

Chapter 14 ⇒ Foreign Exchange Management Act, 1999

Question	Section	
	Section 1 Section 2	Applicability Definition → Person [2(u)] ①, 5, 8, 9, 10, 27, 32 → PRI [2(v)] → PROI [2(w)] → Authorised person [2(e)] → foreign currency [2(m)] → foreign exchange [2(n)] → foreign security [2(o)]
Q 28	Section 3 Section 4 Section 5	Dealing in forex, etc Holding of forex Current Account transaction [CUAT]
Q 23-25, 15, 31	Section 6	Capital Account Transaction [CAT]
Q 2-7, 11, Q 13-21, 29, 30, 33, 34		• Foreign Exchange management [CUA] Rules 2000 :- Schedule I, II, III
Q 34, 22		• Foreign Exchange management [permissible CAT] Regulations 2000

Purpose of the Act: 1999 Act

An Act to consolidate and amend laws relating to foreign exchange with an objective of :

↓ Facilitating external trade & payment AND Promoting orderly development & maintenance of forex market
 ↓

Enforcement of the Act:

Directorate of Enforcement [DE]

★ FEMA vs FERA : [4 marks]

	Basis	FEMA	FERA
1)	Enactment	1999	1973, 1947
2)	Objective	Promote & develop Forex	Conserve forex
3)	Person Resident in India	Based on stay in India	Based on citizenship
4)	Strictness Presumption of guilty mind	Transaction is Permitted unless restricted	Transaction is Prohibited unless Permitted
5)	Mens-rea [Presumption of guilty mind]	Not presumed	Presumption of existence of mens-rea
6)	Compounding of offence	All offences are compoundable	Not allowed

Section 1: Applicability

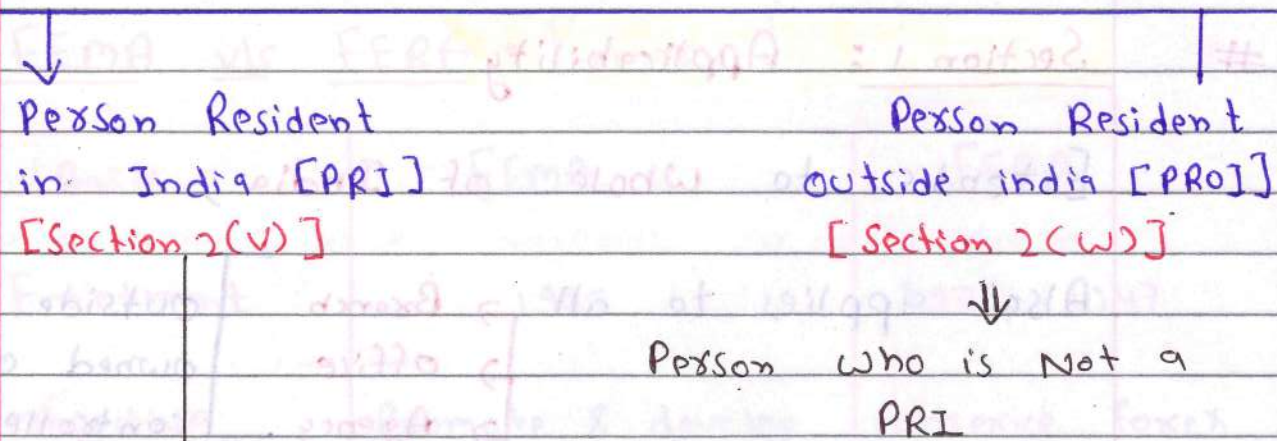
Extends to whole of India,

Also applies to all { Branch
office
Agency } outside India owned or controlled by Person resident in India [PR]

Section 2: Definition

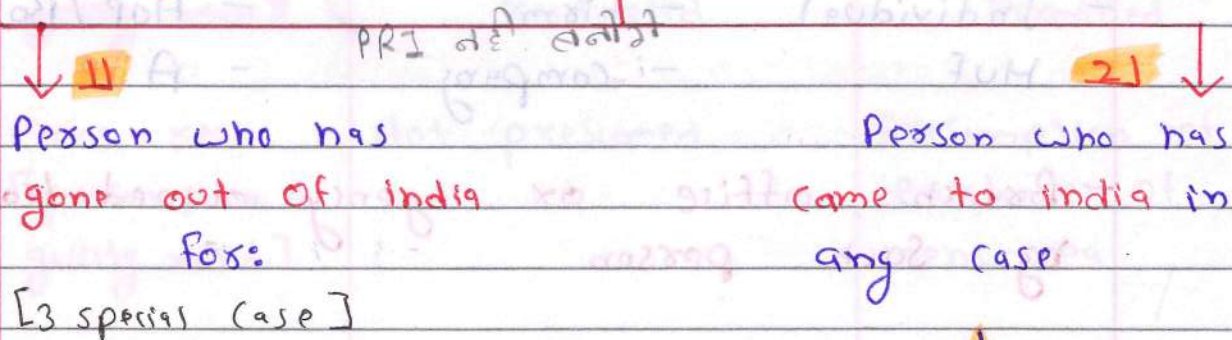
• "Person" [Section 2(u)] includes:-

- Individual - Firm - AOP / BoI
- HUF - company - AJP
- Branch, office or agency owned / controlled by such person



↓ Individual Artificial Person

→ Individual ⇒ A person residing in India for more than 182 days during the course of preceding F.Y but does not include



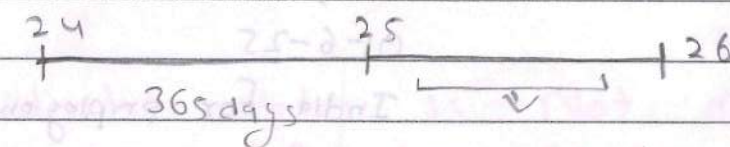
- taking up employment outside India or
- for carrying on business or vacation outside India or
- For any other purpose which indicates intention to stay outside India for uncertain period

21) Person who has come in India in any case:
⇒ However, if such person comes to India for any of the following purpose, he shall be considered as PRI: irrespective of no. of days of stay in preceding F.Y.:

(3 special case)

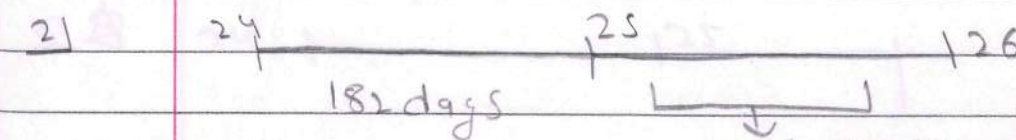
- Employment
 - Business / vacation
 - uncertain period
- India and not PRI irrespective no. of days

Illustration (i)

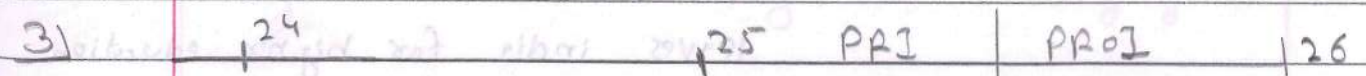


Residential Status

PRI ✓

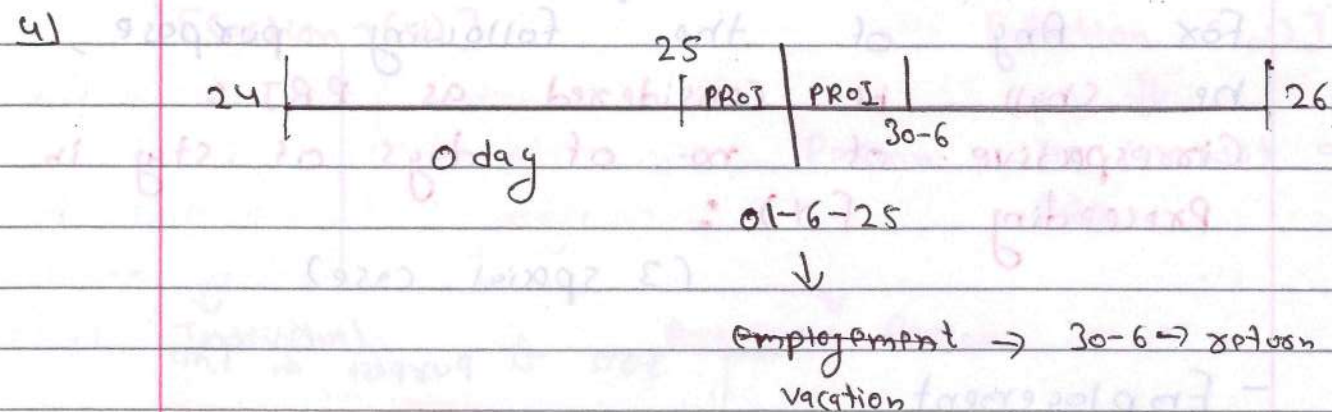


PRI PRO ✓ 7/182d ✓ = 182d XX

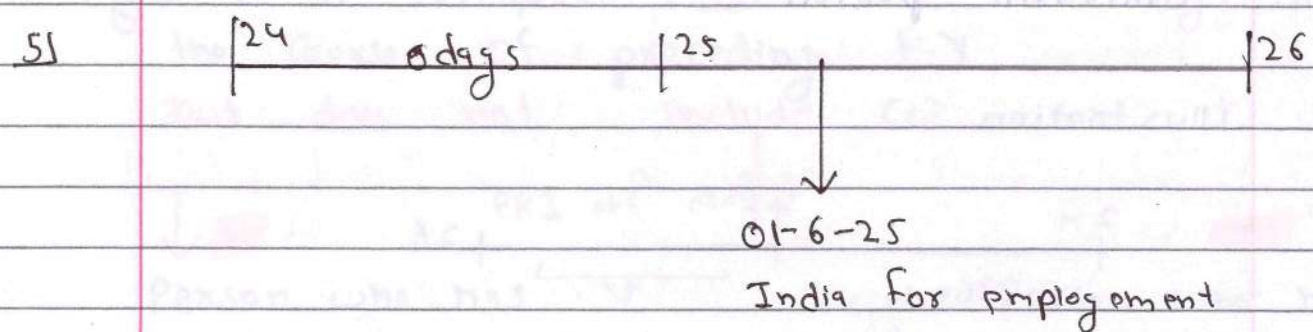


Py 25-26 a) PRI b) PRO ✓ employment 1-7-25 ✓ 01-4-30.6 → PRI 01-7-31.3 → PRO

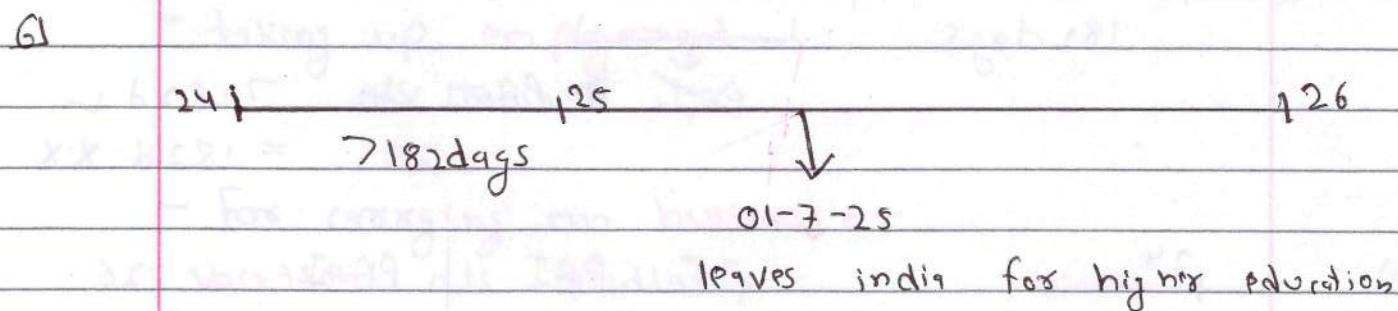
Note $\Rightarrow$ Unlike Income Tax, residential status in FEMA can change during the year



25-26 $\rightarrow$ PROJ

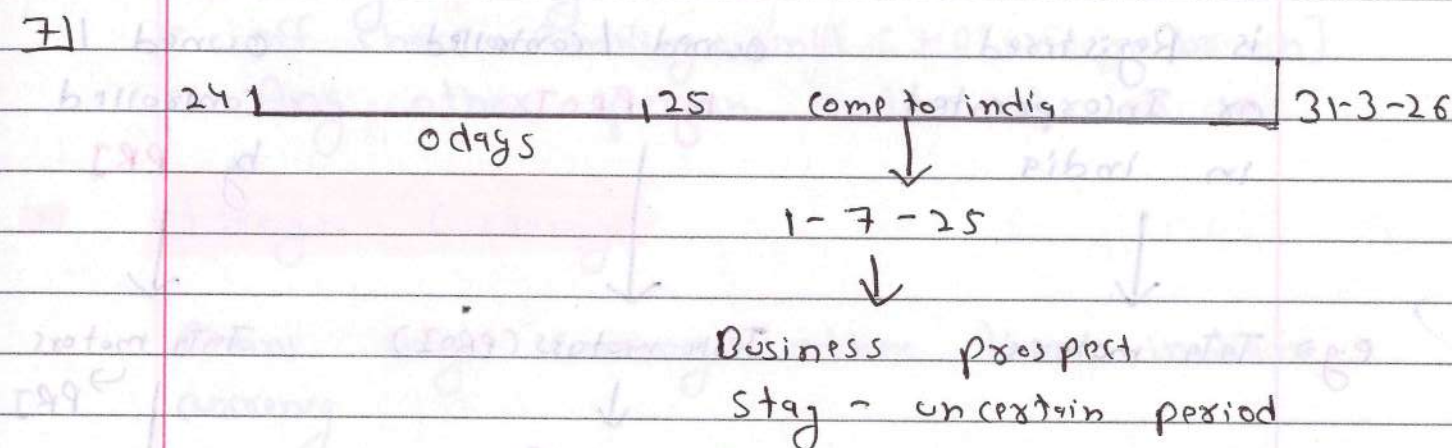


25-26 $\rightarrow$ 01-04-25 to 31-5-25 $\rightarrow$ PROJ
 $\rightarrow$ 01-06-25 to 31-3-26 $\rightarrow$ PRI



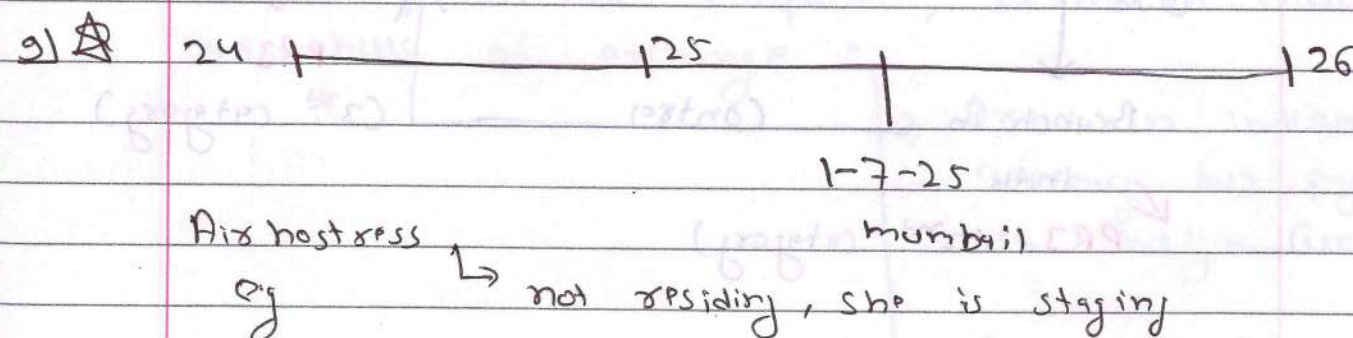
25-26 $\rightarrow$ 01-4-25 to 30-6-25 $\rightarrow$ PRI
 $\rightarrow$ 01-7-25 to 31-3-26 $\rightarrow$ PROJ

Note $\Rightarrow$ RBI has clarified that students leaving india for higher education shall be considered as PROJ



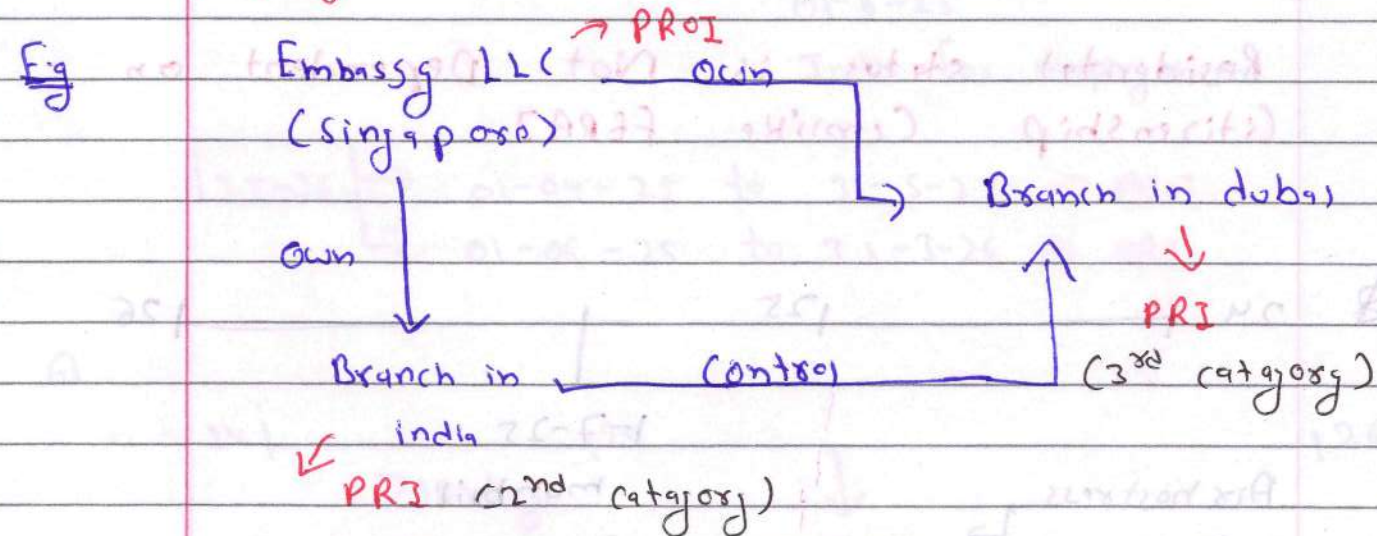
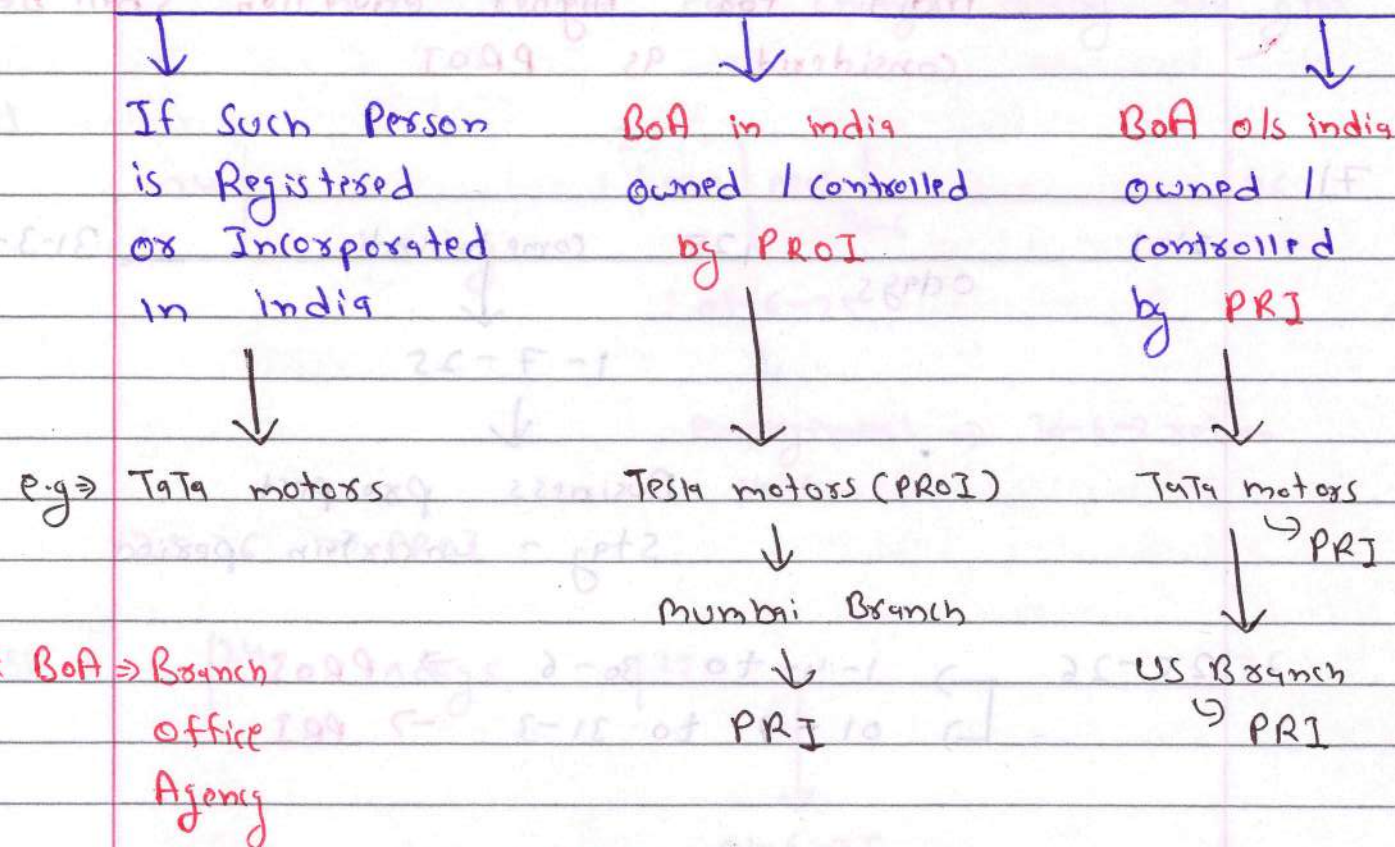
25-26 $\rightarrow$ 1-4-25 to 30-6 $\rightarrow$ PROJ
 $\rightarrow$ 01-7 to 31-3 $\rightarrow$ PRI

81 Residential status is Not Dependent on Citizenship Unlike FEMA



25-26 $\rightarrow$ 1-4-25 to 30-6-25 $\rightarrow$ PROJ
 $\rightarrow$ 1-7-25 to 31-3-26 $\rightarrow$ PROJ

PRI in Case of Artificial Person:



DPO → Read → 1, 5, 8, 9, 10, 27

Write → 32

Authorized Person [Section 2(c)]

- Authorized Dealers [Banks]
- Money Changers [₹ → \$]
- off Share Banking unit [HDFC foreign branch]
- Any other person authorised u/s 10

Foreign Currency

Means any currency other than Indian currency

Foreign Exchange

Means foreign currency & include:

- Deposits, Credits and balance payable in any foreign currency
- Drafts, Traveller cheques, Letter of credits or bills of exchange:

→ Draw in Indian currency but payable in foreign currency

→ Drawn by PROI but payable in I.C. (Indian currency)

Foreign Security ⇒

Any Security [Stock, bond, debentures, etc.] denominated in foreign currency

It includes any security denominated but redemption or returns payable in IC
↓
Indian currency

Currency ⇒

- Includes -
- Currency notes
 - Postal notes / order
 - money order
 - Cheque
 - Draft
 - Traveller's Cheque
 - Letter of credits
 - DoF
 - Credit Cards
 - other instrument notified by RBI

↓
Current Account Transaction

↓
Capital Account Transaction

Current Account Transaction [CAT]

Means any transaction other than capital Account Transaction [CAT]

Without prejudice to the generality of the above definition, CAT includes:

↓	↓	↓	↓
Payments w.r.t foreign trade or service and credit facility in ordinary course of business	Payment w.r.t interest on loan or net income on investment	Remittance of living Expense abroad of parents spouse children	Expense w.r.t - Travel - Edu - Medical of

Capital Account Transaction [CAT]

Means a transaction which alters:

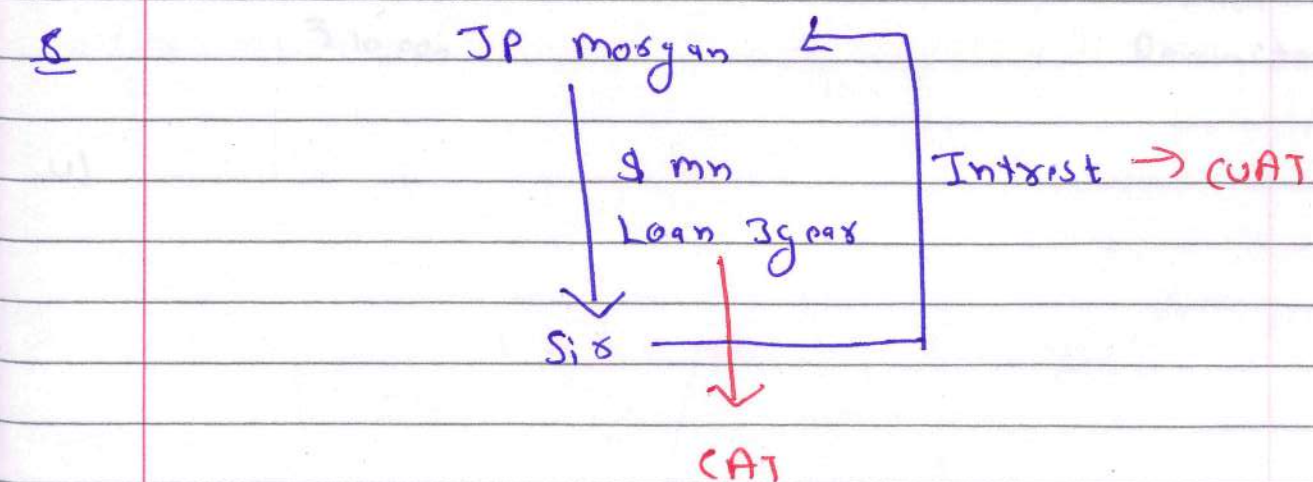
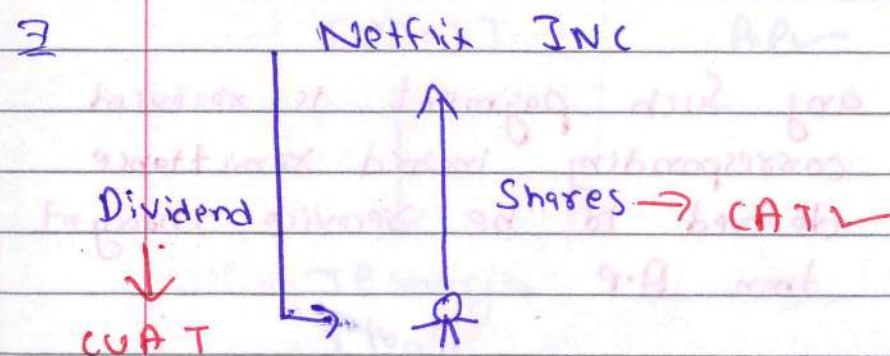
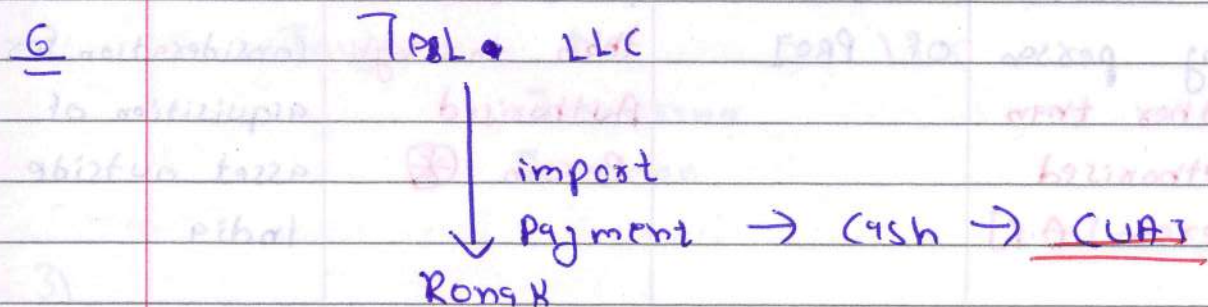
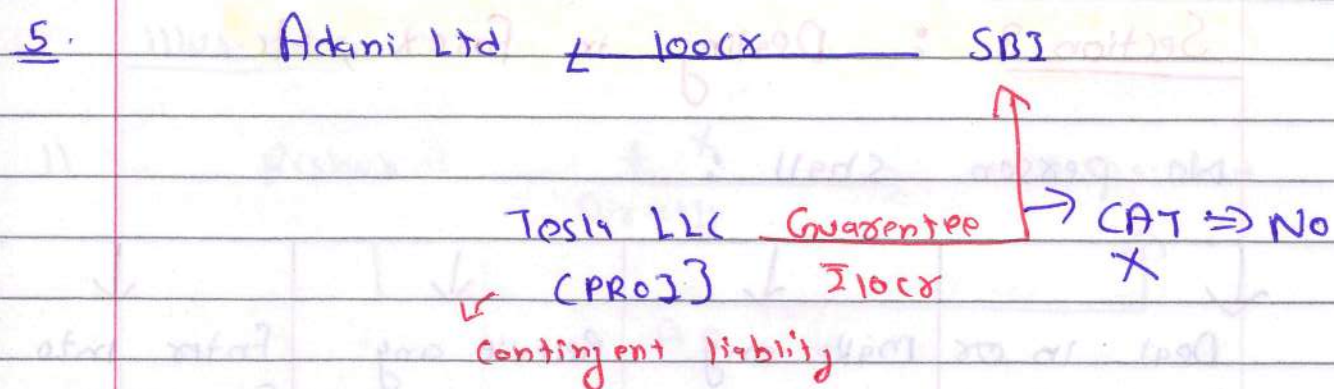
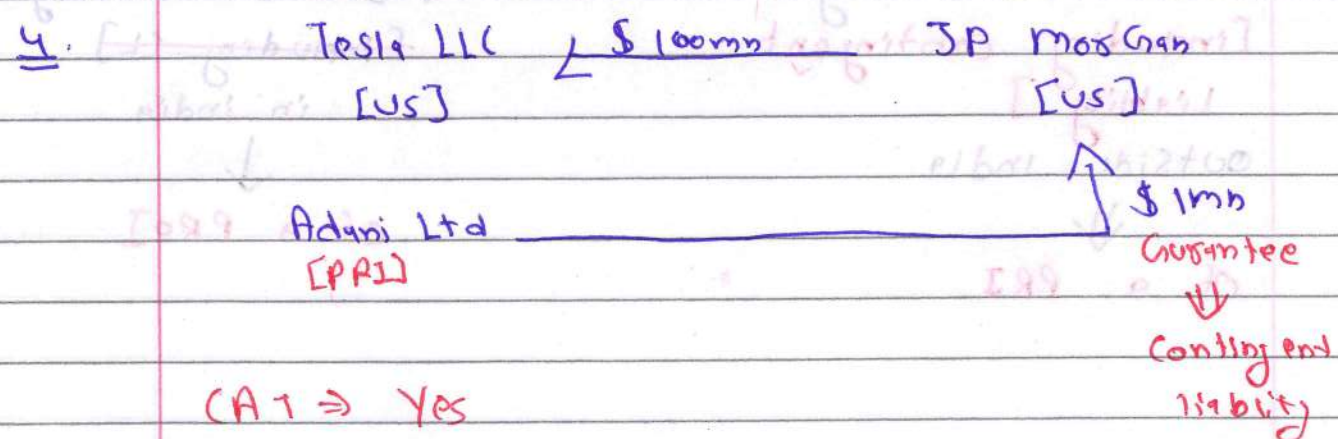
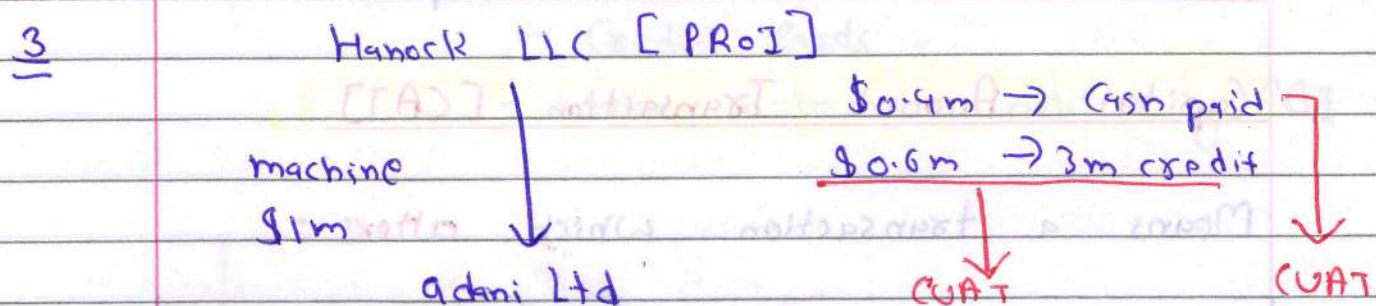
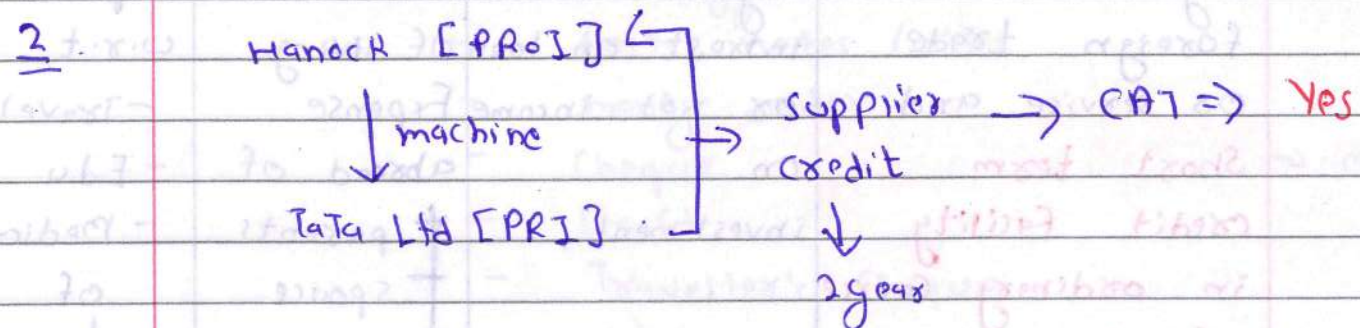
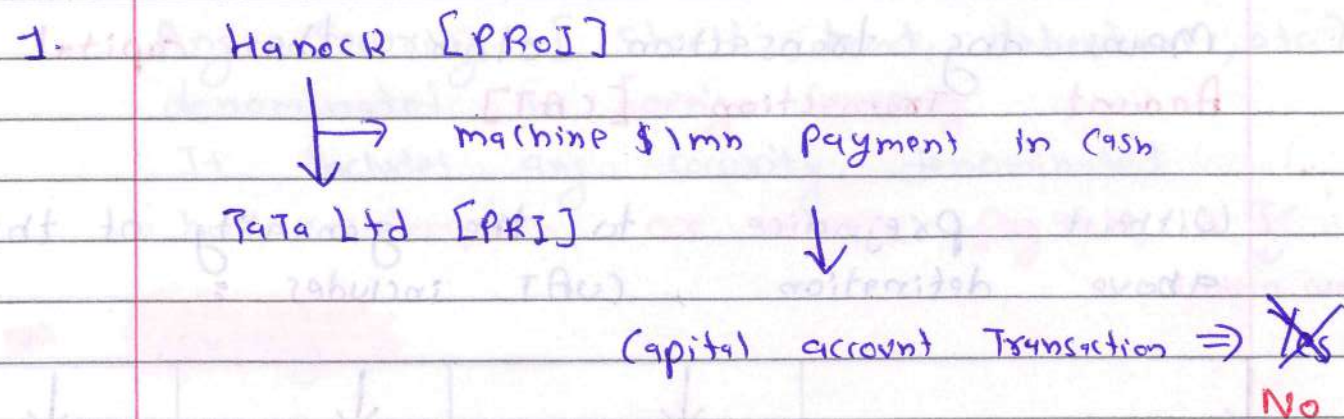
↓
Assets or liability [including contingent liability] outside India

↓
of a PRI

↓
Asset or liability [including CL] in India

↓
of a PRO [CAG]

Illustration



Section 3 : Dealing in Forex, etc.

No person shall :

↓	↓	↓	↓
Deal in or transfer forex or foreign to any person other than <u>Authorized Person [A.P.]</u>	Make any payment to credit of PRO	Receive any payment from PRO otherwise than through <u>Authorized Person</u> *	Enter into financial transaction in India as consideration for acquisition of asset outside India

★ * Note ⇒ Where any such payment is received w/o corresponding inward remittance it shall be deemed to be received through person other than A.P.

Illustration :

1) Rishab $\xrightarrow{\text{Directly}}$ Pizza hut

AP ✓

2) Tanvi $\xrightarrow{\text{NO Insurance ₹ 15000}}$ LIC

3) Youtube [PRO] $\xrightarrow{\text{AP}}$ R [PRI]

JP Morgan $\xrightarrow{\text{HDFC Bank A/c}}$ + Inward Remittance
\$ 100
↓
₹ 10,000

4)

Section 4: Holding of Forex:

Except as provided in this Act:

Person resident in India shall not	→ Acquire	- Forex [5] - Forex [Netflix] - immovable property or India
	→ Hold	
	→ own	
	→ possess	
	→ Transfer	

Section 5: Current Account Transaction [CAT]:

A person may	→ Sell	Forex to / From Authorized person for CAT.
	or	
	→ Draw	

Note ⇒ CAT is freely permitted unless specifically restricted.

(G + RBI) may impose reasonable restriction

* Foreign Exchange Management [FEMA]:

Rules, 2000

Schedule I	Schedule II	Schedule III
↓ Prohibition	↓ Restriction	↓ Transaction
	ie, approval of (G)	allowed upto certain limit beyond which seek RBI is approval

• Schedule I: Drawal of Forex is prohibited for following transactions

- Remittance out of lottery winnings
- Remittance of income from racing, riding or other hobby
- Remittance for purchase of
 - lottery tickets
 - banned magazines
 - football pools
 - Sweep stakes
- Payment of commission on export made towards equity investment in joint venture or wholly own subsidiary [WOS] outside India

- Payment of commission on export under Rupee State Credit Route except commission upto 10% of invoice value of export of → Tea, → Tobacco

- Remittance of dividend by any company to which dividend balancing applies

- Payment w.r.t call back services of telephone

- Remittance of interest income of funds held in non resident special Rupee [NARS] Ak

• Schedule II: Drawal of forex for following transaction requires prior approval of government of India:

• ★ Cultural tours

- Ministry of Human Resource & Development (HRD)

↓
Department of Education & Culture

• ★ Advertisement by → State government in foreign
→ its PSU

print media → \$ 10,000
→ more than

Exception :- Approval Not applicable where advertisement is to:

- T - promote tourism
- I - Foreign investment
- B - international bidding

- Ministry of Finance [Department of Economic Affairs] → [MoF]

• Remittance of freight of vessel chartered by a PSU

- no Surface Transport

• Payment of import through ocean by a PSU on CIF Basis

→ no Surface Transport

• Remittance of hiring charges of transponders

→ TV channels → no information & Broadcasting

→ Internet Service → no communication & Providers Infotech

• Remittance of container detention charges > prescribed rate

→ no surface transport

• Remittance of → Prize money or

→ Sponsorship

of sports activity abroad

By person other than

→ International

→ National

→ State level

Sports bodies

amount > \$ 100,000

→ no HKD - Department of youth affairs & sports

• Remittance of membership of protection & indemnity clubs (PSI club)

- no finance [insurance division]

• Multi modal transport operators making remittance to agents abroad
- Director General of shipping (DGS)

Summary ⇒

Ministry of Surface transport ⇒ • freight of vessel

Schedule III : Drawal of forex in excess of limits requires prior approval of RBI:

General limit
at default
approval
RBI permission

Individual

Other than individual

Person other than individual

Donation:

Donation for :-

- Creation of chairs in reputed educational institute
- Contribution to funds promoted by educational institute

Limit $\Rightarrow$ 1% of forex earning during last 3 years
or
\$5mn

Lower

2) Commission to agent abroad for sale of residential flats or commercial plots in India

Limit $\Rightarrow$ 5% of inward remittance
or
\$25000

Higher

3) Remittance for Consultancy:

Infrastructure Projects

Other Projects

Limit :
\$10mn per project

Limit :
\$1mn per project

4) Pre-incorporation expense:

Reimbursement of pre-incorporation expenses

Limit :
5% of investment brought in
or
\$100,000

Higher

For Individuals

- Limit per year \$ 250,000
- Private visits to any country [except Nepal & Bhutan]
 - Gift or donation
 - Going abroad for employment
 - Emigration → किसी दूसरे देश में जाना
 - maintenance of close relatives abroad
 - Travel for business
 - Medical Treatment Expenses
 - Studies Abroad
 - other CWT

Note ⇒ Expenses in excess of \$ 2,50,000 shall require prior approval of RBI

Note ⇒ In case of — Emigration —
— Medical treatment —
— studies abroad —

Individual may avail forex > \$ 2,50,000 if so require by — country of emigration ✓
— medical institute ✓
— university ✓

Note ⇒ Where individual remits any amount in a FY, such amount is reduced from limit of \$ 250,000 [i.e., limit of \$ 250K is aggregate in a F.Y.]

Note ⇒ In case of PRI but not permanently resident in India, such person may make remittance upto net salary [i.e., after deduction of Taxes & PF]

A person who has come to India for employment for not > 3 years

Note ⇒ 1 Approval under schedule II & III shall not be required if remittance is from:

Resident foreign currency A/c
[RFC A/c]

Exchange foreign foreign currency A/c

[EEFC A/c]

Note ⇒ If a person is on visit abroad, he can incur expenses stated in schedule III through International credit card (ICC) to the extent of limit on card

Except ⇒ PRI club
→ Commission for Sale
→ pre-inc. exp.

of 2,50,000

Section 6: Capital Account Transaction

1 A person may $\left\{ \begin{array}{l} \text{Sell} \\ \text{Draw} \end{array} \right\}$ Forex to / from
Authorised person
from CAT

2 RBI (+CG) may impose reasonable restriction
on CAT involving **debt instruments**

RBI or CG shall not impose restriction
for:

RBI / CG
↓
Restriction
at CAT
↓
Payment due on $\left\{ \begin{array}{l} \text{amortisation} \\ \text{repayment of loan} \end{array} \right\}$
↓
Depreciation of
direct investment
in OCB

CG (+RBI) may impose reasonable restriction
on CAT involving **non debt instruments**

↓
Debt instrument
↓
~~RBI (+CG)~~
CG (+RBI)

↓
Non-debt instrument
↓
~~CG (+RBI)~~
CG (+RBI)

(3) Omitted

4 PRI May $\rightarrow$ Hold
 $\rightarrow$ own
- Transfer
- Invest

↓
- Foreign Currency
- Foreign
- Immovable property
outside India

Provided that it was:

↓
Acquired
by such
person when
he was PRI

↓
Inherited
from
PRI

5 PRI May

$\rightarrow$ Hold
 $\rightarrow$ own
 $\rightarrow$ Transfer
 $\rightarrow$ Invest

↓
- Indian Currency
- Indian Securities
- Immovable property
in India

Provided that it was:

↓
Acquired
PRI

↓
Inherited
PRI

Illustration 1) Rishabh $\rightarrow$ PRI
 $\rightarrow$ PRI
↓
India $\rightarrow$ PRI
 $\rightarrow$ Business
↓
Acquired when
he was PRI
new house can
buy of \$10m
without RBI
permission

2) Rishabh $\rightarrow$ PRI
↓
Ankit $\rightarrow$ Job - India
↓
PRI
↓
Inherited
from
PRI

★ RBI's Classification: ★

Following transactions are covered u/s 6(4):

- Foreign Currency Accounts opened when he was a PROI

- Income from employment or business or income from India when he was PROI

- GIFT Received when he was PROI

★ • PRI may utilize assets abroad or income or sales proceeds thereof freely without RBI's approval, provided that cost of new asset are met out of eligible assets → Sales proceeds of income

★ Note ⇒ Current Account Transactions is freely permitted unless restricted

but

CAT is Restricted unless permitted

Regulation 4: Prohibited Capital Account transactions

- No PROI shall invest in India in any entity engaged in:-

- C - Business of Chit fund
- N - Nidhi Company
- A - Agricultural or plantation activities
- R - Real estate business
- F - Construction of farm house
- T - Trading in Transferable Development Rights [TDRs]

N CRAFT

Note ⇒ Real estate business shall not include:

- Development of township
- Construction of Residential, Commercial premises, roads or bridges
- Registered Real Estate Investment Trust [REITs]

- No PRI shall undertake CAT in north Korea unless approved by (G)

Foreign Exchange Management
[Permissible CAT] Regulation 2000

Schedule I
Permissible CAT
for PRI

[Read from book
Pg. 14.9]



Schedule II
Permissible CAT
for PROJ

[Same]



★ Note ⇒ PRI may draw forex not > \$ 250,000
per FY to schedule I

CAT Sch I + CAT Sch II ⇒ \$ 250,000
[max.]

Note ⇒ No forex shall be used for
remittance to NCLT



non co-operative countries / Territories



as notified by FATF