

Intermediate
Group I
Paper 6: LAWS & ETHICS
(SYLLABUS – 2016)

Objectives

Question 1:

A. Choose the correct answer from the given four alternatives

- (i) Section 23 section provides that the consideration or object of an agreement is lawful, unless _____
(a) it is forbidden by law
(b) is of such nature that, if permitted, it would defeat the provisions of any law
(c) is fraudulent
(d) Any of the above
- (ii) Which of the following agency is irrevocable under The Indian Contract Act, 1872?
(e) Agency for fixed period
(f) Agency for single transaction
(g) Agency coupled with interest
(h) Continuing agency
- (iii) _____ cannot enter into contract except through their agents.
(a) Convicts
(b) Foreign Sovereigns and Ambassadors
(c) Alien enemy
(d) All of the above
- (iv) Which of the following is coercion -
(a) A threat to prosecute
(b) High price and High interest rates
(c) Commit suicide
(d) None of the above
- (v) Which Committee is constituted by the occupier to promote cooperation between the workers and management in maintaining proper safety and health at workplace?

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- (a) **Safety Committee**
(b) Health Committee
(c) Management Workers Consultative Committee
(d) Maintenance Committee
- (vi) All orders and decisions of the Employees State Insurance Corporation shall be authenticated by the signature of the _____
(a) Chairman
(b) Vice - Chairman
(c) **Director General**
(d) Any one of the above
- (vii) The study of ethics can be divided into four operational areas namely meta ethics, normative ethics, descriptive ethics and
(a) Positive ethics
(b) Physical ethics
(c) **Applied ethics**
(d) Natural ethics
- (viii) When a professional promotes a position or opinion to such extent that some objectivity may have to be compromised, this threat is known as
(a) Familiarity threat
(b) Objectivity threat
(c) **Advocacy threat**
(d) Intimidation threat
- (ix) A "small company" means a company, other than a public company, paid up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than _____ rupees.
(a) **10 crore**
(b) 5 crore
(c) 1 crore
(d) Nothings has been prescribed
- (x) The _____ of the company shall contain the regulations for management of the company.
(a) **Articles**
(b) Memorandum
(c) Both
(d) None of the above
- (xi) The relation of partnership arises from _____

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- (a) **Contract**
(b) Status
(c) Both
(d) None of the above
- (xii) The register of charges shall be open for inspection during business hours by _____
(a) **any member or creditor without any payment of fees**
(b) any member without any payment of fees
(c) any member or creditor with payment of fees
(d) any member with payment of fees
- (xiii) The role of Management Accounting is also described as _____
(a) Problem - solving
(b) Score - keeping
(c) Attention directing
(d) **All of the above**
- (xiv) An audit committee has four fold relationship and therefore has to interact with management, internal auditor, public and _____
(a) Cost auditor
(b) **Statutory auditor**
(c) Tax auditor
(d) Management auditor
- (xv) Business ethics are needed to create a faith about the quality, quantity, price etc. of products. The customers have more trust and faith in the businessmen who follow ethical rules. They feel that such businessmen would not cheat them. Which one of the following is appropriate for it?
(a) Sefeguarding consumers' right
(b) **Improve customers' confidence**
(c) Survival of business
(d) Consumer movement
- (xvi) Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance or their official duties. This principle of public life is called _____
(a) Selflessness
(b) Honesty
(c) Objectivity
(d) **Integrity**

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- (xvii) There are many types of ethical conflicts in the
- (a) Business place
 - (b) Office place
 - (c) Work place**
 - (d) Public place
- (xviii) Which one of the following is said to be “unethical behavior”?
- (a) Encouraging communication
 - (b) Adulteration**
 - (c) Employees awareness
 - (d) Objectivity
- (xix) No fine shall be imposed on employees under the age of _____
- (a) 15**
 - (b) 13
 - (c) 12
 - (d) 18
- (xx) The first endorsement of an instrument can be made by _____
- (a) Any person who becomes the holder
 - (b) The payee only**
 - (c) Holder in due course
 - (d) Any of the above

B. Match and Pair:

	Column A		Column B
1	An offer may be lapsed if	A	within 30 days from the date of its becoming payable
2	Manager of every factor in which children are employed	B	bind the company and the members thereof
3	memorandum and articles are registered	C	Any breach of duty which brings advantages to the person committing it by misleading the other to his prejudice
4	Breach of Warranty	D	file with the Registrar and SEBI a return in Form No. SH-11
5	Arrange to pay the amount of gratuity	E	right to a claim for damages but not to reject the goods
6	preferential share capital is not entitled	F	shall maintain a register of child workers
7	Powers of Inspectors	G	it is not accepted within the specified time

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8	misrepresentation	H	supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment
9	a listed company shall, after the completion of the buy back	I	offers a company a competitive advantage
10	business ethics	J	Any surplus in the winding up proceedings

Answer:

	Column A		Column B
1	An offer may be lapsed if	G	it is not accepted within the specified time
2	Manager of every factor in which children are employed	F	shall maintain a register of child workers
3	memorandum and articles are registered	B	bind the company and the members thereof
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7	Powers of Inspectors	H	supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment
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9	a listed company shall, after the completion of the buy back	D	file with the Registrar and SEBI a return in Form No. SH-11
10	business ethics	I	offers a company a competitive advantage

C. True False

(i) The termination of the authority of an agent causes the termination of the authority of all sub agents appointed by him

True

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(ii) A stranger to contract cannot sue upon it.

True

(iii) When the affected party treat breach of condition as breach of warranty he cannot repudiate the contract but claim damages only

True

(iv) Section 119 of Negotiable Instruments Act, 1881 provides that in a suit upon an instrument which has been dishonored, the Court shall, on proof of the protest, presume the fact of dishonor, unless and until such fact is disproved.

True

(v) If the Tribunal is of the opinion that an LLP can be revived or rehabilitated, it may, direct that an action for revival or rehabilitation may be taken.

True

(vi) A Company shall maintain and preserve at its office copies of all documents and information as originally filed with the Registrar till its dissolution.

False

(vii) An application in Form No. INC-23 is to be filed for seeking approval for alteration of memorandum for change of place of registered office from one State Government or Union Territory to another shall be filed with the Central Government along with the fee.

True

(viii) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice versa

True

(ix) Worker is a person employed, directly or by or through any agency (including a contractor) with the knowledge of the principal employer,

False

(x) Ethics is a requirement for human life.

True

D. Fill in the blanks

(i) _____ is a person employed to do any act for another or to represent another in dealing with the third person.

Agent

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- (ii) **Any material alteration of a negotiable instrument renders the same _____.**
Void
- (iii) _____ **may appoint qualified medical practitioners to be certifying surgeons.**
State Government
- (iv) **No gratuity payable under this Act shall be liable to _____ in execution of any decree or order of any civil, revenue or criminal court.**
Attachment
- (v) _____ **includes pension fund, central recordkeeping agency, National Pension System Trust, pension fund adviser, retirement adviser, point of presence and such other person or entity connected with collection, management, recordkeeping and distribution of accumulations**
Intermediary
- (vi) **Where a company has changed its name or names during the last _____, it shall paint or affix or print along with the name, the former name or names so changed.**
two years
- (vii) **The company shall not use any amount raised through the issue of _____ for buying, trading or otherwise dealing in equity shares of any other listed company.**
Prospectus
- (viii) _____ **are such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash.**
Sweat equity shares
- (ix) **Section 95 provides that the register, their indices shall be _____ of any matter directed or authorized to be inserted therein.**
prima facie evidence
- (x) **The Seven Principles of Public Life were set out by _____ for the first time in the year 1995.**
Lord Nolan

SECTION - A

Study Note 1 – Indian Contract Act, 1872

Question 2:

- (a) Ayush stands surety for 'Binod' for any amount which 'Chintu' may lend to 'Binod' from time to time during the next three months subject to a maximum amount of ₹ 1,00,000. One month later 'Ayush' revokes the surety, when 'Chintu' had already lent to 'Binod' ₹10,000. Referring to the provisions of the Indian Contract Act, 1872. Decide:
- Whether 'Ayush' is discharged from all the liabilities to 'Chintu' for any subsequent loan given to 'Binod'?
 - What would be your answer in case 'Binod' makes a default in paying back to 'Chintu' the already borrowed amount of ₹10,000?

Answer:

Revocation of continuing guarantee: The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

- By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
- By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

So far as the transactions before revocation are concerned, the liability of the surety for previous transactions (i.e. before revocation) remains.

- Thus applying the above provisions in the given case, Ayush is discharged from all the liabilities to Chintu for any subsequent loan.
- Answer in the second case would differ i.e. Ayush is liable to Chintu for ₹10,000 on default of Binod since the loan was taken before the notice of revocation was given to Chintu.

- (b) Mr. Sudarshan, is employed as a cashier on a monthly salary of ₹10,000 by fruit bank for a period of three years. Rajeev gave surety for Sudarshan's good conduct. After nine months, the financial position of the bank deteriorates. Then Sudarshan agrees to accept a lower salary of ₹5,000 per month from Bank. Two months later, it was found that Sudarshan has misappropriated cash since the time of his appointment. What is the liability of Rajeev? Decide your answer in reference to the provisions of the Contract Act, 1872?

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Answer:

According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor or without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Thus, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Rajeev is liable as a surety for the loss suffered by the bank due to misappropriation of cash by Sudarshan during the first nine months but not for misappropriations committed after the reduction in salary.

Question 3:

(a) Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872?

Answer:

Contracts which need not to be performed: A contract would not require performance under circumstances spelt out in Sections 62 to 67 of the Indian Contract Act, 1872. These circumstances are:

1. **Novation:** Novation means substitution. Where a given contract is substituted by a new contract, it is novation. The old contract, on novation ceases. It need not be performed. Novation can take place with mutual consent. However, novation can take place by substitution of new contract between the same parties or between different parties. Novation results in discharge of old contract.
2. **Rescission:** In case of rescission, the old contract is cancelled and no new contract comes in its place. A contract is also discharged by rescission. Sometimes, parties may enter into an agreement to rescind the previous contract. Sometimes, the contract is rescinded by implication or by non-performance for a long time without each other complaining about it.
3. **Alteration:** Where the contract is altered, the original contract is rescinded. Hence, the old one need not be performed whereas the new one has to be performed. Alteration involves both rescission and novation. The line of difference between alteration and novation is very thin. While there can be very minor alterations, there cannot be unilateral material alteration to a contract. If it is done it will be void.
4. **Remission** means waiver: Section 63 of the Act deals with remission. It provides that "every promisee may dispense with or remit wholly or in part, the performance of the promise

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made to him or may extend the time for such performance or may accept instead of it any satisfaction which it thinks fit". Thus the promisee can waive either in full or in part the obligation of the promisor or extend the time for performance.

- (b) Mr. Kamal offered to sell his house to Mr. Vimal for ₹15,00,000. Mr. Vimal accepted the offer by post. On the very next day Mr. Vimal sent a telegram revoking the acceptance which reached Mr. Kamal before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. Kamal at the same time?**

Answer:

Communication and revocation of acceptance when complete: The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Referring to the above provisions:

- (i) Yes, the revocation of acceptance by Mr. Vimal (the acceptor) is valid.
- (ii) If Mr. Kamal opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

Question 4:

- (a) Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872?**

Answer:

Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as "quasi-contracts" as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money; Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

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Circumstances identified as quasi-contracts:

1. **Claim for necessaries supplied to persons incapable of contracting:** Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.
2. **Right to recover money paid for another person:** A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.
3. **Obligation of person enjoying benefits of non-gratuitous act:** Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
4. **Responsibility of finder of goods:** A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.
5. **Liability for money paid or thing delivered by mistake or by coercion:** A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

In all the above cases contractual liability arises without any agreement between the parties.

(b) Mr. Ahmed agrees to pay Mr. Doshi a sum of money if Mr. Doshi marries Ms. Priya. Ms. Priya however marries Mr. Farroque, who died subsequently. After the death of Mr. Farroque, Ms. Priya marries Mr. Doshi. Whether Mr. Ahmed is legally bound to pay the agreed sum of money to Mr. Doshi? Comment.

Answer:

If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies (Sec. 34).

In the instant case, future event on which the contract is contingent in the future conduct of a living person. Therefore the marriage of Mr. Doshi with Ms. Priya must be considered impossible at the time Ms. Priya marries Mr. Farroque. Although it is possible that Mr. Farroque dies and Ms. Priya afterwards marries Mr. Doshi. Therefore at that point of time of Ms. Priya's marriage with Mr. Farroque, the contract becomes void on the ground of impossibility of the future event taking place. In view of this Mr. Ahmed is not legally bound to pay the agreed sum to Mr. Doshi.

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(c) A patient in a lunatic asylum can also enter into a valid contract. State the position based on legal provision.

Answer:

A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind (Sec. 12 of Indian Contract Act.)

A patient in a lunatic asylum may a valid contract if he is of sound mind at intervals at the time of making the contract.

Question 5:

(a) Rishi leaves a cow in the custody of Sushil to be taken care of. The cow has a calf. Explain the provisions of restorations of goods bailed, in light of the above statement.

Answer:

Restoration of Goods

The bailed goods should be returned after the bailment is over. Section 159 provides for the restoration of goods lent gratuitously and Section 160 provides for return of goods bailed on expiration of time or accomplishment of purpose. Section 161 provides for the responsibility of the bailee when goods are not duly returned.

Section 159 provides that the lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Section 160 provides that it is the duty of the bailee to return, or deliver, according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed has expired, or for the purpose for which they were bailed has been accomplished.

Non delivery of the goods would amount to breach of contract. This section is silent as to the remedies open to a bailor when the bailee has failed to return the goods on his demand. In 'Dhian Singh Sobha Singh V. Union of India' – AIR 1958 SC 274 the Supreme Court held that a bailor in the event of non delivery of the goods by the bailee on demand made by him in that

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behalf was entitled at his election to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof.

Section 161 provides that if the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Section 163 provides that in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Section 165 provides that if several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Section 166 provides that if the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Hence in the given case Rishi leaves a cow in the custody of Sushil to be taken care of. The cow has a calf. Sushil is bound to deliver the calf as well as the cow to Rishi.

(b) Mr. Bright instructs Ujjwal, a merchant, to buy a ship for him. Ujjwal employs a ship surveyor of good reputation to choose a ship for Mr. Bright. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bright holds Ujjwal responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Ujjwal is responsible to Mr. Bright?

Answer:

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Ujjwal is not, but the surveyor is, responsible to Mr. Bright.

Question 6:

(a) Rules for Ascertaining Passing of Property. Discuss

Answer:

Rules for Ascertaining Passing of Property:

The provisions are discussed hereunder:

- (A) Goods must be ascertained (section 18): As per section 18 in a contract for sale of unascertained goods, the property in the goods does not pass to the buyer unless and until the goods are ascertained.
- (B) Intention of the parties for such transfer (section 19): As per section 19(2), in a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. The intention of the parties is ascertained from the terms of the contract, the conduct of the parties and the circumstances of the case.

When intention of the parties cannot be ascertained, rules contained in section 20-24 are required to be applied for ascertaining the time of transfer of property which is discussed hereunder:

- (i) Specific goods (Sections 20 to 22)
 - (a) Specific goods in a deliverable state (section 20): In an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. (Sec 20). Goods are said to be in deliverable state when they are in such a state that the buyer would under the contract is bound to take delivery thereof.
 - (b) Specific goods to be put into a deliverable state (Sec. 21): Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof (sec 21).
 - (c) Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (section 22): If there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining

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the price, the property does not pass until such act or thing is done and the buyer has notice thereof. (sec 22).

(ii) Unascertained goods (Sec 23)

- (a) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.
- (b) Delivery to carrier: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have appropriated the goods for the purpose of the contract.

(iii) Goods on approval or 'on sale or return'

In order to push up the sales generally there is a practice of sending goods to the customer with the clear cut understanding that he has option to approve or return the goods within a given period. This type of sales is known as "approval or sale or return" In such cases the transaction does not culminate into sale until the goods are approved by the customer and the property in goods still remains with the seller. When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer—

- (a) When he signifies his approval or acceptance to the seller
- (b) When he does any other act adopting the transaction.
- (c) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

(b) Write a short note on auction sale.

Answer:

Auction sale

Section 64 provides that in the case of a sale by auction-

- where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

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- the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract its bid;
- a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;
- where the sale is not notified to the subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;
- the sale may be notified to be subject to a reserved or set up price;
- if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.

Question 7:

(a) Justify the following:

- (i) On 30.11.13 Mr. Sham agrees to sell a painting to Mr. Ram for ₹ 5,000 but Mr. Sham died on 8.12.13. Mr. Sham's son claimed ₹ 10,000, Can Mr. Ram obtain the painting at ₹ 5,000 which was agreed to by Mr. Sham?

Answer:

A contract of sale of goods is a contract where by the seller transfer or agrees to transfer the property in goods to the buyer for price.

A contract may provide for payment by installment or that the delivery or payment or both shall be postponed.

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Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth.

In this case although the contract was not executed but in view of above, Ram, may enforce 'Sham's heirs for the painting at ₹ 5000 which was agreed to by 'Sham'.

- (ii) Mr. Sham informs Mr. Ram that Mr. Sham's estate is free from encumbrances. Mr. Ram buys the property fully relating on Mr. Sham. Subsequently it revealed that the estate was mortgaged. What will be the position of Mr. Ram?**

Answer:

In this the contract is voidable at the option of Ram, he may avoid the contract. He may insist on its being carried out and the mortgaged debt redeemed.

- (iii) Mr. Ram gives diamond to Mr. Sham on "sale or return" basis on the same day; Mr. Sham gives those diamonds to Mr. Jadu on "sale or return" basis. Those diamonds were lost from Mr. Jadu on the same day, who will the loss?**

Answer:

Ownership under sale on return remains with seller until it passes to buyer. Mr. Sham, giving diamonds to Jadu, acquires ownership. Although the diamonds were lost from Mr. Jadu's custody on the same day but he was not owner in this case. The owner i.e. Sham shall bear the loss i.e. Mr. Sham shall pay to Mr. Ram.

- (iv) Mr. Sham orders on Mr. Ram to deliver certain goods at Mumbai. While the goods are lying at Mumbai Railway Station. The Station Master informs Mr. Sham that the goods are held at station at Mr. Sham's risk, but Mr. Sham became insolvent. Has Mr. Ram has any right as an unpaid seller?**

Answer:

Mr. Ram has lost his right of stoppage in transit; the intimation by the station master that the goods are held at the Station at Mr. Sham's rights has transformed the position of station master into a bailee of Mr. Sham instead of Mr. Ram. The transit has thus come to an end.

An unpaid seller can stop the goods in transit in the event of buyers' insolvency. The transit being over, the right is thus lost.

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(b) M/s. Wholesaler agreed to supply 1,000 Pcs. of Cotton Shirts to M/s. Retailer at ₹300 per shirt by 31.05.2014. On 01.02.2014 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to ₹350 each. Examine the right of M/s. Retailer.

Answer:

In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the- seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:

- (1) To have delivery of the goods as per contract. (Sec. 31 & 32);
- (2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;
- (3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57);
- (4) To sue the seller for specific performance;
- (5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);
- (6) To sue the seller the damages for anticipatory breach of contract (Sec 60)

In the instant case M/s. Retailer can exercise any of his rights discussed above

Study Note 3 – Negotiable Instruments Act, 1881

Question 8:

(a) State the circumstances on the basis of which a banker can dishonor a cheque under the provisions of Negotiable Instruments Act, 1881.

Answer:

Grounds for dishonour of cheque —

A banker will be justified or bound to dishonour a cheque in the following cases:

1. If a cheque is undated
2. If the cheque is stale

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3. If the instrument is inchoate or not free from reasonable doubt.
4. If the cheque is post-dated and presented for payment before its ostensible date.
5. If the customer's funds in the banker's hands are not 'properly applicable' to the payment of cheque drawn by the former.
6. If the customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which either he has account or his account is overdrawn.
7. If the bankers receive notice of customer's insolvency or lunacy.
 - (i) If the customer countermands the payment of cheque for the banker's duty and authority to pay a cheque ceases.
 - (ii) If a garnishee or other legal order from the Court attaching or otherwise dealing with the money in the hand of the banker, is served on the banker.
 - (iii) If the authority of the banker to honour a cheque of his customer is undermined by the notice of the latter's death.
 - (iv) If notice in respect of closure of the account is served by either party on the other
 - (v) If it contains material alterations, irregular signature or irregular endorsement

(b) 'Raju' is the holder of a bill of exchange made payable to the order of 'Ram'. The bill of exchange contains the following endorsements in blank:

- (i) First endorsement 'Ram'**
- (ii) Second endorsement 'Ganesh'.**
- (iii) Third endorsement 'Naresh' and**
- (iv) Fourth endorsement 'Bakul'**

'Raju' strikes out, without Bakul's consent, the endorsements by 'Ganesh' and 'Naresh'. Decide with reasons whether 'Raju' is entitled to recover anything from 'Bakul' under the provisions of Negotiable Instruments Act, 1881

Answer:

According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

In the given question, Raju is the holder of a bill of exchange of which Ram is the payee and it contains the following endorsement in blank:

First endorsement, 'Ram'

Second endorsement, 'Ganesh'

Third endorsement, 'Naresh'

Fourth endorsement, 'Bakul'

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'Raju', the holder, may intentionally strike out the endorsement by 'Ganesh' and 'Naresh'; in that case the liability of 'Ganesh' and 'Naresh' upon the bill will come to an end. But if the endorsements of 'Ganesh' and 'Naresh' are struck out without the consent of 'Bakul', 'Raju' will not be entitled to recover anything from 'Bakul'. The reason being that as between 'Naresh' and 'Bakul', 'Naresh' is the principal debtor and 'Bakul' is surety. If 'Naresh' is released by the holder under Section 39 of the Act, 'Bakul', being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if 'Raju' strikes out, without Bakul's consent, the endorsements by 'Ganesh' and 'Naresh', 'Bakul' will also be discharged.

Study Note 4 – Indian Partnership Act, 1932

Question 9:

(a) Sunil, Bikash and Rishi were partners under the agreement that they were to share equally in the profits and losses of the firm. In a suit between them for dissolution and accounts, it is ascertained that contributions of Sunil, Bikash and Rishi to the capital of the firm, were ₹ 10,000, ₹ 5,000 and ₹ 1,000 respectively. The assets of the firm after paying debts of the firm and advances made by the partners, as distinguished from their contributions to the capital of the firm, are ₹ 7,000. Comment on the settlement of this partnership Account.

Answer:

The deficiency of capital (which must be regarded as loss) being ₹ 9,000, each partner must contribute to the assets an equal share of the deficiency, i.e. ₹ 3,000. After this is done, the assets then available, ₹ 7,000 + ₹ 9,000 or ₹ 16,000 will be distributed among the partners with the result that each will have suffered a loss of ₹ 3,000.

In actual practice, it will not be necessary for Sunil and Bikash to pay ₹ 3,000 each but the matter will be settled on the basis of notional contributions so that Rishi whose capital is ₹ 1,000 only will pay ₹ 2,000 out of ₹ 9,000 with the firm. Sunil will take ₹ 7,000 and Bikash ₹ 2,000. Assuming that Sunil and Bikash contribute to the capital deficiency ₹ 3,000 each and Rishi cannot, Sunil and Bikash will share ₹ 13,000, i.e. ₹ 7,000 plus ₹ 6,000 in the proportion of ₹ 10,000: 5,000. Sunil will suffer a loss of ₹ 4,333 in all and Bikash ₹ 3,667.

(b) How can the existence of partnership be determined.

Answer:

Section 6 provides that in order to determine –

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- whether a group of persons is or is not a firm; or
 - whether a person is or is not a partner in a
- form regard shall be had to the real intention between the parties, taking into the facts together.

The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not make such persons as partners.

The receipt -

- of a share of the profits of a business; or
 - of a payment contingent upon the earning of profits; or
 - varying with the profits earned by a business,
- by a person does not of itself, make him a partner with the persons carrying on the business.

The receipt of such share or payment -

- by a lender of money to persons engaged or about to engage in any business;
- by a servant or agent as remuneration;
- by the widow or child of a deceased partner, as annuity, or
- by a previous owner or part owner of the business as consideration for the sale of the goodwill or share thereof does not make the receiver a partner with the persons carrying on the business.

In 'S.K. Parthasarathy Naidu V. K. Rama Naidu' – AIR 2001 Mad 399 (405) it was held that the legal existence of a partnership is proved by facts to support such a claim. There need not be any particular form of document and in fact, the partnership can even be oral, but, whether a relationship of partners exists or does not exist depends on what was intended by parties.

In 'Shiv Narain & Sons V. Commissioner of Income Tax' – AIR 1935 Lah 896 it was held that a partnership firm is not a 'person', but merely a collective name for the individuals who are members of the partnership, and as such it cannot be a partner in another partnership firm. A partnership is a relationship which subsists between persons. A partnership firm is not a legal entity, is incompetent to enter into a partnership with another partnership firm.

Study Note 5 – Limited Liability Partnership Act, 2008

Question 10:

(a) Write a note on designated partners.

Answer:

Section 7(1) provides that every LLP shall have at least two designated partners. The designated partners shall be individual and at least one of them shall be a resident of India, who has stayed

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in India for a period not less 182 days during the preceding one year. In case all the partners of the LLP are bodies corporate or one or more partners are individuals and bodies corporate then at least two individual partners or nominees of bodies corporate shall act as designated partners.

- If the incorporation document specifies who are to be designated partners, such persons shall be designated partners on incorporation;
- If the incorporation document states that each of the partners from time to time of LLP is to be designated partner, every partner shall be a designated partner;
- Any partner may become or cease to be a designated partner in accordance with LLP agreement;

Filing requirement: Section 7(4) provides that -

- An individual shall give his consent to become a designated partner in Form – 9;
- The particulars of an individual who has given his consent to act as designated partner shall be filed in Form No.-4;
- The individual who has given consent to act as partner or a designated partner shall file consent in Form -2 along with fee.

Disqualification to become designated partner: Rule 9 prescribes that a person shall not be capable of being appointed as a designated partner of a LLP, if he-

- has at any time within the preceding five years been adjudged insolvent; or
- suspends, or has at any time within the preceding five years suspended payment to his creditors and has not any time within the preceding five years made, a composition with them; or
- has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or
- has been convicted by a Court for an offence involving section 30 of the Act.

Liabilities of designated partners: Section 8 provides the liabilities of designated partners. It provides that unless expressly provided otherwise in this Act, a designated partner shall be –

- responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Act including filing of any document, return, statement, report under this Act and as specified in the agreement;
- liable to all penalties imposed on the LLP for any contravention of those provisions.

Vacancy: Section 9 provides that a LLP may appoint a designated partner within 30 days of the vacancy arising for any reason. If no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

Punishment: Section 10(1) provides the LLP contravenes the provisions of Sections 7(1) the LLP and its every partner shall be punishable with fine which shall not be less than ₹ 10,000/- but which may extend to ₹ 5 lakhs. Section 10(2) provides that if the LLP contravenes the provisions

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of Section 7(4) and (5), Section 8 or Section 9 the LLP and every partner shall be punishable with fine which shall not be less than ₹ 10000/- but which may extend to ₹ 1 lakh.

(b) A limited liability partnership wants to shift its registered office from Udaipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow?

Answer:

Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

SECTION - B

Study Note 6 to 12 – Industrial Laws

Question 11:

(a) Mr. Green, an employee of Yellow Ltd. becomes disabled due to a disease and is unable to do the same work. He was then re-employed on the reduced wage. How the gratuity of Mr. Green shall be, computed under the provisions of the Payment of Gratuity Act, 1972?

Answer:

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Computation of Gratuity of a disabled employee: According to Section 4(4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts:-

- For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement.
- For the period subsequent to the disablement: On the basis of the reduced wages as drawn by him at the time of the termination of services.

In the case of Bharat Commerce and Industries Vs. Ram Prasad, it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit.

As per section 4(3), the maximum amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

(b) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act 1948.

Answer:

Procedure for Fixing and revising Minimum Wages (Sec 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ;
or

(b) Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1)(b)].

After considering the advice of the committee or committees [under Sec. 5(1)(a)] or all representations received by it before the date specified in the notification [under Sec.

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5(1)(b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec. 5(2)]. The power of the Government under Sec. 5 (2) to issue notification revising minimum wages includes power to give retrospective effect to notification

Question 12:

(a) Ritesh, a 57 years old district judge was appointed by the Central Government as Presiding Officer of the Employee's Provident Funds Appellate Tribunal for a period of five years. After three years, he (Ritesh) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date. Examine the validity of Ritesh's action to cease work under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer:

Section 7F (1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides that the Presiding Officer of a Employees' Provident Funds Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Hence, Ritesh's action is invalid as per above provisions. He is supposed to continue for three months unless he is relieved earlier by the Central Government or his successor appointed by the Central Government has taken up the office, whichever is earlier.

(b) ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workman demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion.

Answer:

According to Sec 2 (m) of the Factories Act, 1948, 'factory' means any premises including the precincts thereof –

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- (i) Wherein 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Wherein 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

In the given case, during the period 01.04.2014 to 30.04.2014, there were 11 workers carrying manufacturing activities with aid of power. So, the Factories Act, 1948 is applicable on ABC Ltd. Mr. Basant is correct.

Question 13:

- (a) Notun Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?**

Answer:

All the 3 units shall be treated as 3 separate establishments since all the 3 units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
- are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Act, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).
- However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the 3 units taken together.

- (b) Explain the composition of Medical benefit council, under Employees State Insurance Act, 1948.**

Answer:

As per section 10 of Employees State insurance Act, 1948, the Central Government shall constitute a Medical Benefit Council consisting of:

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1. the Director General, Health Services, ex officio, as Chairman;
2. a Deputy Director General, Health Services, to be appointed by the Central Government;
3. the medical commissioner of the Corporation, ex officio;
4. one member each representing each of the States (other than Union Territories) in which this Act is in force to be appointed by the State Government concerned;
5. three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;
6. three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and
7. Three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

Question 14:

(a) Primitive Ltd., which is covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was adjudged insolvent and an order for winding up was made. State, in this connection, whether the Provident Fund is attachable and whether the payment of Provident Fund contribution be considered as priority over other Debts of the Company

Answer:

Protection against attachment:

According to section 10 of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member or of any exempted employee in the Provident Fund shall not in any way be capable of, being assigned or charged and shall not be liable to attachments under any decrees order of any court in respect of any debt or liability, incurred by the member or the exempted employee. Neither the official assignee appointed under the Presidency town Insolvency Act, 1909 nor any Receiver appointed under the Provincial Insolvency Act 1920 shall be entitled to have any claim on any such amount. Such amount shall also not be liable to attachment under any degree or order of any court.

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Priority of Payment of Contribution over other debts (Section 11): If the employer is adjudged an insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or the employer's contribution must be included among the debts which are to be paid in priority to all other debts under Section 49 of the Presidency - Towns Insolvency Act, Section 61 of the Provincial Insolvency Act, Section 327 of the Companies Act, 2013, in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability therefor has accrued before this order of adjudication or winding up is made.

(b) Discuss the general duties of an 'occupier' under the Factories Act, 1948

Answer:

General duties of an 'occupier' are discussed in sec 7A of the Factories Act, 1948. These are as follows:

Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include –

- (i) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- (ii) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (iii) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety, of all workers at work;
- (iv) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
- (v) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and

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safety of the workers at work and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

Question 15:

(a) Mr. Alexander was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. Alexander applied to the Appropriate Authority for the recovery of the amount of gratuity. Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer:

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act, 1972. Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this

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Act in no case (Section 8).

In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. Alexander is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. Alexander. On the refusal by the company, Mr. Alexander can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

(b) Ambay Textiles Ltd. employed 20 full – time and 5 part -time employees who were drawing salary of less than ₹ 21,000 per month. After completing service of 28 days, in an accounting year, 10 full - time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full - time employees and to the part - time employees. Against the decision, all the employees applied to the authorities for relief. Decide, stating the provisions of the Payment of Bonus Act, 1956, whether the employees, who resigned, the remaining full - time employees and part - time employees will get relief.

Answer:

In accordance with the provisions of Section 2(13) of the Payment of Bonus Act, 1965 any person other than an apprentice employed on a salary or wage not exceeding ₹ 21,000 per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward whether the terms of employment be express or implied is eligible for bonus.

Further, in accordance with the provisions of Section 8 of the Payment of Bonus Act, 1965 every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year.

The problem as asked is based on the above provisions of the Act and the answer may be given as follows:

- (a) As regards the employees who resigned: The employees who have resigned are not entitled to bonus because they worked only for 28 days in an accounting year although they are drawing salary less than ₹ 21,000 per month.
- (b) As regards full time remaining employees: These employees are entitled to get the bonus as they fulfil both the requirements as stated under Sections 2 (13) and 8 of the Act. Although the employees in this case have been reduced to 10, once the Act is applicable, it continues to apply even if number of employees fall below 20.

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- (c) As regards part time employees: Even a part time employee is entitled to bonus on the basis of total number of days worked by him in an accounting year. The definition of an employee under the Act does not exclude part time employees from the definition of employee. Therefore, if such employees work for over 30 days in the accounting year and have drawn salary of less than ₹ 21,000 per month, they shall be entitled to receive bonus for that accounting year. The Payment of Bonus Act, 1965 does not prohibit such employees as long as they fulfill all the requirements stated above [Automobile Karmachari Sangh vs. Industrial Tribunal (1971)].

Question 16:

(a) With whom does the responsibility of fixing minimum rates of wages lie?

Answer:

This is provided in Sec 3 of the Minimum Wages Act, 1948.

The responsibility of fixing minimum wages lies with appropriate government. The appropriate government shall in the manner hereinafter provided-

- (a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

- (b) review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates if necessary:

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(b) What do you understand by the term 'Industrial establishment' under the Payment of Wages Act, 1936?

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Answer:

According to Section 2(ii) of the Payment of Wages Act, 1923, "industrial or other establishment" means any –

- (a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- (aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- (i) dock wharf or jetty;
- (ii) Inland vessel mechanically propelled;
- (iii) mine quarry or oil-field;
- (iv) plantation;
- (v) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;
- (vi) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;
- (vii) any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

SECTION - C

Study Note 13 – Types, Promotion, Formation of Company

Question 17:

- (a) In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder**

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contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013.

Answer:

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non - inclusion of any matter in the Minutes on the grounds specified in sub - section (5) above.

Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

(b) Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

Answer:

The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal. Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub - section (4), may, after hearing the parties, either dismiss the appeal, or by order -

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- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

Question 18:

(a) N Ltd. has a paid up share - capital of 80 crores. M Ltd. holds a total of 50 crores of N Ltd. Now, N Ltd. is making huge profits and wants to expand its business and is aiming at investing in M Ltd. N Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of M Ltd.

Answer:

In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company -

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one - half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Since, M Ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of N Ltd., it (M Ltd.) is holding of N Ltd. Further, as per the provisions of section 19 of the Companies Act, 2013, No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub - section shall apply to a case -

- (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

In the given question, N Ltd. cannot acquire the shares of M Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

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(b) Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer:

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 Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

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. Thus, the first AGM of Infotech should have been held on or before 31st December, 2017.

Further, the Registrar does not have the power to grant extension to time limit

(c) Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.

Answer:

Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20 (2), save as provided in the Act or the rule there under for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

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Question 19:

(a) Discuss the role of Audit Committee of a Company.

Answer:

The functions of Audit Committee of companies are:

- recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
- examination of the financial statement and the auditors' report thereon;
- approval or any subsequent modification of transactions of the company with related parties;
- scrutiny of inter-corporate loans and investments;
- valuation of undertakings or assets of the company, wherever it is necessary;
- evaluation of internal financial controls and risk management systems;
- monitoring the end use of funds raised through public offers and related matters.

The powers of Audit Committee are as follows:

- To call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board.
- To discuss any related issues with the internal and statutory auditors and the management of the company.
- To investigate into any matter in relation to the items or referred to it by the Board.
- To obtain professional advice from external sources.
- To have full access to information contained in the records of the company.

(b) Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.**
- (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.**

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Answer:

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:

- (a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one - tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid - up; and
- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- The chairman cannot reject the demand for poll subject to provision in the articles of company.
- The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Question 20:

(a) Explain the process of e-voting.

Answer:

PROCESS OF E-VOTING:

- (i) The notice of the meeting shall be sent to all the members, directors and auditors of the company either –
 - (a) by registered post or speed post; or
 - (b) through electronic means, namely, registered e-mail ID of the recipient; or
 - (c) by courier service;

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- (ii) The notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;
- (iii) The notice of the meeting shall clearly state –
 - (a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
 - (b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
 - (c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;
- (iv) The notice shall -
 - (a) indicate the process and manner for voting by electronic means;
 - (b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
 - (c) provide the details about the login ID;
 - (d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.
- (v) The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one days before the date of general meeting, at least in one vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least in one English newspaper having country-wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-
 - (a) statement that the business may be transacted through voting by electronic means;
 - (b) the date and time of commencement of remote e-voting;
 - (c) the date and time of end of remote e-voting;
 - (d) cut-off date;
 - (e) the manner in which persons who have acquired shares and become members of the company after the despatch of notice may obtain the login ID and password;
 - (f) the statement that -
 1. remote e-voting shall not be allowed beyond the said date and time;
 2. the manner in which the company shall provide for voting by members present at the meeting; and
 3. a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
 4. a person whose name is recorded in the register of members or in the register of

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beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

- (g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and
- (h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

- (vi) The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;
- (vii) During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cutoff date, may opt for remote e-voting:

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:

Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

- (viii) At the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

(b) Restrictions in alteration of Memorandum. Comment.

Answer:

Section 13(8) provides that 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 objects for which it raised the money through prospectus unless a special resolution is passed by the company. The special resolution shall be published in the newspapers, one in English and one in vernacular language, which is in circulation at the place where the registered office of the

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company is situated and shall also be placed on the web site of the company, if any, indicating the justification for such change. The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI.

Rule 29 provides that the change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposit or debentures.

An application shall be filed in Form No. INC-24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No. INC-25 shall be issued to the company consequent upon the change.

Question 21:

(a) The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016 - 17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

- (i) Mr. A, holding equity shares of face value of ₹10 lakhs has not paid an amount of ₹ 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?**
- (ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?**

Answer:

- (i) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode. According to the above

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mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

- (ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

(b) Discuss the rules regarding Equity shares with differential rights.

Answer:

Equity shares with differential rights:

Rule 4 of Companies (Share Capital and Debentures) Rules, 2014, provides that no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions:

- the articles of association of the company authorizes the issue of shares with differential rights;
- the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders;
- where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through the postal ballot;
- the shares with differential rights shall not exceed 26% of the total post issue paid up share capital including equity shares with differential rights issued at any point of time;
- the company having consistent track record of distributable profits of the last three years;
- the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

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- the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or schedule bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
- the company has not been penalized by Court or Tribunal during the last three years o any offence under the RBI Act, 1934, SEBI Act, 1992, the Securities Contract Regulation Act, 1956, the FEMA, 1999 or any other special act under such companies being regulated by sectoral regulators.

Study Note 13 – Directors

Question 22:

- (a) Altar Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures. Referring to the provisions of the Companies Act, 2013:**
- (i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.**
 - (ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report?**

Answer:

In accordance with the provisions of the Companies Act, 2013, as contained under sec 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:

- (1) The Chairperson of the company where he is authorized by the Board; or
- (2) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company
- (3) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon. The Board's report and annexures thereto

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shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

- (i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.
- (ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

(b) Prem, a director in a public company, gave in writing to the company that notice for any General Meeting and the Board of Directors' Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, and under certificate of posting. Prem did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 2013,

- (i) whether the contention of Prem is valid?**
- (ii) Would you answer be still the same in case Prem remained outside India for two months (when such notices were given and meetings held).**

Answer:

The problem as asked in the question is based on the provisions of the Companies Act, 2013 as contained in Section 101. Accordingly, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. If, however, a member wants the notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected. Accordingly, the questions as asked may be answered as under:

- (i) The contention of Prem shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.

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- (ii) In view of the provisions of the Companies Act, 2013, the company is not bound to send notice to Prem at the address outside India. Therefore, answer in the second case shall differ from the first one.

Question 23:

(a) X Ltd. entered into a contract with M and Co. Ltd. for purchase of raw materials of ₹ 2,50,000 at the prevailing market rate. The director of X Ltd., Mr. B, was holding shares of the value of 1% of the paid up capital of M and Co. Ltd. Another Director of X Ltd. Mr. C was holding shares of the value of 1.5% of the paid up capital of M and Co. Ltd. Mr. B at the beginning of the year, gave a general notice to X Ltd. that he was interested in M and Co. Ltd,

Mr. B claims that he had given notice to X Ltd. as required under the Companies Act, 2013 and that his holding being only 1% is within the limit under the Companies Act, 2013.

Answer:

As per section 184(2), every director who is any way, directly or indirectly, interested in a contract or arrangement shall disclose the nature of his interest. However, section 184(2) shall not apply to a contract or arrangement entered into between two companies, where any of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid up share capital of the other company.

If the aggregate shareholding of two or more directors in the other company exceeds 2% of the paid up share capital of the other company, all such directors shall make a disclosure as required under section 184(2), irrespective of the fact that individual shareholding of each of the directors is not more than 2% of the paid up share capital of the other company.

Section 184(1) requires every director to disclose the nature of his concern or interest (along with the shareholding, if applicable) in any company, body corporate, association of individuals or firm. Such disclosure is to be made by the director in the first Board meeting in which he participates as a director, the first Board in every financial year and the first Board meeting held after any change in the interest or concern takes place.

In the present case, the aggregate shareholding of Mr. B and Mr. C is more than 2% of the paid up share capital of M and Co., and so section 184(2) has become applicable. Accordingly, Mr. B and Mr. C, both, are required to disclose the nature of their interest (viz. their shareholding in M and Co. Ltd.) in the Board meeting of X Ltd. in which the contract or arrangement between X Ltd. and M and Co. Ltd. is first discussed.

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The requirements specified under section 184(2) is independent of the requirement of section 184(1). In other words, even where a director has disclosed his concern or interest as per section 184(1), he is still required to disclose his concern or interest in each and every contract or arrangement covered under section 184(2), although such contract or arrangement is with a company or body corporate in respect of which disclosure of interest was already given by him in terms of section 184(1).

The general notice given by Mr. B in terms of section 184(1) is not a sufficient compliance of the requirements of section 184(2), and so Mr. B has contravened the provisions of section 184(2). Also, Mr. C has not disclosed his concern or interest in the Board meeting in which the contract or arrangement is first discussed, and so, Mr. C has also contravened the provisions of section 184(2).

Consequences of contravention of section 184(2) shall be as follows:

- Mr. B and Mr. C shall vacate the office of director held by them.
- As per Section 184(4), Mr. B and Mr. C shall be punishable with -
 - (a) imprisonment upto 1 year; or
 - (b) fine which may extend to ₹ 1 lakh; or
 - (c) both.
- The contract or arrangement entered into by X Limited shall be voidable at the option of X Limited [Section 184(3)].

(b) Provisions for entering into contracts that by One person Company. Comment.

Answer:

The provisions of section 193 of the Companies Act, 2013 are explained as follows:

1. Applicability of section 193

Section 193 applies where -

- (a) the company is a One Person Company;
- (b) it enters into a contract with its sole member; and
- (c) the sole member is also the director of the company.

2. Legal requirements

- (a) The contract entered into between the company and the sole member shall be in writing.
- (b) If the contract is not in writing, the company shall ensure that the terms of the contract are contained in a memorandum or are recorded in the minutes of the first Board meeting held next after entering into such contract.

3. Non-applicability of section 193

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Section 193 shall not apply where a contract is entered into by the company in the ordinary course of its business.

4. Duty of the company to inform the Registrar

- (a) Where a contract is entered into by One Person Company and recorded in the minutes of the Board meeting in accordance with the provisions of this section, the company shall inform the Registrar about such contract.
- (b) Such information shall be given to the registrar within 15 days of the date of approval by the Board of Directors.

Section 193 shall apply to One Person Company, irrespective of the fact as to whether it is limited by shares or by guarantee.

Question 24:

(a) What are the different duties of a director in a company as per the Companies Act, 2013??

Answer:

As per Section 166 of the Companies Act, 2013 a director of a company is bound to perform the following duties as mentioned below:

- A director of a company shall act in accordance with the articles of the company.
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment,
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company,
- A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company,
- A director of a company shall not assign his office and any assignment so made shall be void,

If a director of a company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(b) State the prescribed qualifications for an Independent Director.

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Answer:

Rule 5 prescribes the qualification of independent directors. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines to the company's business.

Section 149, further provides that an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. He should have no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten percent of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters or directors, during the two immediately preceding financial years or during the current financial year. An independent director shall not hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing a special resolution by the company. The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

Question 25:

(a) "Office of a Director shall become vacant in case". Comment

Answer:

Section 167 provides that the office of a Director shall become vacant in case –

- (i) he incurs any of the disqualifications specified in Section 164; Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.
- (ii) he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board;

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- (iii) he acts in contravention of the provisions of Section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested.
- (iv) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Section 184;
- (v) he becomes disqualified by an order of a Court or Tribunal;
- (vi) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months. The office shall be vacated by the director even if he has filed an appeal against the order of such court; For point no (v) and (vi) it should be noted that the office shall not be vacated by the director in case of orders—
 - (a) for thirty days from the date of conviction or order of disqualification;
 - (b) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
 - (c) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.
- (vii) he is removed in pursuance of the provisions of the Act;
- (viii) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to the above.

Where all the directors of a company vacate their offices under any of the disqualifications the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than ₹1 lakh but which may extend to ₹5 lakhs or with both.

(b) Board meetings were held on 24th November, 2014 and 15th December, 2014. Mr. Rameshwar, who was the chairman of these two Board meetings died on 20th December, 2014, without signing the minutes. How should the minutes be signed and by whom?

Answer:

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As per section 118, the minutes of a Board meeting may be signed by the chairman of the said meeting or the chairman of the next succeeding meeting. The minutes shall be prepared and signed within 30 days of the conclusion of the Board meeting.

In the present case, the minutes of the meeting held on 24.11.2014 could be signed either by the chairman of the meeting held on 24.11.2014 or by the chairman of the next meeting held on 15.12.2014. Incidentally, the chairman of these two meetings is the same, i.e. Mr. Rameshwar, who has died. The result is that the minutes of the two previous Board meetings, held on 24.11.2014 and 15.12.2014, have remained unsigned.

There is no legal provision covering the above situation. Therefore, it is advisable to convene a Board meeting and appoint a chairman who shall be authorised to sign the minutes of both the meetings held on 24.11.2014 and 15.12.2014.

Question 26:

(a) State the duties of a Director as per Section 166 of Companies Act, 2013.

Answer:

Section 166 of the Act prescribes the duties of a director under the provisions of this Act as detailed below:

- A director of a company shall act in accordance with the articles of the company;
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment;
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;
- A director of a company shall not assign his office and any assignment so made shall be void;

If a director of the company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

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- (b) A and B were appointed as First Directors on 4th April in Sun limited. Thereafter, C, D and E were appointed as Directors on 6th July and F, G and H were also appointed as Directors on 7th August in the Company. In the AGM of the company held after the above appointments, A and B were proposed to be retired by rotation and re-appointed as Directors. At the AGM, resolution for A's retirement and re-appointment was passed. However, before the resolution for 'B' could be taken up for consideration, the Meeting was adjourned. In the Adjourned Meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's retirement. Comment on the following based on the above situation:
- (i) Whether the proposal for retirement by rotation and re-appointment of A and B only were sufficient
 - (ii) Status of B as a director in the company.

Answer:

As per Section 152(6) of Companies Act, 2013

- (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall-
 - (i) be persons whose period of office is liable to determination by retirement of directors by rotation; and
 - (ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.
- (b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.
- (c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.
- (d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.
- (e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.—For the purposes of this sub-section, "total number of directors" shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

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Directors liable to retire by rotation shall be determined in the following manner:

- (a) Those who have served the longest as Director would retire first
- (b) If two or more Directors were appointed on the same date, Directors liable to retire may be determined:
 - (i) As per any agreement between them, or
 - (ii) By draw of lots, in absence of any agreement

Special Consideration should be taken into account would be:

- (a) While fractions in the calculation of minimum number of Rotational Directors were rounded off to one, fractions in determining the number of Retiring Directors shall be rounded off to nearest $1/3^{\text{rd}}$.
- (b) A Director appointed to fill a casual vacancy holds office till the end of the term of the Original Director, he does not retire at the end of the period. Therefore, such a person is not considered as a Retiring Director.

Section 152(7) of Companies Act, 2013 states that:

- (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.
- (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless -
 - (i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
 - (ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
 - (iii) he is not qualified or is disqualified for appointment;
 - (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
 - (v) Section 162 is applicable to the case.

As per the given problem:

- (i) Retiring Director will be deemed re-appointed, if exceptions like unwillingness, disqualification, reason u/s 152(7) are not attracted.
- (ii) B will continue as Director, by way of deemed re-appointment.

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SECTION - D

Study Note 14 – Ethics

Question 27:

(a) Corporate Governance and Corporate fairness are inter-related. Comment.

Answer:

“Corporate governance is about promoting corporate fairness, transparency and accountability”. It is concerned with structures and processes for decision- making, accountability, control and behavior at the top level of organizations. It influences how the objectives of an organisation are set and achieved, how risk is monitored and assessed and how performance is optimized.

The term governance relates to a process of decision making and implementing the decisions in the interest of all stakeholders. It basically relates to enhancement of corporate performance and ensures proper accountability for management in the interest of all stakeholders. It is a system through which an organisation is guided and directed.

Benefits of goods Corporate Governance:

1. Protection of investor interests and strong capital markets
2. Good governance is rewarded with a higher market valuation.
3. Ensure commitment of the board in managing the company in a transparent manner.

Thus corporate Governance can also be defined as “the formal system of accountability and control for ethical and socially responsible organizational decisions and use of resources”. Corporate governance arrangements are key determinants of an or ganization’s relationship with the world

(b) What are circumstances leading to actual happening of threats for an Accounting professionals working as Consultants or Auditors?

Answer:

Sl. No.	Types of threats	Accounting professional working as Consultants or Auditors
1.	Self interest threat	(i) A financial interest in a client. (ii) Undue dependence on fees from a client. (iii) Close business relationship with a client. (iv) Fear of losing a client.

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		(v) Potential employment with a client. (vi) Contingent fees relating to an assurance engagement.
2.	Self review threat	(i) Discovery of a significant error of the work of the professional. (ii) Reporting on the operation of the designed financial systems. (iii) Being a Director or Officer of the client. (iv) Being employed by the client in a position to exert influence over the subject-matter of the engagement.
3.	Advocacy threat	(i) Promoting shares in a Listed Entity of a client. (ii) Acting as an advocate on behalf of client in litigation or disputes with third parties
4.	Familiarity threat	(i) Close relationship with a Director or Officer of the client (ii) Accepting gifts or preferential treatment from a client
5.	Intimidation threat	(i) Being threatened with litigation. (ii) Fear of losing work from client. (iii) Being threatened with replacement.

Question 28:

(a) 'Fairness and honesty are the pillars of success in business'. Comment.

Answer:

The success of the business depends very much on fairness and honesty in the business. Fairness and honesty are at the heart of the business ethics and relate to the general values of decision makers. At a minimum, business professionals and persons are expected to follow all applicable laws and regulation. Even then, they are expected not to harm customers, employees, clients or competitors knowingly through deception, misrepresentation, coercion or discrimination. One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. Another aspect of fairness relates to competition. Although numerous laws have been passed to foster competition and make monopolistic practices illegal, companies sometimes gain control over markets by using questionable practices that harm competition.

Rivals of Microsoft, for example, accused the software giants of using unfair and monopolistic practices to maintain market dominance with its Internet explorer browser.

These aforesaid examples show that fairness and honesty pay in the long run; they secure the stability of the business and overall reputation in the business world. Therefore we may say that fairness and honesty are the pillars of success in the business.

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**(b) 'Healthy competition and Protecting Consumer Interest are a part of Business Ethics'.
Comment.**

Answer:

Healthy Competition and Protecting Consumer's Interest:

Competition means rivalry in the marketplace, which is regulated by a set of policies and laws to achieve the goals of economic efficiency and consumer welfare, and to check on the concentration of economic power. All these goals have an interactive relationship and, when in harmony, deliver total welfare. Indeed, it is the consumers who are supposedly the biggest beneficiaries of competition.

At the macro level, the design and implementation of a competition policy promotes the advancement and increased welfare of the poor. At the micro level, an effective competition regime or consumer law (covering competition distortions) can prevent consumer abuses, both at industry level as well as in a village or locality where one shopkeeper can cheat the whole community.

An appropriate and dynamic competition policy and law are imperative to support the economic development, control the corruption, reduce wastage and arbitrariness, improve competitiveness and provide relief to the poor. An efficient implementation of Business ethics would promote both Healthy competition and protect consumer interests.

Question 29:

(a) State the evolution of ethics.

Answer:

Social conduct has evolved along with the evolution of society. When our elders tell us 'Do not cheat', they are referring to a social code of conduct. Social conduct has developed in society over hundreds of years. The codes of conduct have been passed down from generation to generation, and there is a pattern to the evolution of such codes. Acceptable behaviour is promoted and elevated as a social value, and unacceptable behaviour is rejected and condemned. The laws of country are based on the customs or moral codes of its society. Penalties are prescribed for bad actions, actions that contradict the established laws. The laws are a measure against those people who cross the limits of the code of social conduct, and ensure that good citizens are protected from the negative consequences of the law-breakers. The object of the social codes of conduct is to maintain, promote and elevate harmonious relationships.

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(b) Discuss the nature and relevance of Ethics to Business.

Answer:

Several factors play a role in the success of a company that is beyond the scope of financial statements alone. Organizational culture, management philosophy and ethics in business each have an impact on how well a business performs in the long term. No matter the size, industry or level of profitability of an organization, business ethics are one of the most important aspects of long-term success.

The management team sets the tone for how the entire company runs on a day-to-day basis. When the prevailing management philosophy is based on ethical practices and behavior, leaders within an organization can direct employees by example and guide them in making decisions that are not only beneficial to them as individuals, but also to the organization as a whole. Building on a foundation of ethical behavior helps create long lasting positive effects for a company, including the ability to attract and retain highly talented individuals and building and maintaining a positive reputation within the community. Running a business in an ethical manner from the top down builds a stronger bond between individuals on the management team, further creating stability within the company.

When management is leading an organization in an ethical manner, employees follow in those footsteps. Employees make better decisions in less time with business ethics as a guiding principle; this increases productivity and overall employee morale. When employees complete work in a way that is based on honesty and integrity, the whole organization benefits. Employees who work for a corporation that demands a high standard of business ethics in all facets of operations are more likely to perform their job duties at a higher level and are also more inclined to stay loyal to that organization.

The importance of business ethics reaches far beyond employee loyalty and morale or the strength of a management team bond. As with all business initiatives, the ethical operation of a company is directly related to profitability in both the short and long term. The reputation of a business from the surrounding community, other businesses and individual investors is paramount in determining whether a company is a worthwhile investment. If a company's reputation is less than perfect based on the perception that it does not operate ethically, investors are less inclined to buy stock or otherwise support its operations. With consistent ethical behavior comes increasingly positive public image, and there are few other considerations as important to potential investors and current shareholders. To retain a positive image, businesses must be committed to operating on an ethical foundation as it relates to treatment of employees, respect to the surrounding environment and fair market practices in terms of price and consumer treatment.

Short Notes

Question 30:

Write short notes on:

(i) Doctrine of privity of contract

Answer:

The doctrine of privity of contract means that a contract is between the parties only and no third person can sue upon it. It means that a stranger to contract cannot sue upon it. The Supreme Court of India recognized this rule in *MC Chacko v State Bank of Travancore*. It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. Under the English Common law only a person who is party to a contract can sue upon it. In India the common law doctrine of privity of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privity of contract.

The Indian Contract Act, 1872 is silent about the right of a stranger to contract to sue or not to sue but the Privy Council extended the Principal of English Common law to India in its decision in *Jamna Das V Ram Avtar Pandey* which was affirmed by the Honourable Supreme Court of India in the case of *MC Chako v State Bank of Travancore*.

Accordingly in the following circumstances a stranger to contract can sue:

1. Beneficiaries under trust or charge
2. Marriage settlement, partition or other family arrangements
3. Acknowledgement or estoppel.
4. Agency
5. Assignee in case of insurance policy

(ii) Exceptions to 'Risk Prima Facie passes with the property'

Answer:

The rule regarding risk passes with the property enshrined in section 26 is subject to the following exceptions:

- (a) This rule of 26 will apply only if there is no agreement to the contrary. It is permissible for the parties to provide in the agreement that although the property does not pass, the risk passes and they may fix the point of time when it is to pass.

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- (b) Where delivery has been delayed through the fault of either party the buyer or the seller, the goods are at the risk of the party at fault as regards any loss which might not have been occurred but for such loss. The goods are at the risk of the party who is at fault in delay of delivery.
- (c) If there is a custom in that particular trade that the risk does not pass with property, in such a case the risk will pass as per the custom.
- (d) Risk and property may be separated by agreement between the parties. Section 40 of the Act also provides that where the seller agrees to deliver the goods at his own risk at a distant place from where they are, the buyer shall unless otherwise agreed, not take any risk of deterioration in the goods incidental to the transit.

(iii) Presentment when not necessary

Answer:

Section 76 of Negotiable Instruments Act, 1881 provides that no presentment for payment is necessary in any one of the following cases –

- If the maker, drawee or acceptor intentionally prevents the presentment of the instrument; or
- If the instrument is being payable at his place of business, he closes such place on a business day during the usual business hours; or
- If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours; or
- If the instrument not being payable at any specified place, he cannot after due search be found;
- As against any party sought to be charged therewith, if he has engaged to pay notwithstanding non presentment;
- As against any party if, after maturity, with knowledge that the instrument has not been presented he makes a part payment on account of the amount due on the instrument or promises to pay the amount due thereon in whole or in part or otherwise waives his right to take advantage of any default in presentment for the payment

(iv) Rights of outgoing partners

Answer:

Section 36 provides that an outgoing partner may carry on a business competing with that of the firm. He may advertise such business, but, subject to contract to the contrary, he may not-

- use the firm name;

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- represent himself as carrying on the business of the firm; or
- solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 37 provides that in case where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, the outgoing partner or the representative of the deceased partner is entitled at the option-

- to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or
- to interest at 6% per annum on the amount his share in the property of the firm.

Where an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits. But if any partner, assuming to act in exercise of the option, does not, in all material respects comply with the terms, he is liable to account under the provisions of this section.

(v) Responsibility of the occupier

Answer:

The occupier has to follow the procedure -

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

(vi) Protection of gratuity

Answer:

Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.

Nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non employment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.

(vii) Features of National Pension System

Answer:

The National Pension System shall, on the commencement of this Act, have the following basic features, namely:—

- (a) every subscriber shall have an individual pension account under the National Pension System;
- (b) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations;
- (c) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;
- (d) there shall be a choice of multiple pension funds and multiple schemes:
Provided that—
 - (a) the subscriber shall have an option of investing up to hundred per cent of his funds in

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Government Securities; and

- (b) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;
- (e) there shall be portability of individual pension accounts in case of change of employment;
- (f) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;
- (g) there shall not be any implicit or explicit assurance of benefits except market-based guarantee mechanism to be purchased by the subscriber;
- (h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and
 - (i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

(viii) Payment of commission to any person in connection with the subscription to its securities

Answer:

Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- the payment of such commission shall be authorized in the company's articles of association;
- the commission may be paid out of proceeds of the issue or the profit of the company or both;
- the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less;
- the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;

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- commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;
- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

(ix) Qualification of independent directors

Answer:

Rule 5 prescribes the qualification of independent directors. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines to the company's business.

Section 149, further provides that an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. An independent director shall not hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing a special resolution by the company. The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

(x) Importance of ethics

Answer:

Ethics is a requirement for human life. It is our means of deciding a course of action. Without it, our actions would be random and aimless. There would be no way to work towards a goal because there would be no way to pick between a limitless numbers of goals. Even with an ethical standard, we may be unable to pursue our goals with the possibility of success. To the degree which a rational ethical standard is taken, we are able to correctly organize our goals

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and actions to accomplish our most important values. Any flaw in our ethics will reduce our ability to be successful in our endeavours.

A proper foundation of ethics requires a standard of value to which all goals and actions can be compared to. This standard is our own lives, and the happiness which makes them liveable. This is our ultimate standard of value, the goal in which an ethical man must always aim. It is arrived at by an examination of man's nature, and recognizing his peculiar needs. A system of ethics must further consist of not only emergency situations, but the day to day choices we make constantly. It must include our relations to others, and recognize their importance not only to our physical survival, but to our well - being and happiness. It must recognize that our lives are an end in themselves, and that sacrifice is not only not necessary, but destructive.