INTERMEDIATE EXAMINATION **SET 1**

MODEL ANSWERS **TERM – DECEMBER 2024**

PAPER – 5 **SYLLABUS 2022**

BUSINESS LAWS AND ETHICS

Time Allowed: 3 Hours **Full Marks: 100**

The figures in the margin on the right side indicate full marks.

SECTION – A (Compulsory)

1. Choose the correct option: **[15×2 = 30]**

i. Right to Property is a _____.
- **a. Fundamental Right.**
- **b. Fundamental Duty.**
- **c. Constitutional Right.**
- **d. None of the above.**

ii. A contract is _____.
- **a. a legal obligation**
- **b. An agreement plus a legal obligation**
- **c. Consensus ad idem**
- **d. An agreement plus a legal object**

iii. The doctrine of caveat emptor applies _____.
- **a. There is no implied conditions and warranties.**
- **b. The buyer discloses to the seller the particular purpose for which goods are required.**
- **c. when goods are sold by sample.**
- **d. The seller sells the goods by making fraud and the buyer believes it.**

iv. "Banker" includes:
- **a. Any person acting as an employee of any bank and any post office saving bank.**
- **b. Any person acting as a banker and any post office saving bank**
- **c. Any person acting as an agent of any bank and any post office saving bank.**
- **d. Any person acting as a Managing Director of any bank and any post office saving bank**

v. What are the right of partners after dissolution?
- **a. To have the surplus distributed among the partners or their representatives according to their rights**
- **b. To have business wound up after dissolution.**
- **c. To have the property of the firm applied in payment of the debts and liabilities of the firm**
- **d. All of the above**

vi. Whether a HUF can become partner in LLP?
- **a. HUF may become partner of LLP provided the Registrar may grant permission in this behalf.**
- **b. No, HUF can't become partner in the LLP.**
- **c. Yes, HUF may become partner of LLP.**
- **d. None of the above.**

vii. Age of adolescent worker as per Factories Act, 1948 is:
a. Who has completed 17 years of age
b. Who is less than 18 years
c. Who has completed 15 years but less than 18 years.
d. None of these

viii. Gratuity is payable to an employee _____.
a. On his superannuation;
b. On his retirement or resignation, Retrenchment;
c. on his death or disablement due to accident or disease
d. In all the above cases.

ix. While filing appeal to EPF Appellate Tribunal the employer has to deposit_____ of the amount due from him.
a. 25%.
b. 50%.
c. 75%.
d. None of the above.

x. A member of the ESI shall cease to be a member if he fails to attend_____ consecutive meeting.
a. 3
b. 5
c. 7
d. None of the above.

xi. An instrument of the proxy shall be deposited with the registered office of the company_____ before the conduct of the meeting.
a. 7 hours;
b. 21 hours;
c. 48 hours;
d. 60 hours;

xii. New definition of wage under the Code specifically excludes which of these?
a. any bonus payable under any law for the time being in force
b. any conveyance allowance or the value of any travelling concession
c. house rent allowance
d. all of the above

xiii. A quasi contract _____.
a. is a contract
b. in an agreement
c. creates only a legal obligation
d. is none of these

xiv. What would be the position, where a minor elect not to become a partner _____.
a. He shall be entitled to sue the partners for his share of the property and profits

b. His rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice.
c. His share shall not be liable for any acts of the firm done after the date of the notice.
d. All of the above

xv. The minimum administrative charge payable by the employer to the fund is _____.
a. ₹75
b. ₹500
c. ₹1,000
d. None of the above.

Answer:

i.	ii.	iii.	iv.	v.	vi.	vii.	viii.	ix.	x.	xi.	xii.	xiii.	xiv.	xv.
c	b	a	b	d	b	c	d	c	a	c	d	c	d	b

Section – B

(Answer any five questions out of seven questions given. Each question carries 14 Marks)
[5 x 14 = 70]

2. (a) "Two or more persons are said to be consent when they agree upon the same thing in the same sense" – Discuss with reason the consequences of the absent of consent and free consent.

(b) Discuss the contract at indemnity at the right of indemnity holder when it sued.
[7 + 7 = 14]

Answer:

(a) "Two or more persons are said to consent when they agree upon the same thing in the same sense." - [Sec 13]. There will be flaw in consent if it is not free consent. If the parties have not agreed upon the same thing in the same sense, there is no real consent and hence no contract is formed.

As per section 14 of the Indian Contract Act, 1872 consent is said to be free when it is not caused by:

I) Coercion (Sec 15): The term "Coercion" has been defined in Section 15 of the Act as the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

II) Undue influence (Sec 16): Section 16 of the Indian Contract Act defines undue influence as under:

i) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

ii) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

- Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

III) Fraud (Sec 17): As per section 17 of the Indian Contract Act:

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;

ii) The active concealment of a fact by one having knowledge or belief of the fact;

iii) A promise made without any intention of performing it;

iv) Any other act fitted to deceive;

v) Any such act or omission as the law specially declares to be fraudulent.

IV) Misrepresentation (Sec 18):

A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally, it is misrepresentation and when made intentionally or wilfully it is fraud.

V) Mistake, subject to the provisions of Sec 20, 21 and 22:

Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act. Mistake can be –

A) Mistake of law, or (Section 21)

1. mistake of law of the country
2. mistake of law of a foreign country

B) Mistake of fact (Section 20)

1. Bilateral mistake, or
2. Unilateral mistake

Effect of absence of free consent

1. If consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the contract is voidable at the option of the party whose consent was not free.
2. If both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement. (i.e., mistake of Indian law) (section 21), then the agreement is void.
3. A contract is not voidable merely because one of the parties was at mistake (i.e., unilateral mistake) (section 22).

(b) Section 124 of the Act defines the expression 'contract of indemnity' as a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

Example: A contracts to indemnify B against the consequences of the proceedings which C may take against B in respect of a certain sum of ₹2 lakhs. This is a contract of indemnity. This contract includes indemnifier and indemnity holder. A person who promises to indemnify from losses is called as indemnifier and the person whose loss is made good is called as indemnity holder. To indemnify does not merely means to reimburse in respect of moneys paid, but to save from loss in respect of the liability for which the indemnity has been given.

Rights of indemnity holder when sued: -

Section 125 provides the rights of indemnity holder when sued. This section provides that the promise, in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

☉ all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

☉ all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

☉ all the sums which he was not contrary to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit. This section is not exhaustive and does not set out all the reliefs which an indemnity holder who has been sued may get. It leaves untouched certain equitable reliefs which he may get. The rights of the indemnity holder are not confined to those mentioned in this section. Even before damage is incurred, it is open to him to sue for the specific performance of the contract of indemnity, provided that it is show, that an absolute liability has been incurred by him and that the contract of indemnity covers the said liability.

In 'Pepin V. Chandra Seekur', ILR 5 Cal. 811 it was held that in the case of contract of indemnity, the liability of the party indemnified to a third person is not only contemplated at the time of indemnity, but is the very moving cause of that contract and in case of such

a nature, the costs reasonably incurred in resisting or reducing or ascertaining the claim may be recovered.

3. (a) Demonstrate the procedure relating to winding up of an LLP by the tribunal.

(b) Discuss the circumstances when a Bill of Exchange is dishonored and the roll of a notice in this regards. [7 + 7 = 14]

Answer:

. **(a)** Winding up of a Limited Liability Partnership (LLP) by a Tribunal can be initiated for several reasons:

1. Voluntary Winding Up: The LLP decides to wind up and consents to the process.
2. Insufficient Number of Partners: The LLP has fewer than two partners for six months. An LLP requires at least two partners to operate legally.
3. Inability to Pay Debts: The LLP is financially insolvent and cannot meet its debt obligations or public order.
4. Activities against National Interest: The LLP engages in activities detrimental to the sovereignty, integrity of India, the state's security.
5. Non-compliance with Statutory Filings: The LLP fails to file the Statement of Accounts and Solvency or Annual Returns with the Registrar for five consecutive financial years, indicating a lack of operational transparency and regulatory compliance.
6. Just and Equitable Grounds: The Tribunal determines that it is just an equitable for the LLP to be wound up. This broad and subjective criterion can encompass various situations the Tribunal deems as warranting winding up for fairness or other reasons.

When a Tribunal initiates the winding-up process for an LLP based on these grounds, it marks the beginning of a formal procedure to dissolve the LLP.

<u>Procedure for winding up of an LLP by a Tribunal:-</u>

The procedure for winding up an LLP by a Tribunal involves several steps to ensure an orderly and fair dissolution of the LLP. Here's an overview of the process:

Step 1: Petition for Winding Up

The process begins with filing a petition for winding up to the Tribunal. This petition can be filed by the LLP itself, creditors, partners, or, in certain cases, by the Registrar or by a person authorized by the Central Government.

Step 2: Tribunal's Decision to Wind Up

Upon receiving the petition, the Tribunal will consider the reasons for winding up. If the Tribunal finds sufficient grounds per the LLP Act's provisions, it will pass a winding-up order.

Step 3: Appointment of Liquidator

Once the winding-up order is passed, the Tribunal will appoint a Liquidator. The role of the Liquidator is crucial, as they are responsible for managing the entire winding-up process, including the liquidation of assets.

Step 4. Public Announcement:

The Liquidator must publicly announce the winding up, inviting claims from creditors and instructing debtors to settle their dues.

Step 5. Settlement of Claims:

The Liquidator will then proceed to settle the claims of creditors as prescribed by the law. This includes verifying the claims and deciding the order for the debts to be paid.

Step 6. Liquidation of Assets:

The Liquidator will liquidate the LLP's assets to generate funds to pay off the LLP's debts. This could involve selling off property, machinery, intellectual property, etc.

Step 7. Distribution of Assets:

After paying off the debts. If there are any remaining assets, they are distributed among the partners of the LLP according to the agreement in the LLP deed or the LLP Act if the deed does not specify the distribution.

Step 8. Dissolution of LLP:

Once all debts have been paid, and the remaining assets have been distributed, the Liquidator will apply to the Tribunal for the dissolution of LLP firm. After ensuring that all procedures have been correctly followed, the Tribunal will pass an order to dissolve the LLP.

Step 9. Filing of Order with Registrar:

The order of dissolution issued by the Tribunal must be filed with the Registrar by the Liquidator within a specified period. The Registrar will then publish a notice declaring the LLP to be dissolved.

. **(b)** The dishonor may be due to the following reasons-

1. non acceptance; and
2. by non-payment

1. Section 91 provides that a bill of exchange is said to be dishonored by non-acceptance when the drawee, or one of several drawees, not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted. When the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonored.
2. Section 92 provides that an instrument is said to be dishonored by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Roll of a notice:

Section 93 provides that when an instrument is dishonored the holder must give notice that the instrument has been dishonored.

Section 94 provides that the notice may be in writing or oral. If it is in written form it must be sent by post and may be in any form but it must inform the party to whom it is given either in express term or by reasonable intendment that the instrument has been dishonored and he will be held liable thereon. It must be given within a reasonable

time after dishonor at the place of business or at the residence of the party for whom it is intended.

Section 95 provides that any party receiving notice of dishonor must, in order to render any prior party liable to himself, give notice of dishonor to such party within a reasonable time, unless such party otherwise receives due notice.

Section 96 provides that when the instrument is deposited with an agent for presentment, the agent is to issue notice to his principal who is entitled to a further like period to give notice of dishonor.

Section 97 provides that when the party, to whom a notice of dishonor is dispatched, is dead, but the party is not aware of the death, the notice is sufficient.

Section 98 provides that in the following circumstances there is no requirement to issue notice

- ❖ When it is dispensed with by the party entitled thereto;
- ❖ In order to charge the drawer, when he has countermanded payment;
- ❖ When the party charged could not suffer damage for want of notice;
- ❖ When the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- ❖ To charge the drawers, when the acceptor is also a drawer;
- ❖ In the case of a promissory note which is not negotiable;
- ❖ When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

4. (a) Analyse the deductions , which are might be made from wages as per section 18 of the Code of Wages Act ,2019 .

(b) Discuss the penalties under section 14 of the Employees Provident Fund and Miscellaneous Provision act 1952? [7 + 7 = 14]

Answer:-

(a) Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorized under this Code. For the purposes of this sub-section,

1. any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;
2. any loss of wages to an employee, for a good and sufficient cause, resulting from:
   - i) the withholding of increment or promotion, including the stoppage of an increment; or
   - ii) the reduction to a lower post or time-scale; or
   - iii) the suspension, shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf.

Deductions from the wages of an employee shall be made in accordance with the provisions of this Code, and may be made only for the following purposes, namely: -

a) fines imposed on him;
b) deductions for his absence from duty;
c) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
d) deductions for house-accommodation supplied by the employer or by appropriate Government or any housing board set up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidizing house- accommodation which may be specified in this behalf by the appropriate Government by notification;
e) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorize and such deduction shall not exceed an amount equivalent to the value of such amenities and services.
f) deductions for recovery of:
    i) advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages;
    ii) loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;
g) deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;
h) deductions of income-tax or any other statutory levy levied by the Central Government or State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;
i) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
j) deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;
k) deductions made, with the written authorization of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926;
l) deductions for recovery of losses sustained by the railway administration on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;
m) deductions for recovery of losses sustained by the railway administration on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate

charges due to the railway administration whether in respect of fares, freight, demurrage, wharfage and cranage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;

n) Deductions for recovery of losses sustained by the railway administration on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;

o) Deductions, made with the written authorization of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify.

p) Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made under sub-section (2) in any wage period from the wages of an employee shall not exceed fifty per cent. of such wages.

3. Where the total deductions authorized under sub-section (2) exceed fifty per cent. of the wages, the excess may be recovered in such manner, as may be prescribed.

4. Where any deduction is made by the employer from the wages of an employee under this section but not deposited in the account of the trust or Government fund or any other account, as required under the provisions of the law for the time being in force, such employee shall not be held responsible for such default of the employer.

(b) Section 14(1) provides that for the purpose of avoiding any payment whoever knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of ₹5,000 or with both.

Section 14(1A) provides that an employer, who contravenes or makes default in complying with the provisions of Section 6 or as it relates to the payment of inspection charges, administrative charges shall be punishable with imprisonment for a term which may extend to three years but-

⊙ Which shall not be less than one year and fine of ₹10,000 in case of default of payment of the employees' contribution;

⊙ Which shall not be less than six months and a fine of ₹5,000 in any other case.

Section 14(1B) provides that an employer who contravenes or makes default in complying with the provisions of Section 6C in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than six months and shall also be liable to fine which may extend to ₹5,000.

Section 14(2) provides that subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance scheme may provide that any person who contravenes or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to

₹4,000 or with both.

Section 14(2A) provides that whoever, contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted shall, if no other penalty is elsewhere provided by or under this Act for such contravention or noncompliance, be punishable with imprisonment which may extend to six months but which shall not be less than one month and shall be liable to fine which may extend to ₹5,000.

5. (a) Describe the legal provisions relating to the procedure of alteration of memorandum under section 13 of the Companies Act, 2013.

(b) Examine the provisions relation to the remuneration payable to a Directors including any managing or whole time director under the Companies Act, 2013. [7 + 7 = 14]

Answer:

(a) Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. These provisions are: -

1. Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.
2. Name Change of the company: Any change in the name of a company shall be effected only with the approval of Central Government in writing.

   However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word "Private", consequent on the conversion of any one class of companies to another class.
3. Entry in register of companies: On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.
4. Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.
5. Disposal of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of the registered office within a period of sixty days. Before passing of order, the Central Government may satisfy itself that-
   - The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
   - That the sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or adequate security has been provided for such discharge.
6. Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar–

- the special resolution passed by the company under sub-section (1) of Section 13;
- the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

7. Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.
8. Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.
9. Change in the object of the company: A company, that 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 through postal ballot is passed by the company and—
   - the details, regarding such a resolution shall also 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 company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such a change;
   - The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
10. Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the ompany and certify the registration within a period of thirty days from the date of filing of the special resolution.
11. Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
12. Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

(b) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with the provisions of Companies Act either by the articles of the company, or by a resolution (special resolution if the articles so require), passed by the company in general meeting and the remuneration payable to any such director determined as per the said provisions shall be

inclusive of the remuneration payable to such director for services rendered by him in any other capacity.

Section 198 lays down the overall maximum of managerial remuneration which can be paid by public company or a subsidiary of a public company. The total managerial remuneration payable to directors or manager in respect of a financial year shall not exceed eleven per cent of the net profits of the company. But sometimes a company may make no or inadequate profits in a financial year. This does not mean that its directors shall remain unpaid. In such a case, the company may, with the previous approval of the Central Government, pay by way of minimum remuneration any sum as may be authorized.

It may be noted that the remuneration of directors can be determined only by the articles of a company or a resolution of the general body or a special resolution if the articles so require. The directors cannot themselves fix the remuneration of all or any one of themselves. A managing or whole-time director may be paid either on a monthly basis or a specified percentage of the net profits of the company or partly by one way and partly by the other. But a managing director or whole-time director is not entitled to draw more than five per cent or where there is more than one such director, ten per cent of net profits by way of remuneration, except subject to conditions specified in Schedule XIII or with the approval of the Central Government.

As per Section 2(78) of the companies Act, 2013 'Remuneration' defined as any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under income tax Act, 1961. As per Section 197 of the Act, the total managerial remuneration payable by a public company, to its directors, including managing director, whole time director and its manager, in respect of any financial year shall not exceed 11% of the net profits of that company. Accordingly, a public company can pay remuneration to its directors including executive directors and non-executive directors within the limits of 11% of the net profits and this limits can only be exceeded with the prior approval of the members of the company by an special resolution. The remuneration payable to a director shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

So, even if a director is paid remuneration for special services apart from directorial services, such amount must also be included in the total remuneration in order to ascertain the limits of 11% of net profits as prescribed under Section 197(1) of the Act. However, the only exception is when remuneration paid for professional services rendered by a director to the company without any limit is not included in the limit, if the following two conditions are satisfied: The services rendered are of a professional nature and; In the opinion of the Nomination and Remuneration Committee the director possesses the requisite qualification for the practice of the profession. If the company does not require to have such a committee under section 178, the board can form this opinion.

6. (a) Demonstrate the duties of an auditor provided in section 143 of the Companies Act, 2013.

(b) Analyse the powers of board of directors or a director of a company under the Companies Act, 2013. [7 + 7 = 14]

Answer:

(a) The duties of an auditor have been laid down by the Companies Act, 2013, provided in Section 143. The Act explains the duties in a simplified manner, although the list given is not exhaustive.

1. Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company.
2. The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement or other document which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act
3. Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.
4. In the case of a Government company, or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Government, or partly by the Central Government and partly by one or more State Government, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited.
5. The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to—
   a) comment upon or supplement such audit report, and
   b) conduct any supplementary audit of the company's accounts by himself or by such person or persons as he may authorise in this behalf and such person or persons shall have the same rights and obligations as the auditor who has submitted the report:
6. Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (2) of section 123, if he so deems necessary, by an order, cause test audit to be conducted of the accounts of such company.
7. Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (hereafter in this section referred to as the

company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by other person duly qualified.

8. Every auditor shall comply with the auditing standards.
9. The Central Government may, after consultation with the National Advisory Committee on Accounting and Auditing Standards, by notification, lay down auditing standards.
10. The Central Government may, after consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

    Provided that until the National Financial Reporting Authority is constituted under section 132, the Central Government may hold consultation required under this sub- section with the Committee chaired by an officer of the rank of Joint Secretary or equivalent in the Ministry of corporate Affairs and the committee shall have the representatives from the Institute of Chartered Accountants of India and Industry Chambers and also special invitees from the National Advisory Committee on Accounting Standards and the office of the Comptroller and Auditor-General"

11. Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

    Povided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

    Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed

12. No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.
13. The provisions of this section shall mutatis mutandis apply to—
    a) the cost accountant conducting cost audit under section 148; or
    b) the company secretary in practice conducting secretarial audit under section 204.
14. If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall, –
    a) in case of a listed company, be liable to a penalty of five lakh rupees; and
    b) in case of any other company, be liable to a penalty of one lakh rupees.

(b) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

But, no regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made. Moreover, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:

a) to make calls on shareholders in respect of money unpaid on their shares;
b) to authorize buy-back of securities under Section 68;
c) to issue securities, including debentures, whether in or outside India;
d) to borrow monies;
e) to invest the funds of the company;
f) to grant loans or give guarantee or provide security in respect of loans;
g) to approve financial statement and the Board's report;
h) to diversify the business of the company;
i) to approve amalgamation, merger or reconstruction;
j) to take over a company or acquire a controlling or substantial stake in another company;
k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

7. (a) Summarize the different types of ethics and importance of ethics.

(b) Describe the role of management accounting in relation to the values and attitudes of Professional Accountants. **[7 + 7 = 14]**

Answer:

(a) Ethics may be divided into three types as follows:

- Meta ethics;

- Normative ethics;
- Applied ethics.

Meta ethics deal with the nature of moral judgment. It examines the origins and meanings of ethical principles. Normative ethics is concerned with the content of moral judgments and the criteria for what is right or wrong. Applied ethics addresses controversial topics like war, animal rights and capital punishment.

Importance of ethics: -

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 number 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 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 unnecessary, but also destructive.

(b) The role of management accounting is also described as problem solving, score keeping and attention directing.

- Problem solving: The role of accounting in problem solving is to provide information that is useful for evaluating alternatives.
- Scorekeeping: Scorekeeping records the results of various managerial actions and helps in assessing whether the results expected from the various actions are realized or not.
- Attention directing: The scorekeeping function in combination with expected results, and comparative analysis of scores of across various companies, divisions and departments, as well as comparative analysis of present period scores with previous periods, helps focus managerial attention on areas that require improvement.

Professional accountants take on a vast array of roles in businesses of all types, including the public sector, not-for-profit sector, regulatory or professional bodies, and academia. Their wide ranging work and experience find commonality in one aspect – their knowledge of accounting.

These individuals employ an inquiring mind to their work, based on their understanding of the company's financials. Their training in accounting enables them to adopt a pragmatic and objective approach to solving issues. This is a valuable asset to management, particularly in small and medium enterprises where the professional accountants are often the only professionally qualified members of staff. Cost management is an activity of managers related to planning and control of costs. Managers have to take decisions regarding use of materials, processes, product designs and have to plan costs or expenses to support the operating plan for their department or section. All these activities come under cost management. Information from accounting systems help managers in cost management activities. Cost management is not cost reduction alone. It is much broader. Cost management system has to ensure that a cost is incurred with the expectation of profit.

8. (a) X offered to sell his house to Y for ₹50,000. Y accepted the offer by E-mail. On the next day Y sent a fax revoking the acceptance which X reached X before the E-mail. Examine the validity of revocation. Inspect whether would it make any difference if both the E-mail of acceptance and the fax of revocation of acceptance reach X at the same time.

(b) Mr. Dilip Kumar, a director of ABC Co., resigns from his office on and with effect from 15.04.2024 by tendering his resignation letter addressed to the Chairman of the ABC Co. The letter reaches to the desk of the Chairman on 25.04.2024. Mr. Dilip Kumar did not forward a copy of his resignation along with detailed reasons for the resignation to the Registrar. The Board did not accept the resignation on the ground that the same letter has not been forwarded to the Registrar. Mr. Dilip Kumar argues that he need not to send the letter to the Registrar, hence, his resignation be accepted with effect from 15.04.2024. Analyze the situation and discuss. [7 + 7 = 14]

Answer:

(a) 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.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterward. Referring to the above provisions

(i) Yes, the revocation of acceptance by Y (the acceptor) is valid.

(ii) If X reads the Fax first, the acceptance stands revoked. If he opens the email first and

reads it, revocation of acceptance is not possible as the contract has already been concluded.

(b) A director may resign from his office by giving a notice in writing to the company as per Section 168 (1) of the Companies Act, 2013. On receipt of such notice, the Board shall take note of the same and the company shall intimate the Registrar in such manner,

within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company. Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days of resignation.

The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, resignation of Mr. Dilip Kumar, a director of ABC Co, may be accepted and it cannot be rejected on mere the ground that the copy of the letter has not been forwarded to the Registrar, It was held in Saumil Dilip Mehta vs. State of Maharashtra [2002], that a director can resign just by sending in writing a letter informing either chairman or secretary of company, his intention to resign from post of director of said company. He can tender his resignation unilaterally and without sending a notice to Registrar of Companies. Therefore, the resignation letter of Mr. Dilip Kumar may be accepted with effect from 25.04.2024 i.e. the date of receiving the intimation of the resignation of the director by the Chairman and not with effect from the date of sending the resignation letter.

This paper is subject to amendments in Acts and Regulations.