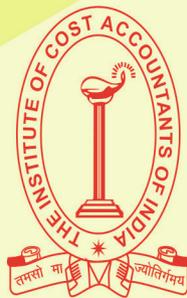




# LAWS & ETHICS

**Group - I**

**Paper - VI**



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**  
(Statutory body under an Act of Parliament)

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**SYLLABUS - 2016**

# **WORK BOOK**

## **LAWS & ETHICS**

### **INTERMEDIATE**

#### **GROUP – I**

#### **PAPER – 6**



**The Institute of Cost Accountants of India**

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## *Preface*

Professional education systems around the world are experiencing great change brought about by the global demand. Towards this end, we feel, it is our duty to make our students fully aware about their curriculum and to make them more efficient.

Although it might be easy to think of the habits as a set of behaviours that we want students to have so that we can get on with the curriculum that we need to cover. It becomes apparent that we need to provide specific opportunities for students to practice the habits. Habits are formed only through continuous practice. And to practice the habits, our curriculum, instruction, and assessments must provide generative, rich, and provocative opportunities for using them.

The main purpose of this volume is to disseminate knowledge and motivate our students to perform better, as we are overwhelmed by their response after publication of the first edition. Thus, we are delighted to inform our students about the **e-distribution of the third edition of our 'Work book'**.

This book has been written to meet the needs of students as it offers the practising format that will appeal to the students to read smoothly. Each chapter includes unique features to aid in developing a deeper understanding of the chapter contents for the readers. The unique features provide a consistent reading path throughout the book, making readers more efficient to reach their goal.

Discussing each chapter with illustrations integrate the key components of the subjects. In the third edition, we expanded the coverage in some areas and condensed others.

It is our hope and expectation that this third edition of work book will provide further an effective learning experience to the students like the second edition.

**The Directorate of Studies,**

**The Institute of Cost Accountants of India**



# Work Book

## LAWS & ETHICS

### INTERMEDIATE

#### GROUP – I

#### PAPER – 6

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## SECTION – A : COMMERCIAL LAWS

### Study Note – 1

### INDIAN CONTRACT ACT, 1872

**Learning Objective:** The objective of the course is to impart basic knowledge of the provisions of the Commercial Laws and the recent amendment along with relevant case law.

MCQ / Fill in the blanks:

- The law of contract is contained in the Indian Contract Act, 1872 which came into force on—  
(a) 1st September, 1872      (b) 15th September, 1873  
(c) 1st October, 1872      (d) 15th October, 1874
- Section 2(j) of the Indian Contract Act, 1872 defined-  
(a) Valid contract (b) void contract (c) voidable contract (d) quasi contract
- The breach of contract may be-  
(a) Actual (b) Anticipatory (c) none of the above (d) either of the above
- The person to whom the proposal is made is called the -  
(a) offerer (b) offeree (c) proposer (d) promisor
- Consideration can be classified into \_\_\_\_ types.  
(a) eight (b) nine (c) six (d) three
- An agreement with a party who is not competent to contract is-  
(a) void (b) voidable (c) valid (d) illegal
- Contingent contract is defined in section \_\_\_\_ of Indian Contract Act, 1872.  
(a) 30 (b) 31 (c) 32 (d) 34
- Pledge is a special kind of-  
(a) bailment (b) Rule (c) business (d) product

Answers:

Q. NO	1	2	3	4	5	6	7	8
ANS	A	B	D	B	D	A	B	A

MCQ/Fill in the blank:

- A proposal when accepted becomes a \_\_\_\_ and an agreement enforceable by law is \_\_\_\_.  
(A) agreement, acceptance (B) promise, contract  
(C) contract, promise (D) acceptance, consideration
- An agreement which prevents a person from carrying a lawful business is \_\_\_\_ under \_\_\_\_ of the Indian Contract Act, 1872.  
(A) void/section 27 (B) voidable/section 28  
(C) illegal/section 26 (D) valid/section 10



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3. Which of the following statements is true?  
 (A) Contract=agreement+ enforceability at law      (B) agreement = offer+ acceptance  
 (C) both      (D) none of the above
4. A and B entered into an agreement for the share of profit, among them, which is to be acquired by them by fraud. It is not a valid argument because-  
 (A) Its object is unlawful      (B) its considerations is unlawful  
 (C) its offer is unlawful      (D) it is an exceptional agreement
5. Contracts classified on the basis of performance are-  
 (A) Executed contract      (B) executory contracts  
 (C) partly executed or partly executory contracts      (D) all of the above.
6. Mistake of Fact can be two types-  
 (A) Own and foreign      (B) Unilateral & Bilateral  
 (C) Unilateral & Foreign      (D) Own and bilateral
7. Section 68 to \_\_\_\_ the Indian Contract Act describes the cases which are deemed \_\_\_\_ contracts.  
 (A) 72, Quasi      (B) 73, Contingent  
 (C) 74, Invalid      (D) 75, Void
8. Quantum Meruit means-  
 (A) as much as earned      (B) as much as performed  
 (C) as much as found      (D) as much as worked
9. The bailment of \_\_\_\_ as security for payment of a debt or performance of a promise is called \_\_\_\_.  
 (A) goods, pledge      (B) rule, void  
 (C) product, services      (D) services, void
10. Barun went into a restaurant and took a cup of tea. In this case, there is-  
 (A) No contract by Barun to pay for the cup of tea  
 (B) An implied contract that he will pay for the cup of the tea  
 (C) An express contract to pay for the cup of the tea  
 (D) A quasi contract to pay for the cup of tea

Answers:

Q. NO	1	2	3	4	5	6	7	8	9	10
ANS	B	A	A	A	D	B	A	A	A	B

1. State the essential elements of a valid contract as per Indian contract act.

Answer:

The following are the requirements for a valid contract-

- There shall be an offer or proposal by one party and acceptance of the proposal by the other party which results in an agreement;
- There shall be an intention to create legal relations or an intent to legal consequences;



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- The agreement shall be supported by lawful consideration;
- The parties to the contract shall be capable of contract;
- There shall be genuine consent between the parties to the contract;
- The object and consideration of the contract shall be legal and the same shall not be opposed to public policy;
- The terms of the consent shall be certain;
- The agreement is capable of being performed i.e., it is not impossible of being performed.

### 2. What is an Offer? What are the points to be considered for a valid offer?

**Ans.**

The term 'proposal' is otherwise called as 'offer'. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for promise, act or forbearance. Section 2(a) of the Act defines 'proposal' or offer as when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal or offer. The person making the proposal is called as 'offeror' or proposer' and the person the proposal is made is called as 'offeree'.

The offer must be a valid one. The following points are to be taken into account for a valid offer-

- The offer must be in clear, definite, complete and final terms. It should not be vague in terms;
- The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer;
- The communication may be in writing or oral;
- The communication may be in expressed terms or in implied terms;
- The offer may be general or specific – if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer;
- Communication of offer is complete when it comes to the knowledge of the person to whom it is made.

An offer which has been communicated properly continues as such until it lapses or revoked by the offeror or rejected or accepted by the offeree.

### 3. What is Consideration? What are the different types of consideration? State the Legal Rules Regarding Consideration.

**Answer:**

Section 2(d) of the Act defines the term 'consideration' which has been discussed in the early part of this material. Consideration is essential for every contract. The following are the fundamental principles for consideration-

- Consideration must be at the desire of the promisor;
- Consideration may move from the promisee or any other person;



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### Types of consideration

Consideration may be of the following types-

- **Executory or future** – it means it makes the form of promise to be performed in the future;  
Example – A makes an engagement with B to marry her in future.
- **Executed or present** – it is an act or forbearance made or suffered for a promise.
- **Past** – it means a past act or forbearance, that is to say, an act constituting consideration took place and is complete before the promise is made.

### Legal Rules Regarding Consideration:

1. It must move at the desire of the promisor
2. It may move from the promisee or any other person
3. Consideration must be something of value.
4. It may be an act, abstinence or forbearance or a return promise
5. It may be past, present or future which the promisor is already not bound to do.
6. It must not be unlawful.
7. Consideration need not be adequate
8. It must not be illusory
9. It must not be opposed to public policy
10. Pre-existing obligations

#### 4. Explain the general rule “ex-nudopacto non oritur action “.

##### Answer:

The general rule is ex-nudopacto non oritur action i.e. an agreement made without consideration is void. For example; if A promises to pay B ₹1,000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in section 25 itself. As per section 25, an agreement made without consideration is not void in the following circumstances:

1. Promise made on account of natural love and affection.
2. Promise to compensate for voluntary services.
3. Promise made to pay a time barred debt.
4. Gift actually made:
5. Creation of agency:
6. Charitable subscription
7. Bailment out of gratituted
8. Undertaking guarantee out of gratitude

#### 5. Write short notes on – [a] stranger to contract / doctrine of privity of contract [b] Lapse of offer

##### Answer:

##### [a] stranger to contract / doctrine of privity of contract:

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



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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 Chacko 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

### **[b] Lapse of offer**

Section 6 provides for the method to revoke the offer. An offer may be lapsed if-

- it is not accepted within the specified time or after a reasonable time;
- it is not accepted in the mode prescribed; if no mode is prescribed in some usual and reasonable manner;
- the offeree rejects it by distinct refusal to accept it;
- either the offeror or the offeree dies before its acceptance;
- the acceptor fails to fulfill a condition precedent to an acceptance;
- the offeree makes a counter offer, it amounts to rejection of the offer and an offer by the offeree may be accepted or rejected by the offeror.

### **6. What do you mean by “E-contract”? State its ingredients and features.**

#### **Answer:**

Electronic contracts are paperless contract. It is in electronic form. It is the change of technology and legal requirements lead the contract to be in electronic form. E-contract is a contract modeled, specified, executed and deployed by a software system. They are conceptually very similar to traditional commercial contracts. E-contract also requires the basic elements of a contract.

The following are ingredients of the e-contracts-

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall an intention to create legal relations;
- The parties must be competent to contract;
- There must be free and genuine consent;
- The object of the contract must be lawful;
- There must be certainty and possibility of performance.



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The main feature of this type of contract is speed, accurate and reliable. The parties to the contract have to obtain digital signature from the competent authority and they have to affix the digital signature instead of manual signing. The Information Technology Act, 2000 regulates such e-contracts. In this type of contract the web site of the offeror acts as a display to the world at large. E-mails are used to negotiate and agree on contract terms and to send and agree to the final contract. An email contract is enforceable if the requirements of the contract are fulfilled. Electronically signed contracts cannot be denied because they are in electronic form and delivered electronically.

### 7. What is bilateral mistake? State the different types of bilateral mistake.

#### Answer:

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

**Explanation:** An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

In order to render a contract void due to bilateral mistake the following two conditions must be met.

- (a) Mistake must be mutual:** Both the parties must misunderstand each other and should be at cross purpose.
- (b) Mistake must relate to a matter of fact essential to the agreement:** What is essential fact of an agreement depends upon the nature of promise in each case.

**The various types of mistakes falling under bilateral mistakes are as under:**

#### **(i) Mistake as to subject matter covers following cases:**

- (a) Mistake as to existence of subject matter:** If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.
- (b) Mistake as to identity of subject matter:** It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identify of subject matter.
- (c) Mistake as to the quality of the subject matter:** If the subject matter is something essentially different from what the parties thought to be, the agreement is void.
- (d) Mistake as to quantity of subject matter:** Bilateral mistake as to quantity of subject matter would render the contract void.
- (e) Mistake as to title of subject matter:** The agreement is void due to bilateral mistake as to title of the subject matter.
- (f) Mistake as to price of the subject matter:** Mutual mistake as to price of the subject matter would render the agreement void.



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(ii) **Mistake as to possibility of performance of Contract Impossibility may be:**

(a) **Physical impossibility:** A contract is void if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.

(b) **Legal impossibility:** A contract is void if it provides that something shall be done which as a matter of law cannot be done.

8. **What is a Sound Mind for the Purposes of Contracting? Give example.**

**Answer:**

A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests [Section 12].

A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

**Examples:**

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Going by the spirit of the section it is clear that a person is of sound mind if he fulfills the following two conditions.

(i) He/she is capable of understanding the contract.

(ii) He/she is capable of forming a rational judgment about the effects of such contract on his interest.

A person not satisfying any of these two conditions is not treated as a person of sound mind.

9. **What is Fraud? Does silence amount to fraud? Elucidate the Effect of Fraud.**

**Answer:**

As per section 17 of the 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;



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- (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.

**Explanation:** Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

### **Does silence amount to fraud?**

At times one of the parties to a contract makes silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors?

Explanation to section 17 of the Indian Contract Act provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Thus we can say that there is exception to the rule that mere silence does not amount to silence. These two exceptions are provided in explanation to section 17 as under which we have already discussed above.

- (i) When there is a duty to speak.
- (ii) Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

**(a) Where there is change in circumstances-** A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly this must be communicated to other party otherwise it amount to fraud.

**(b) When there is half-truth-** Thus even when a person is not bound to disclose a fact he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

**Effect of Fraud:** According to section 19 when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true.

However there is one exception to the rule of voidability of contract at the option of aggrieved party. If such consent was caused by misrepresentation, or by silence, fraudulent within the meaning of section 19 the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means to discovering the truth with ordinary diligence.

### 10. What is a quasi contract? What are the different types of quasi contract?

#### Answer:

Sometimes the law implies a promise imposing obligations on one party and conferring the right in favor of the other even when there is no offer, no acceptance, no consensus ad idem, and in fact, there is neither agreement nor promise. Such cases are not contracts but the court recognizes them as relations resembling those of contracts and enforces them as if they were contracts. Such is called as a quasi contract.

This type of contract rests on the equitable principle that a person shall not be allowed to enrich himself unjustly in the experience of another. It is obligation which the law creates in the absence of any agreement, when any person is in the possession of one persons money or its equivalent under such circumstances that in equity and good conscience he ought not to retain it and which in justice and fairness belongs to another. It is the duty and not an agreement or intention which defines it.

In the Act the following type of quasi contracts are discussed-

- Section 68 – **Claim for necessaries supplied to person incapable of contracting, or on his account** - This section provides that if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied with another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person;
- Section 69 – **Reimbursement of persons paying money due by another, in payment of which he is interested** – This section provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, entitled to be reimbursed by the other;
- Section 70 – **Obligation of person enjoying benefit of non gratuitous act** – This section provides where a person lawfully does anything for another person, or delivers anything to him, to intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered – it is otherwise called as quantum meruit;
- Section 71 – **Responsibility of finder of goods** – This section provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee;
- Section 72 – **Liability of person to whom money is paid or thing delivered by mistake or under coercion** – This section provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

### 11. Explain the concept of Contract of Guarantee

#### Answer:

Section 126 defines the expression 'the contract of guarantee' as a contract to perform the promise, or discharge the liability of a third person in case of his default. The components of this contract consist of-

- Surety – the person who gives the guarantee is called as the 'surety';

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- Principal debtor – the person in respect of whose default the guarantee is given is called the 'principal debtor';
- Creditor – the person to whom the guarantee is given is called the 'creditor'.

A guarantee may be either oral or written. It is a tripartite agreement which contemplates the principal debtor, the creditor and the surety.

### 12. Explain the Difference between Indemnity and Guarantee

**Answer:**

The contract of indemnity is differing from the contract of guarantee in the aspects shown in the following table:

Sl. No.	Contract of Indemnity	Contract of guarantee
1	In this contract there are two parties – the indemnifier and the indemnified	In this contract three parties are involved – principal debtors, surety and creditor
2	The primary liability is on the indemnifier	The principal liability is on the principal debtors. Secondary liability is on the surety.
3	The indemnifier is not acting at the request of the debtor.	The surety gives contract at the request of the principal debtors.
4	The possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.
5	The indemnifier cannot sue the third party in his own unless there is an assignment.	The surety is entitled to proceed against the principal debtor when he is obliged to perform the guarantee
6	The contract is between the indemnifier and indemnified.	The contract is between the principal debtor-creditor; surety – creditor; principal debtor- surety.

### 13. What is discharge of contracts? What are the various modes of discharge of contracts?

**Answer:**

When the rights and obligations created by a contract comes to an end, the contract is said to be discharged or terminated. In other words, discharge of contract means termination of contractual relationship between the parties.

#### **Modes of discharge of contracts:**

The following are the various modes or methods by which a contract is discharged.

1. Discharge by performance
2. Discharge by agreement
3. Discharge by lapse of time
4. Discharge by operation of law
5. Discharge by impossibility of performance
6. Discharge by breach of contract



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### 14. What is pledge? Distinguish between pledge and bailment.

#### Answer:

Pledge: Section 172 of the Act provides that the bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The pledge constitutes-

- Pawner – The bailor in this case is called as pawner;
- Pawnee – the bailee in this is case as pawnee.

A pledge is a bailment of moveable property by way of security. The concept of pledge under this Act is dealt with Sections 172 to 179. In Maharashtra State Co-operative Bank Limited V. Assistant Provident Fund Commissioner – (2009) 10 SCC 123 it was held that in a pledge the pledge is in possession of and has a special property in the goods which he is entitled to detain to secure repayment. Unlike a mortgage, a pledge does not have the effect of transferring any interest in the property in favor of the pledge. Delivery of goods is necessary to complete a pledge.

#### Difference between pledge and bailment

Section 172 of the Act defines a pledge to be the bailment of goods as security for payment of debt or performance of a promise whereas Section 148 provides that a bailment is the delivery of goods by one person to another person for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them.

### 15. Elucidate the Rights of principal with suitable example.

#### Ans.

The rights of principal are described in Sections 215 and 216.

Section 215 provides that if an agent deals on his own account in the business of the agency, without first obtaining the consent of the principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the Principal may repudiate the transaction, if the case shows, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

#### Example –

- (a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material act, or that the sale has been disadvantageous to him;
- (b) A directs B, to sell A's estate. B on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the



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discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

- Section 216 provides that if an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

**Example –** A directs B, his agent, to buy a certain house for him. B tells A that it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.



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## Study Note – 2

### SALE OF GOODS ACT, 1930

**Learning Objective:** The objective of the course is to impart basic knowledge of the provisions of the Commercial Laws and the recent amendment along with relevant case law.

MCQ / Fill in the blanks:

1. A contract for the sale of 'future goods' is-  
(a) sale (b) agreement to sell (c) sale on approval (d) hire purchase agreement
2. Section \_\_\_\_ of the Sale of Goods Act defines delivery.  
(a) 2(3) (b) 2(2) (c) 2(4) (d) 2(5)
3. Buyer can suit for non-delivery u/s \_\_\_\_ of Sale of Goods Act, 1930.  
(a) 57 (b) 59 (c) 58 (d) 60

Answers:

Q.NO	1	2	3
ANS	B	B	A

MCQ/Fill in the blank:

1. The terms 'condition' and 'warranty' are respectively defined in \_\_\_\_ and \_\_\_\_ of the Sale of Goods Act, 1930.  
(A) Section 12(1), 12(2) (B) Section 12 (2), 12(3) (C) Section 12 (3), 12(4) (D) Section 7 and 8
2. The loss of destruction of goods falls on \_\_\_\_ in case of sale, and on \_\_\_\_ in case of agreement to sell.  
(A) Buyer, seller (B) seller, buyer (C) auctioner, agent (D) none of them
3. The doctrine of caveat emptor is given in section \_\_\_\_, and it implies \_\_\_\_\_.  
(A) 15, let the seller beware (B) 16, let the buyer beware  
(C) 18, let seller take care of buyer's interest (D) 17, let the buyer claim damages
4. An/A \_\_\_\_ sale is complete on the \_\_\_\_  
(A) Auction, fall of hammer (B) Ideal, payment of Price  
(C) Outstanding, delivery of goods (D) Both (B) and (C)

Answers:

Q.NO	1	2	3	4
ANS	B	A	B	A

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**1. State the Difference between contract of sale and agreement to sell.**

**Answer:**

Basis	Contract of sale	Agreement to sell
1. Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
2. Type of contract	It is an executed contract	It is an executory contract
3. Type of goods	Sales takes place only for existing and specific goods.	Future and contingent goods.
4. Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer
5. Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer	The seller can sue for damages only in case of breach by the buyer
6. General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller	It gives a right to the buyer against the seller to sue for damages
7. Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the Official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of the seller	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

It may be said that agreement to sale becomes an agreement of sale by performance of one or both the parties.

**2. What is contract of sale? Explain in brief the essentials of a Contract of Sale.**

**Answer:**

According to section 4(1) "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

**Essentials of a Contract of Sale**

The following are thus the essentials of a contract of sale of goods:

- (1) **Bilateral contract:** It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself.



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- (2) **Transfer of property:** The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.
- (3) **Goods:** The subject matter must be some goods.
- (4) **Price** or money consideration: The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.
- (5) **Transfer of possession:** The possession, may be actual or symbolic has to be transferred.

All essential elements of a valid contract must be present in a contract of sale.

### 3. Define the term “Condition and Warranty” and explain the differences.

**Answer:**

Section 12(1) provides that a stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

#### **Condition [Section 12(2)]**

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated.

A condition in a contract of sale of goods is of fundamental nature for breach of which the buyer can repudiate the contract.

#### **Warranty [Section 12(3)]**

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

### 4. Differences between Condition and Warranty

Sl. No.	Condition	Warranty
1.	A condition is a stipulation which is essential to the main purpose of the contract.	A Warranty is a stipulation which is collateral to the main purpose of the contract.
2.	The aggrieved party can repudiate the contract of sale in case there is a breach of a condition	The aggrieved party can claim damages only in case of breach of a warranty.
3.	A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only	A breach of a warranty, can not be treated as a breach of a condition.



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### 5. State the remedies Available to the Buyer for Breach of Conditions

**Answer:**

- (a) Affected party may claim refund of price and reject the goods;
- (b) Elect to treat breach of condition as breach of warranty and claim damages or compensation;
- (c) When the affected parties treat breach of condition as breach of warranty he cannot repudiate the contract but claim damages only;
- (d) No remedy is available when the fulfillment of condition is excused by law by means of impossibility or otherwise 13(3).

### 6. Explain different types of implied warranties.

**Answer:**

Implied warranties are of following types, which are as under:

#### (i) Warranty of quiet possession [Sec.14 (b)]

If the buyer in any way is disturbed from enjoying the quiet possession of goods purchased because of seller's defective title, the buyer can claim damages from seller. It is a warranty that neither the seller shall not nor shall anybody claiming under a superior title or under his authority interfere with the quite enjoyment of the superior title or under his authority interfere with the quite enjoyment of buyer.

#### (ii) Warranty of freedom from encumbrances [Sec.14(c)]

The buyer is also entitled to additional warranty that the goods are free from any charge or right of any third party, not declared or known to the buyer. It is presumed that the goods are free of third parties charges if it is otherwise the buyer is entitled to claim damages from the seller.

#### (iii) Warranty as to quality or fitness by usage of trade:

An implied warranty as to quality or fitness for a particular purpose may be annexed by usage of trade.

#### (iv) Warranty to disclose dangerous nature of goods:

Where a person sell goods knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger he must be warn the buyer of the probable danger, otherwise he will be liable in damages.

### 7. What do you mean by doctrine of “caveat emptor”? State its exceptions.

**Answer:**

The term “caveat emptor” is a Latin word which means “let the buyer beware”. This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that



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purpose. The doctrine of caveat emptor is embodied in Section 16 of the Act which states that “subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale”. In simple words, it is not the seller’s duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of Ward v. Hobbs, (1878) 4 A.C. 13, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer’s own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer’s duty to satisfy him regarding the health of the pigs.

**Exceptions:** Section 16 lays down the following exceptions to the doctrine of Caveat Emptor:

- (1) Where the seller makes a false representation and the buyer relies on it.
- (2) When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.
- (3) When the buyer, relying upon the skill and judgment of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.
- (4) Where goods are bought by description from a seller who deals in goods of that description

**8. What do you mean by “delivery” in Sale of goods act 1930. What is part delivery? State the rules for the delivery as per act.**

**Answer:**

### **Delivery**

Section 33 provides that the delivery of goods sold may be made-

- by doing anything which the parties agree; or
- which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf;

Section 35 provides that the seller of goods is not bound to deliver them until the buyer applies for the delivery apart from any express contract.

### **Part delivery**

Section 34 deals with the effect of part delivery. A delivery of part of goods, in progress of the delivery of the whole, has the same effect as a delivery of the whole for the purpose of passing the property in such goods. If a delivery of part of the goods is done with an intention of severing it from the whole, then it does not operate as a delivery to the reminder.

### **Rules for the delivery**

Section 36 provides rules for the delivery as detailed below:



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- Apart from any contract goods sold are to be delivered
- At the place at which they are at the time of the sale; and
- Goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell; or, which is called "as is where is" basis.
- If not then in existence, at the place at which they are manufactured or produced;
- Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time;
- Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless until such third person acknowledges to the buyer that he holds the goods on his behalf; This shall not affect the operation of the issue or transfer of any document of title to the goods;
- Demand or tender of delivery may be treated as ineffectual unless made at reasonable hour;
- Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller

**9. What do you mean by Unpaid Seller? Explain the rights of unpaid seller against the Goods.**

**Answer:**

**Unpaid seller:**

The seller of the goods is deemed to be 'unpaid seller' within the meaning of this Act-

- when the whole of the price has not been paid or tendered;
- when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instruments or otherwise;

Section 45(2) defines the term 'seller' as including any person who is in the position of a seller as an agent of the seller to whom the bill of lading has been endorsed or a consignor or agent who has himself paid, is directly responsible for the price.

**Rights of an Unpaid Seller against the Goods**

An unpaid seller's right against the goods are:

- (a) A lien or right of retention
- (b) The right of stoppage in transit.
- (c) The right of resale.
- (d) The right to withhold delivery

**(a) Right of Lien (Sections 47-49 and 54) :** An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfillment or tender of the price in cases where the:

- (i) goods have been sold without stipulation as to credit; or
- (ii) goods have been sold on credit, but the term of credit has expired; or
- (iii) buyer becomes insolvent.



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The lien depends on physical possession. The seller's lien is possessory lien, so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.

A lien is lost –

- (i) When the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods;
- (ii) When the buyer or his agent lawfully obtains possession of the goods;
- (iii) By waiver of his lien by the unpaid seller

**(b) Stoppage in transit (Sections 50-52):** The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller when the -

- (i) buyer becomes insolvent; and
- (ii) goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:

- (i) If the buyer obtains delivery before the arrival of the goods at their destination;
- (ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;
- (iii) If the carrier wrongfully refuses to deliver the goods to the buyer.

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.

The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller's claim to the carrier or other person having control of the goods. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the redelivery.

The seller's right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller's right.

**(c) Right of re-sale** (Section 54):

The unpaid seller may re-sell where the -

- (i) goods are perishable;
- (ii) right is expressly reserved in the contract;
- (iii) in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realised, he is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

**(d) Rights to withhold Delivery:**

If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

**10. 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;
- 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.



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## Study Note – 3

### NEGOTIABLE INSTRUMENTS ACT, 1881

**Learning Objective:** The objective of the course is to impart basic knowledge of the provisions of the Commercial Laws and the recent amendment along with relevant case law.

MCQ / Fill in the blanks:

1. In India Negotiable Instruments Act came into force in the year-  
(a) 1861 (b) 1881 (c) 1871 (d) 1981
2. Bearer cheques are also known as \_\_\_\_\_ cheques.  
(a) Crossed (b) General (c) Special (d) Open
3. The liability on the instrument may be discharged by  
(a) cancellation (b) release (c) payment (d) any one of the above methods
4. A cheque shall be deemed to be crossed specially-  
(a) On addition of the name of the banker (b) drawing two lines parallel  
(c) any of (a) or (b) (d) none of (a) or (b)

Answers:

Q. NO	1	2	3	4
ANS	B	D	D	A

MCQ/Fill in the blank:

1. Features of Negotiable instruments are -  
(A) Written and signed (B) Recovery (C) Freely transferable (D) All of the above
2. An instrument is \_\_\_ by \_\_\_ as per N.I Act, 1881  
(A) Discharged/ Cancellation (B) Closed/ release (C) Closed/ Payment (D) None
3. Cheque can be of \_\_\_ types and crossing of cheques can be of \_\_\_ types.  
(A) three, two (B) two, two (C) two, three (D) three, three
4. The \_\_\_ of Promissory Note has been given in section-  
(A) scope, 2 (B) definitions, 4 (C) role, 3 (D) function, 5
5. Holder in due course means any person-  
(A) Drawing the instrument  
(B) who for consideration became the possession of promissory note  
(C) Named in the instrument to whom or to whom order the money is directed to paid  
(D) none of the Above
6. Who may negotiate?  
(A) drawer (B) payee (C) All of the joint makers (D) Any of ( a) to (c)



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### Answers:

Q.NO	1	2	3	4	5	6
ANS	D	A	B	B	B	D

### 1. What is Negotiable Instrument? Discuss the essential features of a Negotiable Instrument.

#### Answer:

Section 13 of the Act defines the terms 'negotiable instrument' as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque-

- is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;
- is payable to the bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank;
- Either originally or by endorsement, is expressed to be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

Section 13 shows that the Act is confined to three specific types of instruments most in common use, namely, promissory notes, bills of exchange and cheques. The Contract Act is a general statute dealing with contracts. The Negotiable instruments Act is a statute dealing with a particular form of the contract. The law laid down for special cases must always overrule the provisions of general character as held in 'Kwong Hip Lone Saw Mill Co. V. C.A.M.A.L. Firms' – AIR 1933 Rang.131. The following are not/considered as negotiable instruments-

- Share certificate passing from hand to hand with blank transfers – Hazarimaul V. Statis Chandra' – ILR 46 Cal.331;
- Deposit receipts – Anantharam V. O.L., of T.N.Q. Bank' – 1939 Mad W.N. 1096;
- Mate's receipt – Nacheppa Chetty V. Irravaddy Flotila & Co., - ILR 41 Cal. 670;
- Bill of lading – United Bank of India V. N.S. Bank – AIR 1959 Cal. 328;
- A benefit under a letter of credit – Joseph Pyke & Son V. Kedarnath- AIR 1962 Cal.326.
- Money order/Postal order

#### Essential Features of a Negotiable Instrument:

1. It must be in writing.
2. It should be signed by the maker or drawer.
3. There must be a promise or order to pay.
4. The promise or order must be unconditional.
5. It must call for payment in money and money only.
6. It should call for payment of a certain sum.
7. The property in the instrument may be passed in two ways by:
  - (a) mere delivery; and
  - (b) endorsement and delivery.
8. The consideration is also presumed to have been passed



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### 2. Distinguish between-

[A] Promissory Note and bill of exchange

[B] Promissory Note and Cheque

[C] Bill of Exchange and Cheque

Answer:

#### [A] Distinction between Promissory Note and Bill of Exchange

Promissory Note		Bill of Exchange	
1.	It is defined in Sec. 4 of NI Act, 1881.	1.	It is defined in Sec. 5 of the NI Act, 1881.
2.	There are <b>two</b> parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety"	2.	There are <b>three</b> parties: • Drawer. • Drawee. • Payee.
3.	It contains a <b>Promise</b> to pay.	3.	It contains an <b>order</b> to pay.
4.	<b>No conditions</b> shall be made in a promissory note.	4.	A bill may be <b>accepted conditionally</b> .
5.	The liability of a maker of the promissory note is primary and absolute.	5.	The liability of the drawee of a bill of exchange is secondary and conditional.

#### [b] Distinction between Promissory Note and Cheque

Promissory Note		Cheque	
1.	It is defined in Sec. 4 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are two parties: • Maker. • Payee If it is given a guarantee, then there will be a third person, who is called as "Guarantor" or "Surety".	2.	There are three parties: • Drawer. • Drawee. • Payee.
3.	Promissory note contains a promise to pay the sum with interest or without interest at a later date.	3.	A cheque is payable immediately on demand without any days of grace.
4.	Promissory note is not crossed.	4.	Cheque can be crossed.
5.	No protection is available to the payee of note.	5.	Statutory protection is given to the drawee banker. (Sec. 128)
6.	A promissory note cannot be self drawn.	6.	A cheque can be self drawn or bearer cheque.

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7.	No criminal liability shall be imposed on the maker.	7.	Criminal Liability may be imposed on drawee for the dishonour of cheques in certain circumstances.
8.	Stamp is necessary.	8.	Stamp is not necessary.
9.	Limitation: 3 years	9.	Limitation: 6 months

### [c] Distinction between bill of exchange and Cheque

Bill of Exchange		Cheque	
1.	It is defined in Sec. 5 of NI Act, 1881.	1.	It is defined in Sec. 6 of the NI Act, 1881.
2.	There are three parties: <ul style="list-style-type: none"> <li>• Drawer.</li> <li>• Drawee.</li> <li>• Payee.</li> </ul>	2.	There are three parties: <ul style="list-style-type: none"> <li>• Drawer.</li> <li>• Drawee.</li> <li>• Payee.</li> </ul>
3.	Bills of exchange are not crossed.	3.	Cheques may be crossed.
4.	Generally three days of grace are given for the payment in case of a bill of exchange. However, this convenience is not allowed in case of bill of exchange payable on demand.	4.	Immediate payment is required in case of cheque. No grace days are allowed.
5.	Anybody including banker may be a drawee in case of bill of exchange.	5.	The drawee is always a banker.
6.	It must be accepted before the acceptor can be made liable upon it.	6.	It requires immediate payment. It does not require acceptance of the maker.
7.	Where a Bill of Exchange is not paid and not honoured, a notice of dishonour should be sent to the drawer to charge him.	7.	Where a cheque is dishonoured, Notice of Dishonour is not strictly necessary. The banker can return the cheque with the memo "Refer to Drawer" which is a sufficient notice.
8.	Statutory protection is not available.	8.	Sec. 85 of the N.I Act, 1881 affords protection to bankers.
9.	Civil Liability in case of dishonour of bill of exchange.	9.	Criminal liability in case of dishonour of a cheque/bouncing of a cheque and is liable to be prosecuted under Sec. 138 of the N.I. Act, 1881.

3. **What do you mean by Holder? What is Holder in due course? Discuss the difference between holder and holder-in-due course.**

**Answer:**

Section 8 defines the term 'holder'. The holder of a promissory note or a bill of exchange or cheque is any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

In 'Anjaniah V. Nagappa' – AIR 1967 AP 61 it was held that the term 'holder' as defined in Section 8 of the Act would not include a person, who, though in possession of the instrument, had no right to recover the amount due from the parties thereto, such as the finder of a lost instrument payable to bearer or a thief in possession of such an instrument, or even the payee himself, if he is prohibited by an order of court from receiving the amount due on the instrument. Where a plaintiff sued not as a holder in possession of the promissory note but claimed to recover the debt, on the basis of a succession certificate, he would be the only person entitled to recover the debt.

**Holder in due course** – Section 9 defines the term 'holder in due course. It means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or the endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In 'Braja Kishore Dikshit V. Purna Chandra Panda' – AIR 1957 Ori. 153 the High Court held that the holder in due course under Section 9 has to satisfy the following three conditions-

- An endorsee becomes a holder in due course for consideration;
- He can become an endorsee before the amount mentioned in the promissory note became payable; and
- He should have no sufficient cause to believe that any defect existed in the title of the person from whom he was to derive his title.

As regard to the second condition the promissory note becomes payable either on demand or at maturity.

**4. Difference between holder and holder-in-due course**

Holder	Holder in due course
1. Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	1. Holder in due course possesses the instrument for consideration before maturity and in good faith.
2. Title of the holder is subject to title of the transferor.	2. Holder in due course gets a better title than transferor.
3. Holder may receive the instrument without consideration.	3. Holder in due course always receives the instrument for consideration.
4. Holder does not get certain privileges available to the holder in due course.	4. Holder in due course always gets privileges not available to holder.

### 5. What are the different types of Instruments provided in NI Act?

#### Answer:

There are various types of instruments mentioned in the NI Act as follows:

- **Inland instrument** – a promissory note, bill of exchange or cheque drawn or made in India and made payable in or drawn upon any person resident in, India shall be deemed to be an inland instrument.
- **Foreign instrument** – a promissory note, bill of exchange or cheque not drawn, made or made payable, in India, shall be deemed to be a foreign instrument.
- **Ambiguous instrument** – where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election, treat it as either and the instrument shall be thenceforward treated accordingly.
- **Instruments payable on demand** – A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.
- **Inchoate stamped instruments** – Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments for the time being in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under.

### 6. What is Notice? When notice is not essential?

#### Answer:

Section 93 provides that when an instrument is dishonored the holder must give notice that the instrument has been dishonored to all prior parties whom he wants to make liable. In 'Union bank V. Dina Nath' – AIR 1953 All. 637 it was held that this section was intended to confine the holder's right of enforcing the liability to only those who are otherwise liable under the law and to whom notice has been given; it was not intended to enlarge the holder's right so as to enable him to claim damages from persons against whom he has no remedy under the Act.

#### Notice – when not necessary?

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;



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- 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.

**7. Briefly narrate the recent changes in The Negotiable Instruments (Amendment) Act 2018. Explain the background and purposes behind these changes.**

As the central government pushes for a cashless economy, legislative steps are under way to fortify other instruments of financial transactions, including cheques. With the objective of reducing delay in proceedings pertaining to dishonour of cheques and to provide interim relief to the payee in such cases, the Negotiable Instruments (Amendment) Act 2018 has been introduced in August, 2018. In a move to prevent unscrupulous elements from holding back payment through an often long-drawn litigation in cheque bounce cases, the government has come up with a series of amendments to the N. I. Act, 1881. This law was enacted to define and amend the law relating to promissory notes, bills of exchange, and cheques.

The Negotiable Instruments (Amendment) Act 2018 introduces a new clause which allows the payment of interim compensation to the aggrieved party as an immediate relief when the case reaches the court. In the statement of objects and reasons for the Act, the government points out that though the 1881 Act was amended from time to time to provide for the speedy disposal of cases relating to the offence of dishonour of cheques, it has been receiving several representations from the public, including from the trading community, relating to pendency of cheque dishonour cases. "This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings," the statement says.

This delay has slowly eroded the faith of the traders in the use of cheques, it reasons. Injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

The purpose of the Act is to provide interim relief to the aggrieved party till the final solution of the cheque dishonour case in court, and to discourage frivolous and unnecessary litigation which would save time and money.

The new Section 143A provides for the court trying a cheque dishonour case under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant at the time of framing of charges. The interim compensation shall not exceed 20% of the amount of the cheque.

A second provision, Section 148, allows the Appellate Court to first order the party convicted in a cheque bounce case to deposit 20% of the of the fine or compensation awarded by the trial court. The above amendments will strengthen the credibility of cheques.



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## Study Note – 4

### INDIAN PARTNERSHIP ACT, 1932

**Learning Objective:** The objective of the course is to impart basic knowledge of the provisions of the Commercial Laws and the recent amendment along with relevant case law.

MCQ / Fill in the blanks:

- In the absence of any agreement, the partners are entitled to share the profits-  
(a) equally (b) in the ratio of capital (c) as decided by registrar (d) in the ratio of loan advanced.
- The legal definition of 'Partnership' is given in \_\_\_\_\_ of Indian Partnership Act, 1932.  
(a) Section 2 (b) Section 3 (c) Section 4 (d) Section 5
- Voluntary dissolution of partnership firm can be of \_\_\_ types  
(a) two (b) four (c) three (d) five

Answers:

Q. NO	1	2	3
ANS	A	C	B

MCQ/Fill in the blank:

- Where there is no provision in the \_\_\_ deed regarding the dissolution of partnership, firm is known as \_\_\_\_.  
(A) Business, indefinite partnership (B) Partnership, partnership at will  
(C) Trade, contingent partnership (D) Business, general partnership
- A partner has no implied authority to -  
(A) Enter into partnership on behalf of the firm  
(B) Purchase goods of the kind used in firm's business  
(C) Engage servants to perform the business of the firm  
(D) Engage a lawyer and defined the action brought against the firm
- A partner can \_\_\_\_\_ an existing firm only with the consent of all the partners as per sections 32 of Partnership Act, 1932.  
(A) enter, into (B) retire, from (C) join, from (D) insolvent, from
- The liabilities and \_\_\_ of an expelled partner are the same as those of a \_\_\_ partner.  
(A) duties, minor (B) duties, incoming (C) position, insolvent (D) rights, retiring

Answers:

Q. NO	1	2	3	4
ANS	B	A	B	D

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### 1. What is partnership? State the difference between partnership and company.

**Answer:**

Section 4 defines the term 'partnership' as the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The term 'partners' is defined as persons, who have entered into partnership with one another are called individually 'partners'. A 'firm' is the collective of the partners. The 'firm name' is the name under which the business is carried on.

The following are the essential ingredients for the constitution of a partnership-

- There should be an agreement between the parties;
- The agreement must be to share the profits of the business; and
- The business must be carried on by all or any of them acting for all;
- The existence of an agency between the concerned persons inter-se.

The agreement need not be in writing. It may be oral. It may be express or implied.

### 2. Difference between a partnership and a company

**Answer:**

The following are the differences between the partnership and a company:

Basis	Partnership	Company
Legal entity	It is no. It is not a separate legal entity.	It is a separate legal entity.
Liability	The liability of the partners is unlimited.	The liability of the members of the company is limited.
Number of members	Minimum required is two. Maximum number is 50 subject to some exceptions	Minimum number of members for a private company is 2 and maximum 200. Minimum number of members for a public limited company is 7 and there is no limit for maximum.
Transfer of shares	A partner cannot transfer his share without the consent of other members	Transfer of shares in a public limited company is not a restricted one.
Management	The firm can be run by all or any of the partners.	The Board of Directors is having responsibility to run the management
Relationship	The relationship with partners is of that of agency.	No such relationship in the company.
Profit distribution	Profit is distributed according to the agreement entered between partners; if no agreement equal distribution.	No requirement of profit distribution to members. It is at the discretion of the management to declare dividend that too only out of profits.
Remedy to creditors	The creditors of a firm can proceed against the partners jointly and severally.	The creditors can proceed only against the company and not against shareholders.



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## Study Note – 5

### LIMITED LIABILITY PARTNERSHIP ACT, 2008

**Learning Objective:** The objective of the course is to impart basic knowledge of the provisions of the Commercial Laws and the recent amendment along with relevant case law.

MCQ / Fill in the blanks:

1. LLP defined in the LLP Act, 2008 under section \_\_\_\_  
(a) 2(1)(n) (b) 2(1)(e) (c) 2(2) (d) 2(1)(a)
2. Incorporation documents and subscribers statement provided in-  
(a) E-form 1 (b) E-form 2 (c) E-form 3 (d) E-form 4

Answers:

Q.NO	1	2
ANS	A	B

MCQ/Fill in the blank:

1. Limited Liability Partnership [LLP] is managed as per LLP \_\_\_\_\_ and there is no idea of any \_\_\_\_\_.  
(A) Deed, contribution (B) Agreement, share capital  
(C) Rules, agreement (D) Book, designated partner
2. Foreign nationals \_\_\_\_ become a partner in a LLP but minor \_\_\_\_ be admitted to the benefits of LLP.  
(A) can't, can (B) can, can't (C) never, always (D) with Indian origin, with parents
3. Some of the advantages of LLP are -  
(A) easy to incorporate (B) body corporate  
(C) easy to manage (D) all of the above
4. For Application for reservation of name two prerequisites are-  
(A) DIN & PAN (B) PAN & DSC (C) DIN & DSC (D) PAN & TAN

Answers:

Q.NO	1	2	3	4
ANS	B	B	D	C



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### 1. Write the Difference between partnership and limited liability partnership.

Answer:

Basis	Partnership	Limited Liability Partnership
1. Legal entity	It is not a separate legal entity	It is a separate legal entity
2. Liability	The liability of the partners is unlimited.	The liability of the members of the LLP is limited.
3. Number of members	Minimum required is two. Maximum number is 50 subject to some exceptions	Minimum number of members for a LLP is 2 and no limit for maximum numbers.
4. Entering into contracts	Partnership is not a separate person and enter into contract on behalf of its partners	LLP is capable of entering into contracts and holding property in its own name
5. Compliance of law	Lesser compliance	More compliance under LLP Act.
6. Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise e than agreed to in the agreement.	LLP can be dissolved by complying with the provisions of LLP (Winding up and Dissolution) Rules, 2012.

### 2. State the provision of Appointment, Removal and Resignation of auditor as per LLP Act 2008

Answer:

#### Appointment of auditor

A Chartered Accountant in practice is qualified for appointment as an auditor. The auditor(s) shall be appointed for each financial year of the LLP for auditing its accounts. The designated partners may appoint an auditor(s)-

- at any time for the first financial year but before the end of the first financial year;
- at least 30 days prior to the end of each financial year (other than the first financial year); (to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of LLP exceeds the limits; or
- to fill up the vacancy caused by removal of an auditor.

If the designated partners have failed to appoint auditor(s), the partners may appoint an auditor or auditors. An auditor appointed shall hold office in accordance with the terms of his or their appointment and shall continue to hold such office till the period-

- the new auditors are appointed; or
- they are re-appointed. Rule 24 (14) provides that where no auditor has been appointed, any auditor in office shall be deemed to be re-appointed unless-
- the LLP agreement requires actual reappointment; or
- the majority of partners have determined that he should be reappointed and have given a notice to this effect to the LLP.



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A notice may be in hard copy or electronic form and must be authenticated by the person or persons giving it.

The above shall be applicable to removal and resignation of auditors.

The remuneration of an auditor may be fixed by the designated partners or in accordance with the procedure laid down in the LLP agreement.

### Removal of auditor

Rule 24(18) provides that the partners of a LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement. If the agreement does not provide for the removal of an auditor, consent of all partners shall be required for removal of the auditor from his office.

### Resignation of auditor

Rule 24(19) provides that an auditor of an LLP may resign his office by depositing a notice in writing to that effect at the LLP's registered office. If an auditor is not willing to be re-appointed he shall give a notice in writing to the LLP not less than 14 days before the end of the time allowed for appointing the new auditor. The notice is not effective unless it is accompanied by the statement of the circumstances connected with his ceasing to hold office. The auditor's term comes to an end as on the date on which the notice is deposited or on such later date as it may be specified in the notice.

### 3. Explain the procedure of Cessation of partnership interest as per LLP Act, 2008.

#### Answer:

Section 24 explains the procedure of Cessation of partnership interest.—

- (1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.
- (2) A person shall cease to be a partner of a limited liability partnership— (a) on his death or dissolution of the limited liability partnership; or (b) if he is declared to be of unsound mind by a competent court; or (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.
- (3) Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless— (a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or (b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.
- (4) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.



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- (5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership—
- (a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and
  - (b) his right to share in the accumulated profits of the limited liability partnership, after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.
- (6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

**4. State the Relationship of partners as per LLP Act, 2008.**

**Answer:**

Section 23 of the LLP Act elucidates the Relationship of partners, as specified below—

- (1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.
- (2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.
- (3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.
- (4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.



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## SECTION – B : INDUSTRIAL LAWS

### Study Note – 6

## FACTORIES ACT, 1948

**Learning Objective:** Important definitions associated with Factories Act, 1948; safety measures for the workers, guidelines for the improvement of working conditions within the factory premises and also the provisions regarding employment of women and young persons.

#### Fill in the blanks:

1. **Occupier** of a factory as the person who has the ultimate control over the affairs of the factory.
2. The occupier shall, at least **15 days** before he begins to occupy or use any premises as a factory, send to the Chief Inspector, a written notice.
3. No child who has not completed **his 14th** year shall be required or allowed to work in any factory.
4. No adult worker shall be required or allowed to work in factory for more than **nine hours** in any day, without specific approval from The Inspector of Factories.
5. Every adult worker who has worked for a period **240 days or more** in a factory during a calendar year shall be allowed leave with wages for one day for every **20 days** of work performed by him during the previous calendar year.
6. In respect of overtime work, the employee is entitled to wages at the rate of **twice** his ordinary rate of wages.
7. The total number of leave that may be carried forward shall not exceed **30** days in the case of adult or **40** days in the case of child worker.

#### True or False:

1. In case of a company, any one of the directors shall be deemed to be the occupier of the factory. – **True**
2. White wash or colour wash should be carried out at least once in every period of 12 months. **False**  
White wash or colour wash should be carried out at least once in every period of 14 months.
3. Double employment is allowed in factories act.

#### False

Section 60 imposes restriction that no adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

4. Strike period is not counted as duty for the purposes of computation of the period of 240 days meant for calculation of leave entitlement.

#### True



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Answer the following question:

**1. What is the purpose of Factories Act, 1948?**

**Answer:**

Factories Act, 1948 is meant to provide protection to the workers, to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. It also provides for the improvement of working conditions within the factory premises. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.

**2. Define manufacturing process as per Factories Act, 1948.**

**Ans:**

Section 2(k) of Factories Act, 1948 defines 'manufacturing process' as any process for- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or pumping oil, water, sewage or any other substance; or generating, transforming or transmitting power; or composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or preserving or storing any article in cold storage.

**3. Define factory as per Factories Act, 1948.**

**Answer:**

Section 2(m) of Factories Act, 1948 defines the term 'factory' as any premises including the precincts thereof-

whereon ten or more workers are working, or were working on any day of the preceding twelve 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

whereon twenty or more workers are working, or were working on any day of the preceding twelve 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, but does not include a mine or mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.



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4. Write short notes on
- (i) Carry forward of leave
  - (ii) Encashment of leave

**Answer:**

- (i) If a worker does not in any calendar year take the whole of the leave allowed to him any leave not taken by him shall be carried over to the succeeding year. The total number of leave that may be carried forward shall not exceed 30 days in the case of an adult or 40 in the case of a child. A worker, who has applied for leave with wages but has not been granted, shall be entitled to carry forward the leave refused without any limit.
- (ii) Section 79(3) provides that if a worker is discharged or dismissed from services or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, shall be entitled to the wages in lieu of the quantum of leave to which he was entitled immediately before such termination of his services. Such payment shall be made before the expiry of the second working day from the date of discharge, dismissal or quitting and where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

5. What are the responsibilities of an occupier in a factory?

**Answer:**

Section 7A prescribes the general duties of occupier. 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.

The occupier has to follow the procedure-

- (i) to lay down a detailed policy with respect to the health and safety of the workers;
- (ii) 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;
- (iii) 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.
- (iv) 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.



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**6. Critically examine the duties of certified surgeon under the Factories Act, 1948.**

**Answer:**

The duties of certified surgeons are as follows-

1. the examination and certification of young person;
2. the examination of person engaged in factories in such dangerous occupations or processes;
3. the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where-
  - (a) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
  - (b) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
  - (c) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.



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## Study Note – 7

### PAYMENT OF GRATUITY ACT, 1972

**Learning Objective:** Different schemes for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

#### Fill in the blanks:

1. Where an employer intends to close down the business he shall submit a notice in **Form C** to the controlling authority of the area at least **sixty days** before the intended closure.
2. The right of receiving the gratuity by the employee is the **statutory right**.
3. 'Gratuity' is the payment made by the employer to the employee at the time of **termination of his service**.
4. The employer shall arrange to pay the amount of gratuity within **30 days** from the date of its becoming payable
5. Gratuity shall be payable to an employee on the termination of his employment has rendered continuous service for not less than **5 years**.
6. If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the **Controlling Authority**

#### True or False:

1. The term wages includes all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowance, any bonus, commission, house rent allowance, over time wages and any other allowance.

#### False:

Section 2(s) of Payment of Gratuity Act, 1972 defines the term 'wages' as all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowance **but does not include** any bonus, commission, house rent allowance, over time wages and any other allowance.

2. The employer shall display an abstract of the Act and the Rules in Form No N

#### False:

The employer shall display an abstract of the Act and the Rules in **Form No U**



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3. Teachers in educational institutions are not considered as employee under the Payment of Gratuity Act, 1972.

**False:**

In 'Ahmedabad Private Primary Teachers Association V. Administrative Officer' – AIR 2004 SC 1426 it was held that teacher was held to be not an employee under the Act. The teachers are clearly not intended to be covered by the definition of employee. But the Payment of Gratuity (Amendment) Act, 2009 has amended the definition of 'employee, **including teachers** in educational institutions within the purview of the Act.

4. Gratuity is a lump sum payable on consideration of the past services rendered by the employee.

**True**

**Answer the following question:**

1. **Define family as per Payment of Gratuity Act, 1972**

**Answer:**

Section 2(h) of Payment of Gratuity Act, 1972 defines the term 'family' in relation to an employee, shall be deemed to consist of-

- (i) in case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any;
- (ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

2. **What does it mean by the term Retirement?**

**Answer:**

Section 2(q) of Payment of Gratuity Act, 1972 defines the term 'retirement' as termination of the service of an employee otherwise than on superannuation.

Section 2(r) defines the term 'superannuation' as in relation to an employee, the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment.

**3. Discuss the different means of payment of Gratuity.**

**Answer:**

Section 4(1) of Payment of Gratuity Act, 1972 provides that 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;

Section 4(2) provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. The maximum amount of gratuity allowed under the Act is 20 lakhs (with effect from March 2018). Formula for calculation of gratuity = Last wage drawn  $\times$   $\frac{15}{26}$   $\times$  completed years of service. In calculation of gratuity one month is taken as 26 days. No half year shall be counted. If an employee is employed for more than half year (even by one day) it will be taken as full year but he has worked for 5 months and 29 days, it will be ignored.

In the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

In the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Section 4(3) provides that the amount of gratuity payable to an employee shall not exceed twenty months' wages.

**4. Discuss the situations on which gratuity can be forfeited.**

**Answer:**

Section 4(6) provides that notwithstanding anything contained in sub-section (1),- the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

The gratuity payable to an employee may be wholly or partially forfeited,-

If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.



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## Study Note – 8

### EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

**Learning Objective:** Provisions regarding the social security and timely monetary assistance to industrial employees and their families when they are in distress.

#### Fill in the blanks:

1. Employees Provident Fund and Miscellaneous Provisions Act is now applicable to employees drawing pay **not exceeding 15,000** per month.
2. The contribution to insurance fund is to be remitted by the employer within **15 days** of the close of the month.
3. The maximum penalty recoverable from the employer who makes the default in payment of any contribution to the fund is **25%**
4. The contribution of employer to the Provident Fund is **10%** of basic wages, dearness allowance and retaining allowance, if any.

#### True or False:

1. If an employee is transferred from one employment to another, the balance at his credit in his PF Account cannot be transferred to the new establishment.  
**False**  
If an employee is transferred from one employment to another, the balance at his credit in his PF Account can be transferred to the new establishment.
2. The contribution of employer to Deposit Linked Insurance Scheme is 1% of the basic, DA and retaining allowance.  
**True**
3. Contribution to pension scheme is recoverable when the employee crosses 58 years of age.  
**False**  
Contribution is not payable when the employee crosses 58 years of age since the scheme ceases on completion of 58 years.

#### Answer the following question:

1. What does it mean by contributions towards the Employees Provident Fund?



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### Answer:

As per Section 6 of Employees Provident Fund and Miscellaneous Provisions Act, 1952, the contribution shall be paid by the employer to the Fund shall be 10%, (12% in some class of Industries/ establishments as notified by Govt.) the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act.

Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working.

Contribution is paid up to a maximum of 15,000 by employer and employee with effect from 01.09.2014. To pay a contribution on higher wages, a joint request from employee and employer is required.

### 2. In which situation withdrawal from the fund is allowed under Employees Provident Fund and Miscellaneous Provisions Act, 1952?

#### Answer:

Withdrawal from the fund is allowed for the following purposes-

- (i) For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
- (ii) For repayment of loans in special cases;
- (iii) Withdrawal within one year before the retirement;

### 3. When Advances can be received from the fund under Employees Provident Fund and Miscellaneous Provisions Act, 1952?

#### Answer:

Advances from the fund are paid for the following purposes-

- (a) For illness in certain cases;
- (b) For marriages or post matriculation education of children;
- (c) In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non-refundable)
- (d) Granted to members affected by cut in the supply of electricity; (non-refundable)
- (e) Grant of advance to members who are physically handicapped; (non-refundable)



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### 4. What are the schemes available in the EPF Act?

**Ans:**

The Act provides three types of schemes for the benefit of the employees as detailed below-

Section 5 –Employees' Provident Fund Schemes;

Section 6A – Employees' Pension Scheme;

Section 6C – Employees' Deposit Linked Insurance Scheme.

Section 7 gives powers to the Central Government to amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance scheme, as the case may be.



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## Study Note – 9

### EMPLOYEES STATE INSURANCE ACT, 1948

**Learning Objective:** Various benefits to employees in case of sickness, maternity and employment injury and provisions for certain other matters in relation thereto.

#### Fill in the blanks:

1. Employees State Insurance Act, 1948 is devised to provide social protection to employees in contingencies such as illness, long term sickness or any other health risks due to exposure to employment injury or occupational hazards.
2. The term of office of a member of the Standing Committee under Employees State Insurance Act, 1948 shall be two years from the date on which his election is notified.
3. Under Employees State Insurance Act, 1948 at present the rate of contribution is 3.25% and 0.75% of workers' wages by employers and employees respectively.
4. Under Employee's State Insurance Act, 1948, the term of the office of the members of Medical Benefit Council shall be 4 years from the date on which the appointment is notified.
5. The term of office of a member of the standing committee, constituted under ESI Act, shall be two years from the date on which his election is notified.

#### True or False:

1. Under Employees State Insurance Act, 1948 the term 'family' includes a child who is wholly dependent on the earnings of the insured person and who is receiving education, till he or she attains the age of 18 years.  
**False**  
under Employees State Insurance Act, 1948 the term 'family' includes a child who is wholly dependent on the earnings of the insured person and who is receiving education, till he or she attains the age of **25 years**.
2. The contribution shall be paid in a bank duly authorized corporation within 30 days of the last day of the calendar month in which the contribution falls due for any wage period.  
**False**  
The contribution shall be paid in a bank duly authorized by the ESI corporation within **21 days** of the last day of the calendar month in which the contribution falls due for any wage period.
3. Employer may dismiss or punish the employee during sickness etc.  
**False:**  
Under Employees State Insurance Act, 1948 Section 73 provides that no employee shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit.

Answer the following questions:

1. **Define the terms 'family' and 'immediate employer' under ESI Act.**

**Answer:**

**Family**

Section 2(11) of ESI Act defines the term 'family' as all or any of the following relatives of an insured person-

a spouse;

a minor legitimate or adopted child dependent upon the insured person;

a child who is wholly dependent on the earnings of the insured person and who is-receiving education, till he or she attains the age of 25 years;

an unmarried daughter;

a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;

dependent parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;

in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person.

**Immediate employer**

Section 2(13) defines the terms 'immediate employer' in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor.

2. **Write short notes on:**

**(i) Permanent partial disablement**

**(ii) Permanent total disablement**

**(iii) Temporary disablement**

**Answer:**

(i) Section 2(15A) defines the expression 'permanent partial disablement' as such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. Every injury



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specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement.

- (ii) Section 2(15B) defines the expression 'permanent total disablement' as such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident in such disablement. The permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100% or more.
- (iii) Section 2(21) defines the term 'temporary disablement' as a condition resulting from an employment which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury.

### 3. What is the Registration procedure of the employees under Employees State Insurance Act, 1948?

#### Answer:

Registration is the process of obtaining and recording information about his employment which is insurable employment for the purpose of his identification under the Act. This process also identifies to provide the benefits available under the Act that are related to the contributions paid by the employer on behalf of insured employees. The employee is required to give his details and his family details to his employer so that the employer can register the employee online. A family photo is also to be provided so that the employer can register the employee.

This exercise of registering an employee has to be a onetime exercise in life time of an employee. The insurance number generated on the first occasion of registration is to be used throughout his life time irrespective of change of employment including change of place.

### 4. Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948.

#### Answer:

Section 46 provides that the insured persons, their dependents shall be entitled to the following benefits-

- (i) Periodical payments to any insured person in case of his sickness;
- (ii) Periodical payments to an insured woman in case of confinement or mis-carrriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage;
- (iii) Periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee;
- (iv) Periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee;
- (v) Medical treatment for and attendance on insured persons;

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(vi) Payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

The amount of such payment shall not exceed such amount as may be prescribed by the Central Government. The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

### 5. **What are the different purposes for which employees' state insurance fund may be utilized by the central government?**

**Answer:**

Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only for the following purposes:

- payment of benefits and provision of medical treatment and attendance to insured persons
- payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;
- establishment and maintenance of hospitals, dispensaries and other institutions;
- payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons;
- defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
- payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;
- payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
- defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.



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## Study Note – 10

### PAYMENT OF BONUS ACT, 1965

**Learning Objective:** Provisions regarding payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

#### Fill in the blanks:

1. Under Payment of Bonus Act, 1965 term 'establishment in public sector' is defined as an establishment owned controlled or managed by a corporation in which not less than **40%** of its capital is held, either singly or taken together by the Government or Reserve Bank of India or a Corporation owned by the Government or the Reserve Bank of India.
2. Every employee shall be entitled to receive bonus from his employer in an accounting year. For this he has to work in the establishment for not less **thirty workings days** in that accounting year.

#### True or False:

1. Annual return is to be filed under Payment of Bonus Act, 1965 in Form No. U.  
**False:**  
Annual return is to be filed under Payment of Bonus Act, 1965 in **Form No. D.**
2. The maximum bonus payable during an accounting year is 15% of the salary.  
**False:**  
The maximum bonus payable during an accounting year is 20% of the salary

#### Answer the following questions

1. **Discuss the applicability of the Payment of Bonus Act, 1965.**

#### Answer:

Territorial wise this act is applicable to the whole of India. This Act shall apply to the following:

- (i) Every factory; and
- (ii) Every other establishment in which twenty or more persons are employed on any day during an accounting year;
- (iii) Any establishment or class of establishments as notified by the appropriate Government, employing such number of persons less than twenty as may be specified in the notification, that the number of persons so specified shall in no case be less than ten.
- (iv) An establishment to which this act applies shall continue to be governed by the Act notwithstanding that the number of persons employed falls below twenty or the number specified in the notification.



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In deciding the number of persons employed in an establishment all employees, even those drawing more than the threshold limit must be taken into consideration. The strength of the employees of an establishment would be taken into consideration, irrespective of their place of work.

### 2. What are the disqualifying situations from receiving bonus?

**Ans:**

Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

### 3. Discuss the procedure for the recovery of bonus due from an employer.

**Answer:**

Section 21 of the Act provides the procedure for the recovery of bonus due from an employer. In such cases-

- the employee himself; or
- any other person authorized by him in writing in this behalf; or
- in the case of death of the employee, his assignee or heirs

may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for that amount to the Collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.

Every such application shall be made within one year from the date on which the money become due to the employee from the employer and after the date of expiry of one year if Appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the one year period .



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## Study Note – 11

### MINIMUM WAGES ACT, 1948

**Learning Objective:** A guideline for fixing minimum rates of workers in those industries where the level of wages was substantially low as compared to the wages for similar types of labour in other industries.

#### Fill in the blanks:

1. The term 'adolescent' means a person who has completed his **fourteenth year** of age but has not completed his **eighteenth year**.
2. Under Minimum Wages Act, 1948, the appropriate Government may review at such intervals, as it may think fit, such intervals not exceeding **five years** and revise the minimum rate of wages, if necessary.

#### True or False:

1. A wage slip shall be issued by every employer to every person employed by him at least seven days prior to the disbursement of wages.  
**False**  
A wage slip shall be issued by every employer to every person employed by him at least **a day** prior to the disbursement of wages.
2. As per Minimum Wages Act, 1948 for payment for work on a day of rest at a rate not less than the minimum wage rate.  
**False**  
For payment for work on a day of rest at a rate not less than the **overtime** rate.
3. The wages of a worker in any scheduled employment in all the establishment shall be paid on a working day before the expiry of 7th day after the last wage period in respect of which the wages are payable  
**False**  
Rule 21(1) provides that the wages of a worker in any scheduled employment shall be paid on a working day-  
In the establishment for which less than 1000 persons are employed – before the expiry of 7th day;  
In other establishments – before the expiry of **10th day**  
After the last wage period in respect of which the wages are payable.

#### Answer the following questions:

1. Define Wages and Minimum wages as per Minimum Wages Act, 1948?

Ans:



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Section 2(h) of Minimum Wages Act, 1948 defines the term 'wages' as all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include –

- The value of –
  - any house accommodation, supply of light, water, medical attendance; or
  - any other amenity or any service excluded by general or special order of the appropriate government;
- any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- any traveling allowance or the value of any traveling concession;
- any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- any gratuity payable on discharge;

Section 2(h) defines the term 'wages' and not 'minimum wages'. It is up to the appropriate Government to fix the minimum wages considering into the various aspects of the employment, sectoral organization etc., In many a case the Courts declare who are eligible to receive minimum wages apart from the decisions of the appropriate Governments.

### 2. Explain the procedure for fixing and revising minimum wages under Minimum Wage Act, 1948.

#### Answer:

Section 5 (1) provides that In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall, either –

appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be; or

by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.

Section 5(2) provides that after considering the advice of the committee or committees all representations received by it before the date specified in the notification, the appropriate government shall by notification in the Official Gazette, fix, or, as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also.



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### 3. Discuss the provision relating with overtime under Minimum Wages Act, 1948

**Answer:**

Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages-

in case of employment in agriculture - one and a half times the ordinary rate of wages;

in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

### 4. What are the different registers to be maintained by the employer under Minimum Wages Act, 1948?

**Answer:**

Every employer, including a contractor who engaged laborers for others who owns the establishment/factory etc., is bound by the provisions of this Act, to comply with the requirements of maintaining registers etc., The following are the forms prescribed for registers and records-

Form – I: Register of Fines;

Form – II: Register of deductions for damage or loss caused to the employer, by the neglect or default of the employed persons;

Form III: Unified Annual Return; Form IV; Overtime Register for workers;



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## Study Note – 12

### PAYMENT OF WAGES ACT, 1936

**Learning Objective:** *The procedure for disbursement of wages by the employers within the prescribed time limit to the employee.*

#### Fill in the blanks:

1. Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the **second working day** from the day on which his employment is terminated.
2. No fine shall be imposed on any employed person who is under the age of **fifteen years**.

#### True or False:

1. Every register and record required to be maintained under Payment of Wages Act, 1936 shall be preserved for a period of eight years after the date of the last entry made therein.  
**False**  
Every register and record required to be maintained under Payment of Wages Act, 1936 shall be preserved for a period of **three years** after the date of the last entry made therein.
2. In appeal against the order of the authority may be filed to the District Court within 45 days  
**False**  
In appeal against the order of the authority may be filed to the District Court within **30 days**
3. Fine may be recovered from the employed person by installments  
**False**  
No fine imposed on any employed person shall be recovered from him by instalments.

#### Answer the following questions:

1. **Write short note on Contracting out.**

#### Answer:

Section 23 of Payment of Wages Act, 1936 provides that any contract or agreement whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

2. **What is wage period under Payment of Wages Act, 1936?**



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**Answer:**

In payment of the wages it is important to fix the wage period. Section 4 of the Act provides that every person responsible for the payment of wages shall fix periods in respect of which wages shall be paid. This section further provides that no wage period shall exceed one month. The wage period may be daily, weekly or fortnightly or for any period but the period should not exceed one month.

**3. What is the provision regarding displaying of the Act in the establishment under Payment of Wages Act, 1936?**

**Answer:**

Section 25 of Payment of Wages Act, 1936 provides that the person responsible for the payment of wages of persons employed in a factory or an industrial or other establishment shall cause to be displayed in such factory or industrial or other establishment a notice containing such abstracts of this Act and of the rules made there under in English and in the language of the majority of the persons employed in the factory, or industrial or other establishment as may be prescribed.

**4. State the procedure of payment of undisbursed wage in case of death of employed person under Payment of Wages Act, 1936**

**Answer:**

Section 25A of Payment of Wages Act, 1936 provides that subject to the other provisions of the Act all amounts payable to an employed person as wages shall if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known –

- be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or
- where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages –

- are paid by the employer to the person nominated by the employer person; or
- are deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those wages.



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Match the pair

	Column 1		Column 2
A	Payment of Bonus Act	I	1972
B	Employees Provident Fund and Miscellaneous Provisions Act	II	1965
C	Factories Act	III	1952
D	Payment of Gratuity Act	IV	1936
E	Payment of Wages Act	V	1948

Answer

	Column 1		Column 2
A	Payment of Bonus Act	II	1965
B	Employees Provident Fund and Miscellaneous Provisions Act	III	1952
C	Factories Act	V	1948
D	Payment of Gratuity Act	I	1972
E	Payment of Wages Act	IV	1936



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## Study Note – 13

### PENSION FUND REGULATORY AND DEVELOPMENT ACT, 2013

**Learning Objective:** The objective of the course is to impart basis knowledge of the provisions of Pension Fund Regulatory and Development Act, 2013.

**1. Indicate the correct answer out of the options given in each of the question.**

(i) Pension Fund Regulatory and Development Act, was enacted in the year:

- (a) 2012
- (b) 2013
- (c) 2014
- (d) 2015

(ii) Securities Appellate Tribunal, as referred under PFRD Act is the Tribunal under:

- (a) PFRD Act
- (b) Companies Act, 2013
- (c) Insurance Act
- (d) SEBI Act

(iii) The pension fund can be invested:

- (a) only in India
- (b) only outside India
- (c) both in India and abroad
- (d) none of the above

#### Answers

(i) b (ii) d (iii) a



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### 2. Discuss the basic features of National Pension System.

A. The basic features of National Pension System are as follows.

- (i) every individual subscriber shall have an individual pension account number;
- (ii) withdrawal up to 25% of the accumulated fund may be allowed.
- (iii) There will be a Central Record Keeping Agency, who will be responsible for record keeping, accounting and switching of funds from one set of investment to other, at the option of the subscriber;
- (iv) No guarantee on return can be made, unless the fund is invested in guaranteed return funds;
- (v) In case of change of employment, the fund shall continue;

While exiting the fund, annuity shall be purchased from LIC with the balance in fund.



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### SECTION – C : CORPORATE LAW

#### Study Note – 14

#### COMPANIES ACT, 2013

**Learning Objective:** Corporate Law helps to build the cognitive skills to analyse evaluate and synthesise information about corporations, corporate officers, shareholders and creditors so as to identify and resolve legal and business related issues. Students should develop the ability to write clearly and concisely about Corporate Law and its application to basic Corporate Law problems.

Answer all questions:

#### (A) Multiple Choice Questions

1. What is the minimum paid up share capital required for the appointment of an Independent director?
- (a) ₹10 crore
  - (b) ₹5 crore
  - (c) ₹50 crore
  - (d) ₹1 crore

**Answer: (a) ₹10 crore**

Note:

Section 2(47) of the Act prescribed that "Independent director" means an independent director referred to in sub section (5) of section 149 of the Act. In fact reference should have been made to sub section (6) of 149 as it specified the qualifications of independent director with clarity.

Every listed public company shall have at least one-third of the total number of directors as independent directors (fraction is to be rounded off to one). Central Government has prescribed under Rule 4, public companies with specified limits as on the last date of latest audited financial statements mentioned below shall also have at least 2 directors as independent directors:-

- Paid up share capital of ₹ 10 crore or more; or
- Turnover of ₹ 100 crore or more; or
- In aggregate, outstanding loans/borrowings/ debentures/deposits/ exceeding ₹ 50 crore or more.

In case a company covered under this rule is required appoint higher number of independents directors due to composition of its audit committee and then they shall appoint such higher number of independent directors.

Further if there is any intermittent vacancy of an independent director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.

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2. A Company cannot issue fully paid up bonus share to its members out of its :-

- (a) Free Reserves
- (b) Securities Premium Account
- (c) Capital Redemption Reserve Account
- (d) Capitalizing reserves created by revaluation of assets.

Answer: (d) Capitalizing reserves created by revaluation of assets.

Note:

Section 63 provides for the issue of bonus shares. Section 63(1) provides that a company may issue fully paid up bonus shares to its members out of its-

- free reserves;
- the securities premium account; or
- the capital redemption reserve account.

No bonus shares shall be made by capitalizing reserves created by revaluation of assets.

Section 63(2) provides that no company shall capitalize its profits or reserves for the purpose of issuing fully paid up shares unless-

- it is authorized by its articles;
- it has, on the recommendation of the Board, been authorized in the general meeting of the company;
- it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- the partly paid up shares, if any outstanding on the date of allotment are made fully paid up;
- it complies with such conditions as may be prescribed;

Section 63(3) provides that the bonus shares shall not be issued in lieu of dividend.

Rule 14 provides that the company which has once announced the decision of the Board recommending a Bonus issue shall not subsequently withdraw the same.

3. In which e-Form is required for increase in authorized capital of a company?

- (a) MGT-14
- (b) SH-7
- (c) PAS-3
- (d) MR-2

Answer: (b) SH-7

Note:

### **Procedure for Increasing Authorised Share Capital**

A company may need to increase its authorised share capital before issuing new equity shares and increasing paid-up capital. Authorised share capital is the total value of shares a company can issue, while paid-up capital is the total value of shares the company has issued. Paid-up capital can never exceed authorised capital.

#### **1. Verify Articles of Association (AOA) of the Company**

Before commencing the procedures for increasing authorised share capital, verify the Articles of Association (AOA) to ensure there is enabling provision in the Articles of Association (AOA) particularly with reference to increase authorized share capital. If there are no provisions for increasing authorised share capital, the company must first amend the Articles of Association of the company by passing Special Resolution in General Meeting.

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### 2. Convene Board Meeting

To increase the authorised share capital, first, convene a Board Meeting by providing notice to the Director. At the Board Meeting, obtain approval from the Board of Directors for increasing authorised share capital. Then fix a date, time and place for conducting an Extra-Ordinary General meeting to obtain approval of shareholders for the increase of authorised share capital and making changes to the MOA of the company.

### 3. Extra-Ordinary General Meeting

On the time, date and place mentioned on the Notice of Extra-Ordinary General Meeting, conduct the Extra-Ordinary General Meeting and obtain shareholders approval for increase of authorised capital. The approval of shareholders for increasing authorised share capital must be in the form of an Ordinary Resolution.

### 4. File ROC Forms

Once the ordinary resolution is passed at the Extra-Ordinary General Meeting, Form SH-7 must be filed by the company within 30 days of passing of ordinary resolution. Along with Form SH-7, the prescribed government fee for authorised capital must be paid and the following documents must be attached:

1. Notice related to EGM.
2. Authorized True copy of Ordinary Resolution.
3. Changed Memorandum of Association. (Showing higher authorised capital)

If the procedures for increasing authorised capital are followed as mentioned in the Companies Act and Companies Rules, then the Registrar would approve the filing and increase the authorised share capital of the company. The new authorised share capital of the company would be reflected on the MCA portal.

#### 4. Which of the following section deals with Private Placement of shares?

- (a) Section 48
- (b) Section 43
- (c) Section 62
- (d) Section 42

Answer: (d) Section 42

Note:

As per the definition under Explanation II to Sub Section 1 of Section 42 of the Companies Act, 2013 Private Placement means any offer of securities or invitation to subscribe securities to a select group of persons by a Company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.

Private Placement is governed by Section 42 of the Companies Act, 2013. As per Section 42 of the Companies Act, 2013 the maximum number of persons to which allotment can be done in a year shall not exceed 200 (Excluding Qualified Institutional Buyers and Employees who have been given securities under ESOP Scheme) in a financial year. If the same exceeds the prescribed limit then it will be deemed to be a public issue and the Company has to follow the procedure of Public issue.

#### **Procedure for private placement**

1. Company planning to make Private Placement has to first pass a special resolution in the general meeting of the Company.

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However, in case of Non Convertible Debentures (NCD) it will be sufficient if the Company passes a special resolution once in a year for all the Private Placements to be made by the for the NCD during the year.[Rule 14(2)].

2. Next, the Company has to issue a Private Placement letter of offer to the Identified persons by the Board to whom the allotment is to be made.

However, it is to be noted that the Private Placement letter of offer shall not contain Right to Renunciation.[ Companies Amendment Act, 2017].

The Company also has to keep the records of the same and file the details with the ROC within 30 days from the date of issue of Private Placement letter of offer. [Rule 14(3)].

3. Once the Company receives the allotment money, the Company shall allot the Securities within 60 days and if it fails to do so then refund the money within the next 15 days. If the Company fails to do so then interest @12% will be charged from the expiry of 60th day.
4. The Company has to file return of allotment within 15 days of allotment in Form PAS-3 .  
(Note: Company cannot utilize the Application money until it has filed Return of allotment with the ROC.)

### **Important points to be kept in mind while making private placement**

1. The Application money to be received shall be either through Cheque, Demand Draft or other banking channels except cash. [Section 42(5)]
2. The minimum application size shall not be less than ₹ 20,000/- (Twenty Thousand) per person.
3. Private Placement shall not be done unless any previous offer or invitation has been completed or withdrawn or abandoned by the Company. [Section 42(3)].
4. The Company shall not advertise about the Private Placement to the public.
5. If a Company makes contravenes the provisions of this Section, then the Company, Promoters and its Directors shall be liable for a penalty which may extend to the amount involved in the contravention or rupees two crores, whichever is higher. Further the Company also has to refund all monies to subscribers within 30 days of the order.
6. Restriction of 200 is for Each Kind of a Security [explanation to Rule 14(2)(b)].

5. **What is the duration during which the approved name is available for formation new of the Company?**

- (a) 90 Days
- (b) 60 Days
- (c) 30 Days
- (d) 20 Days

Answer: (d) 20 Days

### **Note:**

RUN or Reserve Unique Name facility is a service offered by the Ministry of Corporate Affairs (MCA) to simplify and speedup the company name approval process. Prior to the introduction of RUN form, any person wishing to obtain a name approval from the MCA must first obtain Director Identification Number (DIN) and then make a name reservation application in Form INC-1.

Now, any person having a MCA login can easily reserve a company name for a period of upto 20 days by applying on the MCA portal. The fee charged by the Government for verifying and approving or rejecting a name approval application made using RUN form is ₹ 1,000. The average time taken by the Government for processing a RUN name application is less than a day.

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### **Points to be noted:**

1. We can apply a maximum of 2 names in RUN at a time and 1 resubmission is allowed if on the first RUN application the name gets rejected.
2. If a name application is made for new company then the time limit for which the name is reserved is 20 Days and if the company does not get incorporated within those 20 days then the name gets rejected automatically and then again fresh name application has to be made.
3. And if a name application is made for an existing company then the time limit for which the name is reserved is 60 Days and if the company does not complete all its procedure for change of name within 60 days then the name gets rejected automatically and then again fresh name application has to be made.

### **6. What is the time limit for filing Annual Return of The Company?**

- (a) Within 15 days from the date of Annual General Meeting.
- (b) Within 30 days from the date of Annual General Meeting.
- (c) Within 60 days from the date of Annual General Meeting.
- (d) Within 90 days from the date of Annual General Meeting.

Answer: (c) Within 60 days from the date of Annual General Meeting.

### **Note:**

MGT-7 is an electronic form provided by the Ministry of Corporate affairs to all the corporates in order to fill their annual return details. This e-form is maintained by the Registrar of Companies via electronic mode and on basis of the statement of correctness given by the company.

All companies, whether public or private which are registered in India must file the Form MGT-7 every year within 60 days from the date of Annual General Meeting of the company.

(Note: The due date for regulating annual general meeting is on or before the 30th day of September following the close of every financial year. Therefore, the last date for filing form MGT-7 is generally 29th of November every year.)

### **Purpose of the e-Form MGT-7**

Every company shall prepare an annual return in the form MGT-7 containing the particulars as they stood on the close of the financial year. These details include details regarding:

- The registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- The shares, debentures, other securities and shareholding pattern of the company;
- Indebtedness of the company;
- The members and debenture-holders along with alterations connected to them since the end of the previous financial year;
- The promoters, directors, key managerial personnel along with alterations connected to them since the close of the previous financial year;
- Meetings of members or a class thereof, Board and its various committees along with attendance details;
- Remuneration of directors and key managerial personnel;
- Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- The matters relating to certification of compliances and disclosures as may be prescribed;
- Its Shareholding pattern; and
- Such other matters as required in the form.



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### **Attachments of MGT-7:**

This e-form can be filled by attaching the scanned copy of documents under the attachments head. This is at the end of the form. The attachments required include:

- List of shareholders, debenture holders
- Approval letter for extension of AGM;
- Copy of MGT-8;
- Optional Attachment(s), if any

### **Who can certify MGT-7**

ONLY Practicing Company Secretary (In the case where the company does not have CS) or Company Secretary in Employment (In case where company has a CS) can certify the eform MGT-7.

7. **The annual return, filed by a listed company or, by a company having such paid-up capital of ₹10 Crores or more or turnover of ₹50 Crores or more shall be certified by a PCS in Form No.\_\_\_\_\_ stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.**
- (a) MGT-9  
(b) MGT-8  
(c) MGT-7  
(d) MGT-14

Answer: (b) MGT-8.

Note:

Form MGT-8 is a certification provided by a practicing company secretary on a company's annual return, according to the Companies Act 2013, under Section 92(2). In Form MGT-8, the CS certifies that the annual return discloses the facts correctly and adequately and that it complies with the relevant provisions of the Company's Act 2013. In order to provide such an assurance, the company secretary needs to carefully examine the registers, records, books and papers of a company to ensure they are free from any misrepresentations and fraudulent activities.

### **Applicability of Form MGT-8**

According to the rules under Section 92(2) of the Companies (Management and Administration) Rules, 2014, the following types of companies should get their annual returns certified by a practicing Company Secretary in the Form MGT-8:

- Listed Company, or
- A company having a paid-up share capital of ₹ 10 Crores or more, or
- A company with a turnover of ₹ 50 Crores or more

### **Compliance Aspects**

The certificate assures that a company has complied with provisions of the Act & Rules under some aspects of compliance. The following are the some of the aspects of compliance that the MGT-8 deals with:

- Status of the company under the Act
- Maintenance of registers/records, filing of forms and returns
- Calling/convening/ holding meetings of Board of Directors or its committees
- Closure of Register
- Advances/loans to its directors
- Contracts/arrangements with related parties
- Issue, allotment, transfer, transmission, or buyback of securities or shares
- Signing of audited financial statement
- Approvals required to be taken from the Central Government and other local authorities



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8. What is the Quorum of a Public Company having 3000 members?  
(a) Two (2)  
(b) Three (3)  
(c) Fifteen (15)  
(d) Ten (10)

Answer: (c) Fifteen (15)

Note:

### Quorum

As per Section 103(1) Unless the articles of association of the company provide for a larger number,—

(a) in case of a public company the quorum shall be,—

- (i) 5 (five) members personally present if the number of members as on the date of meeting is not more than one thousand;
- (ii) 15 (fifteen) members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (iii) 30 (thirty) members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, 2 (two) members personally present, shall be the quorum for a meeting of the company.

9. What is the fees required for name application of Company in RUN (Reservation of Unique Name)?  
(a) ₹200/-.  
(b) ₹500/-  
(c) ₹2,000/-  
(d) ₹1,000/-

Answer: (d) ₹1,000/-.

### (B) Fill in the Blanks:

1. A Company can have a maximum of \_\_\_\_\_ Directors.
2. Every company shall have at least one director who has stayed in India for a total period of not less than \_\_\_\_\_ in the previous calendar year.
3. E-Form \_\_\_\_\_ is required to be filed for increase in paid-up share capital of a company.
4. The Annual Return of the Company should be filed in form \_\_\_\_\_ within \_\_\_\_\_ from the date of Annual General Meeting.
5. A person can be appointed as director in a maximum of \_\_\_\_\_ Companies and a maximum of \_\_\_\_\_ public company.
6. A PCS can sign MGT-8 of \_\_\_\_\_ maximum in a financial year.
7. Section \_\_\_\_\_ deals with Disqualification of Appointed Directors.
8. Order of Central Government is to be filed in e-form \_\_\_\_\_.
9. The first Annual General Meeting of a company should be held within a period of \_\_\_\_\_ from the date of closing of the first financial year of the company.
10. Application of DIN is made in e-form \_\_\_\_\_.
11. For resignation of Director the Company files e-form \_\_\_\_\_ and the resigning director files e-form \_\_\_\_\_.
12. Women Director is appointed in a Listed Company and in unlisted public company having Paid up Share Capital of \_\_\_\_\_ or Turnover of ₹ \_\_\_\_\_.

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### Answer:

1. 15 (Fifteen)
2. 182 Days (One Hundred and Eighty Two Days)
3. PAS-3
4. MGT-7, 60 Days
5. 20 Companies, 10 Public Companies.
6. 80 (Eighty) Companies
7. Section 164
8. E-Form INC-28
9. 9 (Nine) Months
10. DIR-3
11. DIR-12 , DIR-11
12. ₹ 100 Crore, ₹ 300 Crore

### (C) Match the following:

	Column 'A'		Column 'B'
1.	Private Placement	A.	SPICE e-form
2.	Incorporation of Company	B.	Paid Up ₹100 Crores or Turnover ₹300 Crores.
3.	Independent Director	C.	Section 149(6)
4.	Share Transfer	D.	Section 42.
5.	Disqualification of Director	E.	PAS-3
6.	Women Director	F.	Section 164
7.	Return of Allotment	G.	SH-4

Answer:

	Column 'A'		Column 'B'
1.	Private Placement	D.	Section 42.
2.	Incorporation of Company	A.	SPICE e-form
3.	Independent Director	C.	Section 149(6)
4.	Share Transfer	G.	SH-4
5.	Disqualification of Director	F.	Section 164
6.	Women Director	B.	Paid Up ₹100 Crores or Turnover ₹ 300 Crores.
7.	Return of Allotment	E.	PAS-3

### Answer the following questions:

1. **Sambhav Media Limited, an Unlisted Public Company, has the following figures at the end of the Financial Year 2016-17:**  
**Paid-up Share Capital = ₹ 130 Crore**  
**Turnover = ₹ 320 Crore**  
**Average Profit of last 3 years = ₹ 7.5 Crore**  
**Borrowings = ₹ 75 Crore**
  - (i) **Is the Company required to appoint Independent Director and further are they required to appoint Women Director? Explain the composition of Board.**
  - (ii) **Explain the Code of independent directors as per schedule IV of the Companies Act 2013.**

### Answer:

- (i) Yes the company is required to appoint an Independent Director as per the provisions of Section 149(4) & Rule 4 of Companies (Appointment and Qualification of Directors) Rule, 2014 every Listed Company shall have at least one-third of the total number of directors as Independent Director and every Unlisted public Company are required to appoint atleast 2 Independent Directors having any one of the following features:
- Public Company having Paid Up Share Capital of ₹ 10Crore or more; or
  - Public Company having Turnover of ₹ 100 Crore or more; or
  - Public Company having aggregate outstanding loans, debentures and deposit, exceeding ₹50 Crore.

So as we see in the case study Shambhav Media Limited, an Unlisted Public Company, has Paid-Up Share Capital of ₹130 Crore, Turnover of ₹ 320 Crore, and Borrowings of ₹ 75 Crore which is more than the criteria mentioned in sec 149(4), so therefore the Company is required to appoint atleast 2 Independent Directors.

Yes, the Company is required to appoint a Women Director as per second Proviso to Section 149(1) read with Rule 3 of The Companies (Appointment and Qualification of directors) Rules, 2014. The following classes of companies are required to appoint at least one Woman Director-

- (i) Every Listed Company;
- (ii) Every Unlisted Public Company having –
- Paid-up share capital of ₹100 Crore or more; or
  - Turnover of ₹300 Crore or more.

So as we see in the case study Shambhav Media Limited, an Unlisted Public Company, it has Paid-Up Share Capital of ₹ 130 Crore, Turnover of ₹ 320 Crore, which is more than the criteria mentioned in Section 149(1), so therefore the Company is required to haveatleast1Women Director in the composition of Board of Director of the Company.

Therefore the Company should have at least 1 women director in composition of the Board of the Company and at least 2 Directors should be Independent Directors.

### **(ii) Schedule IV (Code of conduct of Independent Directors)**

#### **Guidelines of professional conduct:**

An independent director shall:

- (1) uphold ethical standards of integrity and probity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a bona fide manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.



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### Role and functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

### Duties:

The independent directors shall—

1. undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
2. seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
3. strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
4. participate constructively and actively in the committees of the Board in which they are chairpersons or members;
5. strive to attend the general meetings of the company;
6. where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
7. keep themselves well informed about the company and the external environment in which it operates;
8. not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
9. pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
10. ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
11. report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
12. 1["act within their authority"], assist in protecting the legitimate interests of the company, shareholders and its employees;
13. not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.



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2. Mr. Rajiv Singh is a director in 22 Companies as given below:

- 12 Public Companies
- 1 Section 8 Company
- 9 Private Companies

Now out of the 22 Companies, he is Alternate Director in 4 Companies.

- (i) Which Section of Companies Act, 2013 specifies the maximum number of Directorship an individual can hold?
- (ii) Is Mr. Rajiv in contravention with the provisions of Companies Act, 2013? Explain with reason.
- (iii) What would have been your answer if Mr. Rajiv would have been director in 10 Public Companies, 6 Section 8 Companies and 10 Private Companies?
- (iv) What is the penalty for contravention of this provision?

**Answer:**

- (i) Section 165 of the Companies Act, 2013 specifies that a person can hold office as a director, including any alternate directorship, in maximum twenty companies at the same time.
- (ii) Yes, Mr. Rajiv Singh is in contravention of Section 165 of the Companies Act, 2013. As per the Act, a person cannot be appointed in more than 20 companies at the same time, provided that a person shall not hold office in more than 10 Public Companies out of the limit of 20 Companies. Since Mr. Rajiv Singh is Director in more than 10 Public Companies i.e. 12. Therefore, it is advised to Mr. Rajiv Singh to resign from any of the 2 Public Companies out of the 12 Public Companies in which he is currently appointed to avoid contravention of Section 165 of the Companies Act, 2013.
- (iii) As per the provisions of the Section 165 of the Companies Act, 2013 the limit is 20 companies out of which a person cannot be appointed as a director in more than 10 Public Companies and further the limit of 20 companies shall not include Section 8 Companies.
- Therefore, as per the case study Mr. Rajiv is Director in 10 Public Companies, 6 Section 8 Companies and 10 Private Companies where those 6 Section 8 companies shall not be counted in the limit of 20 Companies. So in this situation Mr. Rajiv is complying with the provisions of section 165 of the Companies Act, 2013.
- (iv) If a person accepts an appointment as a director in contravention of sub-section (1) of Section 165, he shall be liable to a penalty of ₹2,000 (two thousand) each day subject to maximum of Rs. 2 lakhs.

3. (a) Specify the power of board as per section 179 of the Companies Act, 2013.  
(b) What are the restrictions on powers of Board?

**Answer:**

- a) Section 179 of the Act deals with the powers of the board. 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 authorized to exercise and do provided 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.

The following (section 179(3) read with Rule 8 of Companies (Meetings of Board and its Power) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely:



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- (1) to make calls on shareholders in respect of money unpaid on their shares;
- (2) to authorize buy-back of securities under section 68;
- (3) to issue securities, including debentures, whether in or outside India;
- (4) to borrow monies;
- (5) to invest the funds of the company;
- (6) to grant loans or give guarantee or provide security in respect of loans;
- (7) to approve financial statement and the Board's report;
- (8) to diversify the business of the company;
- (9) to approve amalgamation, merger or reconstruction;
- (10) to take over a company or acquire a controlling or substantial stake in another company;
- (11) to make political contributions;
- (12) to appoint or remove key managerial personnel (KMP);
- (13) to appoint internal auditors and secretarial auditor;

- b)** The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other 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 (4) to (6) above on such conditions as it may specify.

The Board can exercise the following powers only with the consent of the company by special resolution, namely –

- (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings;
- (b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- (c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business;
- (d) to remit, or give time for the repayment of, any debt due from a director.

The special resolution relating to borrowing money exceeding paid up capital, free reserves and securities premium share specify the total amount up to which the money may be borrowed by Board.

The title of buyer or other person who buys or takes on lease any property, investment or undertaking in good faith cannot be affected and also in case if in the ordinary business of the company comprises such selling or leasing.

The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except in accordance with the provisions contained in this Act.

The debt incurred by the company exceeding the paid up capital, free reserves and securities premium is not valid and effectual, unless the lender proves that the loan was advanced in good faith and also having no knowledge that limit imposed had been exceeded.

- 4.**
- (a) Which classes of Companies are specified to conduct meeting through electronic means and under which section of the Act?**
  - (b) Explain the process of e-voting.**
  - (c) What is the role of Scrutinizer in voting through electronic means and through poll?**



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### Answer:

- (a) Section 108 of the Companies Act, 2013 prescribes that Every Company which is Listed on a Recognized Stock Exchange and every other Company having 1000 or more members shall provide to its members the facility to exercise their right to vote on resolution proposed to be considered at a general meeting by electric means (i.e. E-voting).

### **(b) 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;
- (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—
    - (A) remote e-voting shall not be allowed beyond the said date and time;
    - (B) the manner in which the company shall provide for voting by members present at the meeting; and
    - (C) 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



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- (D) a person whose name is recorded in the register of members or in the register of 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.

### **(c) ROLE OF SCRUTINIZER**

- (i) The Board of Directors shall appoint one or more scrutinizers, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner:  
Provided that the scrutinizers so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;
- (ii) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;
- (iii) The Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutinizers, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.
- (iv) The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company and make, not later than three days of conclusion of the meeting, a consolidated scrutinizer's report of the total



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- votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same:  
Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;
- (v) For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutinizer shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutinizers may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:
- (vi) The scrutinizers shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.

### 5. Write short notes on (any three):

- (i) Section 42
- (ii) Independent Director u/s 149(6)
- (iii) Disqualification of Director u/s 164
- (iv) Entrenchment Clause

#### Answer:

- (i) **Section 42:** Section 42 deals with the provision of PRIVATE PLACEMENT under Companies Act, 2013. A private placement offer cannot be made to more than 200 people in aggregate in a financial year excluding "Qualified Institutional Buyers" and employees of the company being offered securities under a Scheme of Employee's Stock Option as per provisions of clause (b) of sub-section (1) of Section 62.

The value of such offer or invitation shall be with an investment size of not less than ₹ 20,000/- per person.

The number of such offers or invitations shall not exceed 4 in a financial year and not more than once in a calendar quarter with a minimum gap of 60 days between any 2 such offers or invitations.

#### Procedure

1. Check Provision in the Articles of Association regarding Private Placement
2. Call Board Meeting:
  - To Prepare Offer Letter
  - Make Proposal for Private Placement
  - Prepare list of persons to whom option will be given
  - Call Extra Ordinary General Meeting
3. Pass Special Resolution in Extra Ordinary General Meeting which will be valid for 12 months
  - If Private Placement is not completed in 12 Months then pass another Special Resolution
  - Approve Draft Offer Letter by Special Resolution
4. File MGT-14 with ROC with following Attachments:
  - Notice of EGM
  - Certified True Copy of Special Resolution
  - Minutes of Extra Ordinary General Meeting
5. Issue offer letter in PAS-4 within 30 days of record of name of persons:
6. Prepare complete record of Private Placement in PAS-5
7. File PAS-4 + PAS-5 with ROC within 30 days of issue of offer letter in e-form GNL-2



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8. Make Allotment of shares within 60 days of receipt of money from the persons to whom the right was given.
9. Called Board Meeting for allotment of shares
10. File PAS-3 (Return of Allotment) with ROC within 30 days of Allotment with following Attachments:
  - List of Allottees
  - Board Resolution for allotment of shares

### **(ii) Independent Director u/s 149(6):**

An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;  
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) who has or had no pecuniary relationship 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;
- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (e) who, neither himself nor any of his relatives—
  - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
  - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
    - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
    - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten percent or more of the gross turnover of such firm;
  - (iii) holds together with his relatives two percent or more of the total voting power of the company; or
  - (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five percent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two percent or more of the total voting power of the company; or
- (f) who possesses such other qualifications as may be prescribed.

### **(iii) Disqualification of Director u/s 164:**

- (1) A person shall not be eligible for appointment as a director of a company, if —
  - (a) he is of unsound mind and stands so declared by a competent court;
  - (b) he is an undischarged insolvent;
  - (c) he has applied to be adjudicated as an insolvent and his application is pending;



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- (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:  
Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
- (e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- (g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
- (h) he has not complied with sub-section (3) of section 152.
- (2) No person who is or has been a director of a company which—
- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

### **(iv) Entrenchment Clause:**

The Article may contain entrenchment provision. This is new concept under Indian Companies Act, as there was no such concept under the old Act.

The word Entrench is not defined under Companies Act, 2013. As per Oxford Dictionary the word entrench means to establish (an attitude habit or belief) so firmly that change is very difficult or unlikely. It may require form of super majority or referendum submitted to the people, or the consent of another party.

If such entrenchment provisions are intended to be incorporated in its Articles after Incorporation then consent of members is mandatory in the prescribed manner. In case of a 'Private Company', consent of all the members of the company is required and in case of 'Public Company' consent of its members by way of special resolution is required.

According to Rule 10 of Companies (Incorporation) Rules, 2014 where the Article contain provisions for entrenchment, the Company shall give notice to the Registrar within 30 days from the date of formation or amendment of Articles of such provision in Form INC-2 or Form INC-7 as the case may be at the time of incorporation of the Company.

Where the Articles of an existing company has been altered to include entrenchment, the notice of entrenchment shall be filed in Form MGT -14 within 30days from the date of entrenchment of the Articles as the case may be along with the fees as provided in the Company's Rules, 2014.

### **6. A Limited, a Company situated in Kolkata (West Bengal) wants to shift its registered office from West Bengal to Maharashtra.**

**Advice the Company with complete procedure along with names of e-forms required with their respective attachments.**

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### Answer:

A Limited, a Company of West Bengal, which wants to shift its registered office to Maharashtra, has to comply with the following formalities as mentioned below:

1. The Company has to call an Extra Ordinary General Meeting.
2. Pass Special Resolution seeking members' approval for shifting of registered office and file e-Form MGT-14 to Registrar of Companies (ROC) within 30 days of passing Special Resolution.
3. At least one month before filing application with Regional Director(RD) –
  - Publish a notice, at least in one daily newspaper published in English and in one principal language of that district in which the registered office of the company is situated and serve individual notice on each debenture holder, depositor and creditor of the Company. The newspaper advertisement/notice to creditors should state that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the Company within 21 days of the date of publication of that notice.
4. Draw up the application and file e-form INC 23, with following attachments:-
  - Copy of minutes of meeting in which special resolution has been passed
  - Copy of Memorandum of Association
  - Notice convening the general meeting along with explanatory statement
  - Extract of special resolution passed by members approving the change of registered office
  - Copies of advertisement published
  - Copies of notice sent to creditors, debenture holder, depositor along with dispatch proof
  - Particulars of objections received;
  - Any attachment to support the details of prosecution filed against the company and its officers in default, if any
5. File a copy of the application to ROC and Chief Secretary through Speed/ Registered Post.
6. Once the order is passed by the RD, approving shifting of the registered office, File e-form INC-28 along with the Order passed by RD within 30 days from the date of passing order by RD and then file e-form INC 22 with both the ROCs, supported by the following documents:
  - The registered document of the title of the premises of the registered office in the name of the company; or
  - The notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
  - The authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
  - The proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

### 7. Advice:

- (1) C Limited sent the notice of EGM on 30th September, 2017 for a meeting to be held on 24<sup>th</sup> October, 2017 through courier. Explain whether the notice was sent as per Section 101 of the Act.
- (2) B Limited has 4000 members. The Company conducted an EGM and at the EGM 20 members were present. Explain whether the quorum was sufficient as per Section 103 of the Act.
- (3) Some members of AB Limited want Mr. C's name to be proposed for the candidate of director in the Company. Explain the procedure with applicable provision. What would have been your answer if the company would have been a Private Limited Company?

### Answer:

- a) As per section 101 of the Companies Act, 2013 a company has to give atleast 21 Clear Days notice to the members to call a General meeting. Over here Clear days means it will not include the date of giving of notice and the day of meeting and further if the notice is sent by post then it will be deemed to be delivered after 2 days from the dispatch of notice. Further those 21 Clear Days does not include a National Holiday i.e. Gandhi Jayanti (2<sup>nd</sup> October), Independence Day (15<sup>th</sup> August) and Republic Day (26<sup>th</sup> January).

So as we can see in the given case study C Limited sends notice on 30<sup>th</sup> September, 2017 for a meeting to be held on 24<sup>th</sup> October so the Day of sending notice and the day of meeting is excluded and further there is a National Holiday on 2<sup>nd</sup> October so that will also be excluded and the speed post is sent by post so it will be deemed to be received after 2 days of sending the notice. Therefore, total number of days excluded are (1+1+2+1=5) so days remaining (25-5=20) Days. Hence Section 101 is not complied over here by the company.

- b) As per section 103 of the Companies Act, 2013, unless the Articles of the company provide for a larger number,—

(a) In case of a Public Company,—

- (i) 5 (five) members personally present if the number of members as on the date of meeting is not more than one thousand;
- (ii) 15 (fifteen) members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (iii) 30 (thirty) members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, 2 (two) members personally present, shall be the quorum for a meeting of the company.

As per the given case study B Limited, a Public Company, has 4000 members so therefore the Company needs to have a quorum of 30 (Thirty) people in a general meeting but B Limited has only 20 members present in the EGM so the Quorum is not sufficient as per Section 103 of the Act and therefore the meeting shall be adjourned till next week same day same place at same time.

- c) As per Section 160 of the Companies Act 2013 a person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than 14 (fourteen) days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of ₹ 1,00,000/- [one lakh rupees] shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25 % (twenty-five percent) of total valid votes cast either on show of hands or on poll on such resolution.

So as per the given case study the members of AB Limited who want Mr. C as the candidate for the Directorship of the company has to give a notice in written to the company about the candidate standing for the position of Directorship at its registered office atleast 14 days before the meeting and deposit ₹ 1,00,000/- with the company as a security deposit which shall be refunded once Mr. C becomes the director of gets atleast 25% votes otherwise the deposit shall be forfeited by the company.

If the Company would have been a private co then this section would have not been applicable on the Company as per the Notification dated 5<sup>th</sup> June 2015 of the Companies Act, 2013 which granted exemption to private companies from Section 160.



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## SECTION – D : ETHICS

### Study Note – 15

### BUSINESS ETHICS

**Learning Objective:** *The primary objective of this topic is to develop a basic understanding of the challenges related to business ethics and corporate social responsibility; to be faced by the manager in a global market. Exposing students to the leading thinkers in ethics and corporate responsibility and also – by exposing participants to recent corporate examples of the challenges in this area.*

#### Section-A

##### 1. (a) Multiple Choice Questions: (Answers in **Bold**)

- (i) In which year British Government appointed a committee called as Committee on Standards in Public Life to advise the Prime Minister on ethical standards of public life
- 1992
  - 1994**
  - 1996
  - 1998
- (ii) What is mandatory in business
- Law**
  - Ethics
  - None of the above
  - Both
- (iii) Among the following which is not a part of Golden Rule of Ethics?
- Everything you want others to do to you, you shall do to others,
  - Do not do to others that which you do not wish them to do to you,
  - Do not do anything to others that if done to you, would cause harm to you.
  - Always engaged in such activity that will lead to personal betterment as well as of others.**
- (iv) How does the ethical operation of a company related to profitability?
- Directly with short term basis
  - Directly with long term basis
  - Directly with both short term and long term basis**
  - Directly with long term but indirectly with short term
- (v) In which year the Seven Principles of Public Life were set out by Lord Nolan?
- 1985
  - 1993
  - 1995**
  - 1997
- (vi) The process by which human behaviours, institutions, or policies are judged to be in accordance with or in violation of moral standards is known as-
- Ethical process
  - Moral Reasoning**
  - Moral relativism process
  - Business Ethics



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- (vii) A study that there are no ethical standards that are absolutely true and that they apply or should be applied to the companies and people of all societies is known as-
- Normative Study
  - Descriptive Study
  - Ethical relativism**
  - Moral Reasoning
- (viii) An ethic based on evaluations of the moral character of persons or groups is known as---
- Ethics of Care
  - Ethics of Virtue**
  - Utilitarianism
  - Egalitarianism
- (ix) Which theory supports the view that every person should be given equal shares of a society's or a group's benefits and burdens?
- Ethics of Care
  - Ethics of Virtue
  - Utilitarianism
  - Egalitarianism**
- (ix) Which concept advocates that everyone should be given an equal chance to qualify for the more privileged positions in society's institutions?
- Distributive Justice
  - Principle of Equal Opportunity**
  - Retributive Justice
  - Compensatory Justice
- (x) Which type of justice deals with blaming or punishing persons fairly for doing wrong?
- Distributive Justice
  - Justice & fairness
  - Retributive Justice**
  - Compensatory Justice
- (xi) An ethic that sees concrete communities and communal relationships as having fundamental value that should be preserved and maintained is known as-
- Communitarian Ethic**
  - Ethic of Care
  - Principle of Equal opportunity
  - Work Ethic

**(b) Fill in the Blanks:** (Answers in **Bold**)

- (i) The word Ethics is derived from the Latin word----**Ethos**---
- (ii) The word Kaizen means----**Continuous Improvement**----
- (iii) The Seven Principles of Public Life were set out by ---- **Lord Nolan**----
- (iv) British Govt. had established the Committee on Standards in Public Life in the year----**1994**----
- (v) Kohlberg's three levels of moral developments are-----**Pre-conventional, Conventional and Post-conventional**.....
- (vi) A study to explain the situation without any intention to reach conclusions is known as----**Descriptive Study**....
- (vii) ---**Ethics of Care**--- emphasizes caring for the concentrate well being of those near to us
- (viii) --- **Principle of Equal Opportunity** – tells that everyone should be given an equal chance to qualify for the more privileged positions in society's institutions.



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- (ix) An acquired disposition that is valued as a part of the character of a morality of good human being and that is exhibited in the person's habitual behaviour is known as---**Moral Virtue....**

**(c) True or False:** (Answers in **Bold**)

- (i) Applied ethics deal with the nature of moral judgment.  
**False**
- (ii) Meta Ethics looks at the origins and meanings of ethical principles.  
**True**
- (iii) Normative study is a study to reach conclusions what are goods and what are evils.  
**True**
- (iv) Egalitarianism supports the view that holds that actions and policies should be evaluated on the basis of benefits and costs that will impose on society  
**False**
- (v) Utilitarianism view holds that every person should be given equal shares of a society's or a group's benefits and burdens  
**False**
- (vi) Distributive Justice tells that everyone should be given an equal chance to qualify for the more privileged positions in society's institutions.  
**False**
- (vii) Compensatory Justice advocates restoring to a person what the person lost when he or she was wronged by someone  
**True**
- (viii) Puritan ethic advocated the view that every individual has a religious obligation to work hard at his calling.  
**True**

**(d) Match & Pair**

(i)

	Column 1		Column 2
1	Meta Ethics	A	Deals with morality in corporate activities
2	Normative Ethics	B	Deals with issues like animal rights, war etc.
3	Applied Ethics	C	Deals with nature of moral judgement
4	Business Ethics	D	Deals with content of moral judgement

**Ans: 1-C, 2-D, 3-B, 4-A**

(ii)

	Column 1		Column 2
1	Normative Study	A	A study to explain the situation without any intention to reach conclusions
2	Descriptive Study	B	A study to reach conclusions what are goods and what are evils
3	Business Ethics	C	A study that there are no ethical standards that are absolutely true and that they apply or should be applied to the companies and people of all societies.
4	Ethical Relativism	D	A specialized study of moral right and wrong applicable in corporate domain

**Ans: 1-B, 2-A, 3-D, 4-C**

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(iii)

	Column 1		Column 2
1	Ethics of Care	A	A view that every person should be given equal shares of a society's or a group's benefits and burdens
2	Ethics of Virtue	B	A view that holds that actions and policies should be evaluated on the basis of benefits and costs that will impose on society
3	Utilitarianism	C	An ethic based on evaluations of the moral character of persons or groups
4	Egalitarianism	D	An ethic that emphasizes caring for the concentrate well being of those near to us

**Ans: 1-D, 2-C, 3-B, 4-A**

(iv)

	Column 1		Column 2
1	Distributive Justice	A	Blaming or punishing persons fairly for doing wrong
2	Retributive Justice	B	Sharing society's benefits and burden fairly
3	Compensatory Justice	C	Everyone should be given an equal chance to qualify for the more privileged positions in society's institutions
4	Principle of Equal Opportunity	D	Restoring to a person what the person lost when he or she was wronged by someone

**Ans: 1-B, 2-A, 3-D, 4-C**

### Section-B

2. **Define Business Ethics. State the basic features of business ethics. In this context elucidate general principles of business ethics. Why adherence to ethical principle is required for business organization?**

**3+4+4+4**

**Answer:**

Business ethics is the principles and standards that determine acceptable conduct in business organizations. The acceptability of behavior in business is determined by customers, competitors, government regulators, interest groups, and the public, as well as each individual's personal moral principles and values.

**Basic features of business ethics:-**

- (i) Code of conduct;
- (ii) Provide protection to social group;
- (iii) Provide basic frame work;
- (iv) Need willing acceptance;
- (v) Education and guidance;
- (vi) Not against for profit making.
- (vii) Fair treatment to all stakeholders.

**General Principles of business ethics:-**

- Be trustful;
- Be keep open mind;
- Meet obligations;
- Have clear documents;
- Become community involved;
- Maintain accounting control;
- Be respectful.

### Need for adherence to business ethics

The following points discuss the need for adherence to business ethics

- to stop business malpractice;
- to improve customers' confidence;
- for the survival of business;
- to safeguard consumers' rights;
- to protect employees and shareholders;
- to develop good relations;
- to create good image;
- for smooth functioning;
- consumer movement;
- consumer satisfaction;
- importance of labor;
- healthy competition

### 3. Discuss the concepts of Ethics. What are the various forms of Ethics? Discuss the seven principles of public life.

**Answer:**

**Ethics is a set of rules that define right and wrong conduct.** The term 'ethics' derived from Latin word 'ethos' which means character. Ethics is a social science which deals with concepts such as right and wrong, moral and immoral, good and bad behavior of dealing with one another. Ethics is the basic concepts and fundamental principles of decent human conduct. It includes the study of universal values of such as the essential quality of all men and women, human or natural rights, obedience to the law of land, concern for health and safety and increasingly, also for the natural environment. Ethics are the set of moral principles that guide a person's behavior. These morals are shaped by social norms, cultural practices, and religious influences. Ethics reflect beliefs about what is right, what is wrong, what is just, what is unjust, what is good, and what is bad in terms of human behavior. They serve as a compass to direct how people should behave toward each other, understand and fulfill their obligations to society, and live their lives.

**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 looks at 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 looks at controversial topics like war, animal rights and capital punishment.

**The Seven Principles of Public Life** were set out by Lord Nolan for the first time in the year 1995. These principles of public life will apply to any one who works as a public office holder, including elected and appointed to public office either locally or nationally. The British Government appointed a committee called as Committee on Standards in Public Life to advise the Prime Minister on ethical standards of public life. The Committee was established in October 1994. The Committee submitted its first report in the year 1995 containing the seven principles of public life.

The said principles have been amended over year. The seven principles of public life as amended up to and as on 2015 are as follows:



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- **Selflessness** – Holders of public office should act solely in terms of the public interest.
- **Integrity** - Holders of public office must avoid placing themselves under any obligation to people or organizations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability** - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty** - Holders of public office should be truthful
- **Leadership** - Holders of public office should exhibit these principles in their own behavior. They should actively promote and robustly support the principles and be willing to challenge poor behavior wherever it occurs.

#### 4. Short notes:

- (a) Recognition of ethical issues in business,
- (b) Improving ethical behavior in business,
- (c) Mission Statement of ICAI
- (d) Areas in Business Ethics
- (e) Elements of moral responsibility
- (f) Types of Justice

Answer:

#### (a) Recognition of ethical issues in business-

Learning to recognize ethical issues is the most important step in understanding business ethics. An ethical issue is an identifiable problem, situation, or opportunity that requires person to choose from among several actions that may be evaluated as right or wrong, ethical or unethical. In business, such a choice often involves weighing monetary profit against what a person considers appropriate conduct. The best way to judge the ethics of a decision is to look at a situation from a customer's or competitor's viewpoint. Many business issues may seem straightforward and easy to resolve, but in reality, a person often needs several years of experience in business to understand what is acceptable or ethical. Ethics are also related to the culture in which a business operates.

#### (b) Improving ethical behavior in business-

Understanding how people make ethical choices and what prompts a person to act unethically may reverse the current trend toward unethical behavior in business. Ethical decisions in an organization are influenced by three key factors: individual moral standards, the influence of managers and co-workers, and the opportunity to engage in misconduct. It is difficult for employees to determine what conduct is acceptable within a company if the firm does not have ethics policies and standards. And without such policies and standards, employees may base decisions on how their peers and superiors behave. Professional codes of ethics are formalized rules and standards that describe what a company expects of its employees. Codes of ethics, policies on ethics, and ethics training programs advance ethical behavior because they prescribe which activities are acceptable and which are not, and they limit the opportunity for misconduct by providing punishments for violations of the rules and standards. The enforcement of such codes and policies through rewards and punishments increases the acceptance of ethical standards by employees.



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### (c) Mission statement of ICAI

The Institute of Cost and Management Accountants of India has promulgated the following standards of ethical conduct for practitioners-

- maintain at all times independence of thought and action;
- not to express an opinion on cost / financial reports or statements without first assessing her or his relationship with her or his client to determine whether such Member might expect her or his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts; and
- when preparing cost / financial reports or statements or expressing an opinion on cost / financial reports or statements, disclose all material facts known to such Member in order not to make such cost / financial reports or statements misleading, acquire sufficient information to warrant an expression of opinion and report all material misstatements or departures from generally accepted accounting principles.
- not to disclose or use any confidential information concerning the affairs of such Member's employer or client unless acting in the course of his or her duties or except when such information is required to be disclosed in the course of any defence of himself or herself or any associate or employee in any lawsuit or other legal proceeding or against alleged professional misconduct by order of lawful authority or any committee of the Society in the proper exercise of their duties but only to the extent necessary for such purpose;
- inform his or her employer or client of any business connections or interests of which such Member's employer or client would reasonably expect to be informed;
- not, in the course of exercising his or her duties on behalf of such Member's employer or client, hold, receive, bargain for or acquire any fee, remuneration or benefit without such employer's or client's knowledge and consent; and
- take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter.
- conduct himself or herself toward other Members with courtesy and good faith;
- not to accept any engagement to review the work of another Member for the same employer except with the knowledge of that Member, or except where the connection of that Member with the work has been terminated, unless the Member reviews the work of others as a normal part of his or her responsibilities;
- not to attempt to gain an advantage over other Members by paying or accepting a commission in securing management accounting work;
- not to act maliciously or in any other way which may adversely reflect on the public or professional reputation or business of another Member;
- at all times maintain the standards of competence expressed by the Institute from time to time;
- undertake only such work as he or she is competent to perform by virtue of his or her training and experience and will, where it would be in the best interests of an employer or client, engage, or advise the employer or client to engage, other specialists.

### (d) Areas in business ethics

Generally, the areas of business ethics are following-

- Corporate Social Responsibility;
- Fiduciary responsibility to stake holders;
- Industrial espionage.

Ethical behavior and corporate social responsibility can bring significant benefits to a business.

For example, they may:

- attract customers to the firm's products, which means boosting sales and profits
- make employees want to stay with the business, reduce labour turnover and therefore increase productivity

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- attract more employees wanting to work for the business, reduce recruitment costs and enable the company to get the most talented employees
- attract investors and keep the company's share price high, thereby protecting the business from takeover.

Knowing that the company, they deal with, has stated their morals and made a promise to work in an ethical and responsible manner allows investors' peace of mind that their money is being used in a way that arranges with their own moral standing. When working for a company with strong business ethics, employees are comfortable in the knowledge that they are not by their own action allowing unethical practices to continue. Customers are at ease buying products or services from a company they know to source their materials and labor in an ethical and responsible way.

A company which sets out to work within its own ethical guidelines is also less at risk of being fined for poor behavior, and less likely to find themselves in breach of one of a large number of laws concerning required behavior. Reputation is one of a company's most important assets, and one of the most difficult to rebuild should it be lost. Maintaining the promises it has made is crucial to maintaining that reputation. Businesses not following any kind of ethical code or carrying out their social responsibility leads to wider consequences. Unethical behavior may damage a firm's reputation and make it less appealing to stakeholders. This means that profits could fall as a result. The natural world can be affected by a lack of business ethics. For example, a business which does not show care for where it disposes its waste products, or fails to take a long-term view when buying up land for development, is damaging the world in which every human being lives, and damaging the future prospects of all companies.

### (e) Elements of moral responsibility

The term moral responsibility is sometimes used to mean moral duty or obligation. For example, when we say "Mr. X had a moral responsibility not to lie." it means this is the moral obligation of Mr. X not to tell lie. However, people are not always morally responsible for their deed. For example, a person who injures someone by accident is excused from any blame if he unwillingly commits such a foul. However, a person is morally responsible for an injury when that person caused the injury and did so knowingly and freely. Hence a person is morally responsible for an injury if-

- (i) the person caused or helped cause it , or failed to prevent it when he could and should have, and
- (ii) the person did so knowing what he or she was doing and
- (iii) the person did so of his own free will.

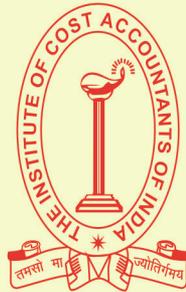
In the light of the above statement basic elements of moral responsibility can be the following-

- (i) Individual must cause or fail to prevent an avoidable injury or wrong, and
- (ii) Individual must know what he is doing and
- (iii) Individual must act of his own free will.

### (f) Types of Justice-

In the literature of ethics in general and business ethics in particular three types of Justice can be observed-

- (i) Distributive Justice
- (ii) Retributive Justice
- (iii) Compensatory Justice
  - (a) Distributive Justice- Sharing society's benefits and burden fairly
  - (b) Retributive Justice- Blaming or punishing persons fairly for doing wrong
  - (c) Compensatory Justice- Restoring to a person what the person lost when he or she was wronged by someone.



## **THE INSTITUTE OF COST ACCOUNTANTS OF INDIA** (Statutory body under an Act of Parliament)

Website : [www.icmai.in](http://www.icmai.in)

Email: [studies@icmai.in](mailto:studies@icmai.in)

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### **HEADQUARTERS**

CMA Bhawan  
12, Sudder Street, Kolkata - 700 016  
Ph: +91-33-2252-1031/34/35/1602/  
1492/1619/7373/7143  
Fax: +91-33-2252-7993/1026/1723

### **DELHI OFFICE**

CMA Bhawan  
3, Institutional Area, Lodhi Road  
New Delhi - 110003  
Ph: + 91-11-24666100/24666124/24666122  
Fax: +91-11-43583642

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