z. Subsequently, Z sold the shares to J and J's name was placed in the register of shareholders. Later on, X discovered that forgery has taken place.

Referring to the provisions of the Companies Act, 2013, state the remedy available to X and Z in the given case. Explain. **(NEW SM, OLD PM)**

**Provision:** Sec 46(1) of the Companies Act, 2013 – Certificate of shares.

As per sec 46(1), A share certificate once issued amounts to a declaration by the Company to all the world that the person in whose name the certificate is made out and to whom it is given is a shareholder in the Company in other words the Company is stopped from denying his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee any title to the shares. If a Company acts on a forged transfer and removes the name of the real owner from the register of members then the Company is bound to register the name of original owner as the holder of the shares and to pay him dividends which he ought to have received.

In such a case, the Company should first enquire into the validity of the instrument of transfer. It should also send a notice to the transferor to his address and inform him that such a transfer has been lodged and if no objection is made before this specified date, it would be registered.

**Analysis and Conclusion:**

**Remedies available to X:** Since a forged transfer is a nullity, it does not pass any legal title to the transferee. The true owner can have his name restored on the register of members. A forged document can never have any legal effect.

X can also claim any dividend, which may not have been paid to him during the intervening period. (*Barton V North Staffordshire*).

**SECTION NUMBER**

| S.No | CONCEPT   | Sec. No. |
|------|---|----------|
| 1.   | Transfer and transmission of securities                                   | 56       |
| 2.   | Refusal of registration and appeal against refusal                        | 58       |
| 3.   | Power to nominate any person by security holder in the event of his death | 72       |

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**PENALTIES AND PUNISHMENT**

| S. No | CONCEPT  | PENALTIES AND PUNISHMENTS   |
|-------|--|---|
| 1.    | Non-compliance of provisions of sec 56. (Transfer and / or Transmission of securities).  | <p>a) Company: fine varying from Rs. 25,000 but which may extend to Rs.5 lakhs and</p> <p>b) Every officer who is in default: minimum fine of Rs. 10,000 but which may extend to Rs.1lakhs.</p> <p><i>In case of Depository &amp; Depository participants:<br/>Guilty of fraud u/s 447 of the Companies Act, 2013 and Liability mentioned under the Depositories Act, 1996.</i></p> |
| 2.    | Non-compliance of orders of the Tribunal u/s 58 by a Company. (i.e. Registration of transfer or transmission of securities)      | <p>He, who contravenes the orders of the tribunal shall be punishable with -</p> <ul style="list-style-type: none"> <li>• <u>Imprisonment</u>: For a term of not less than 1 year but may extend to 3 years <u>and</u></li> <li>• <u>Fine</u>: Not be less than Rs.1 lakh but may extend to Rs.5 lakhs.</li> </ul>  |
| 3.    | Non-compliance of orders of the Tribunal by a Company u/s 59 (i.e. Refusal of rectification of register of members of a Company) | <p><u>For Company</u>: Fine ranging from Rs.1 to 5 lakhs <u>and</u><br/><u>Every officer of the Company, who is in default</u>: punishable with -</p> <ul style="list-style-type: none"> <li>• Imprisonment extending upto 1 year or</li> <li>• Fine ranging from Rs.1 to 3 lakhs or</li> <li>• Both.</li> </ul>  |

**TIME - LIMIT**

|    |  |   |
|----|--|---|
| 1. | Time limit for submission of valid instrument of transfer to the Company by the transferor or transferee u/s 56(2).  | Within a period of 60 days from the date of execution of such transfer deed along with certificate relating to securities or letter of allotment, as the case may be.   |
| 2. | Time limit for making objection by transferee in case of transfer of partly paid up shares and such application is made by the transferor alone u/s 56(3). | Within 2 weeks from the receipt of notice from the Company.   |
| 3. | Time limit for delivery of share certificate by the Company u/s 56(4)(c).  | Within a period of 1 month from the date of receipt by the Company of the instrument of transfer or transmission, as the case may be.   |
| 4. | Time limit for intimation of refusal of registration of transfer or transmission of securities by the public / private Company, as the case may be.        | Within 30 days from the date of receipt of instrument of transfer / intimation of transmission to the transferor or transferee or person making intimation of such transmission along with reasons of such refusal.   |
| 5. | Time limit for filling the appeal to the Tribunal about refusal of registration without justified ground / sufficient cause.                               | <p><b><u>In case of private Company:</u></b></p> <ul style="list-style-type: none"> <li>• Within 30 days of receipt of notice of refusal or</li> <li>• Within 60 days of lodging documents for registration, if no reply has been received.</li> </ul> <p><b><u>In case of public Company:</u></b></p> <ul style="list-style-type: none"> <li>• Within 60 days of intimation such refusal or</li> <li>• Within 90 days of the delivery of the instrument, if no intimation has been received from the Company.</li> </ul> |
| 6. | Time limit for complying with the orders of the  | Within a period of 10 days of the receipt of the  |

|    |   |  |
|----|---|--|
|    | Tribunal by a Company about registration of transfer or transmission.   | order from the Tribunal.   |
| 7. | Time limit for complying with the orders of the Tribunal by a Company about rectification of register of members. | Within a period of 10 days of the receipt of the order from the Tribunal.  |
| 8. | Time limit for making entry in the register of securities holders about the nomination by a Company (Sec.72)      | Within a period of 2 months from the date of receipt of duly filled and signed nomination form from the securities holder. |

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**THE END**

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