



Time Allowed: 3 Hours

Full Marks: 100

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

SECTION – A

1. Multiple Choice Questions:

[15 x 2 = 30]

- (i) Cash is withdrawn by a customer of a bank from the automatic teller machine is an example of _____.
- Express Contract
 - Void Contract
 - Tacit Contract
 - Illegal Contract
- (ii) Which of the following agency is irrevocable under The Indian Contract Act, 1872?
- Agency for fixed period
 - Agency for single transaction
 - Agency coupled with interest
 - Continuing Agency
- (iii) A sort of tacit understanding /agreement among the intending bidders to stifle competition by not bidding against each other in an auction sale is called as _____.
- Damping
 - Konck-out Agreement
 - Puffers
 - By-Bidders
- (iv) When an instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein, it is called:
- Ambiguous Instrument
 - Inchoate Instrument
 - Escrow Instrument
 - Inland Instrument
- (v) A new partner may be admitted into a partnership firm either for the increase of capital of the firm or to strengthen the _____
- Production of the firm
 - Management of the firm
 - Profit share of the firm
 - Manpower of the firm
- (vi) Power to exempt any LLP or class of LLP for audits of accounts is with _____.
- Inspector



- b. Central Government
- c. Any other regulatory authority
- d. None of the above

(vii) According to Factories Act, 1948 white wash or colour wash should be carried out at least once in every period of _____.

- a. 14 months
- b. 24 months
- c. 48 months
- d. 60 months

(viii) Provisions of EPF & Miscellaneous Provision Act, 1952 are applicable to Cinema/Theatre employing:

- a. 10 or more persons
- b. 20 or more persons
- c. 5 or more persons
- d. 15 or more persons

(ix) Gratuity is payable to an employee after he has rendered continuous service for not less than five years on his _____.

- a. transfer
- b. daughter's marriage
- c. re-employment
- d. resignation

(x) The employer's and employee's share of contribution of ESI fund is

- a. 1.75% and 4.75% of wages respectively
- b. 3.25% and 0.75% of wages respectively
- c. 10% and 3.75% of wages respectively
- d. 11% and 3.75% of wages respectively

(xi) In which of the following manner, the employer may fix wage period as per Code of Wages, 2019?

- (i) Daily (ii) Weekly (iii) Fortnightly (iv) Monthly
- a. (i), (ii) and (iv)
 - b. (i) and (ii)
 - c. (i), (ii), (iii) and (iv)
 - d. Only (iv)

(xii) The sweat equity shares shall be locked in for a period of ____ years from the date of allotment.

- a. One
- b. Two
- c. Three
- d. Four



(xiii) Every company limited by shares shall keep and maintain the Register of Members in Form No. _____

- a. MGT – 1
- b. MGT – 3
- c. MGT – 7
- d. MGT – 12

(xiv) A prospectus which does not have complete particulars on the price of securities offered and the quantum of securities offered by the company is known as:

- a. Private placement
- b. Red-herring prospectus
- c. Deemed prospectus
- d. Shelf prospectus

(xv) Meta ethics deal with the nature of _____

- a. External influences
- b. Moral Judgement
- c. Material facts
- d. Personal rights

Answer:

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

Section – B

(Answer any five questions out of seven questions given. Each question carries 14 Marks)

- 2.(a) Discuss the different modes of terminating contractual relationship between the parties. [7]
- 2.(b) Discuss the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal? [7]

Answer:

2. (a) **Modes of Terminating Contractual relationship between the parties:**

When the rights and obligations created by a contract come 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:

1. Discharge by performance:



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Performance is the usual mode of discharge of a contract. Performance may be:

- (a) actual performance
- (b) attempted performance.

Actual performance is the fulfillment of the obligations arising from a contract by the parties to it, in accordance with the terms of the contract.

Offer of performance is also known as attempted performance or tender of performance.

A valid tender of performance is equivalent to performance.

2. Discharge by agreement:

The parties may agree to terminate the existence of the contract in any of the following ways:

- (a) Novation (Sec. 62)
- (b) Alteration (Sec. 62)
- (c) Rescission (Sec. 62)
- (d) Remission (Sec. 63)
- (e) Waiver (Sec. 63)

a. Novation: Substitution of a new contract in place of the existing contract is known as “Novation of Contract”. It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties.

b. Alteration: Alteration means change in one or more of the terms of the contract. In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.

c. Rescission: Rescission means “cancellation”. All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.

d. Remission: Remission means acceptance of a lesser performance than what is actually due under the contract. There is no need of any consideration for remission.

e. Waiver: Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged.

3. Discharge by lapse of time: Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law.

4. Discharge by operation of law: A contract may be discharged by operation of law in the following cases.

- a. Death
- b. Insolvency
- c. Unauthorized material alteration.
- d. Merger

a. Death: In contracts involving personal skill or ability, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass on to his legal representatives.

b. Insolvency: The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his adjudication.

c. Unauthorized material alteration: Material alteration in the terms of the contract without the consent of the other party discharges the contract. Change in the amount

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of money to be paid, date of payment, place of payment etc. are examples of material alteration.

d. Merger: When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end.

5. Discharge by breach of contract: Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract.

6. Discharge by impossibility of performance: Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things.

2.(b) Personal Liability of Agent - Sec. 230: In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary. -Such a contract shall be presumed to exist in the following cases: -

- (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) Where the agent does not disclose the name of his principal;
- (3) Where the principal, though disclosed, cannot be sued. An agent is not personally liable for the contracts entered into by him on behalf of his principal unless there is a contract to the contrary. Such a contract is presumed in the following circumstances:
 - i. Where the Contract Expressly Provides
 - ii. Where the Agent Acts for a Foreign Principal
 - iii. Where the agents act for an unnamed principal
 - iv. Where the principal cannot be sued
 - v. Where the Agent Contracts in Excess of his Authority
 - vi. Where the Agent Acts for an Undisclosed Principal
 - vii. Where the Trade Usage or Customs makes him Personally Liable
 - viii. Where the Agent Acts for a Non-Existing Principal
 - ix. Where an Agent Receives or Pays Money by Mistake or Fraud
 - x. Where the Agent Signs the Negotiable Instruments in his own Name
 - xi. Pretended Agent
 - xii. Where the Agent's Authority is Coupled with Interest.

3.(a) Demonstrate the circumstances in which Limited Liability Partnership may be wound up by Tribunal? [7]

3.(b) What do you understand by "Caveat Emptor" under the Sale of Goods Act, 1930? Discuss the exceptions to this rule? [7]

Answer:

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- 3.(a)** The circumstances in which a Limited Liability Partnership may be dissolved by Tribunal are provided in Section 64 of the Limited Liability Partnership Act, 2008. A Limited Liability Partnership may be wound up by the Tribunal in the following ways:
- The Limited Liability Partnership decides that limited liability partnership be wound up by the Tribunal.
 - If, for a period of more than six months, the number of partners of the Limited Liability Partnership is reduced below two.
 - If the Limited Liability Partnership has acted against the interests of the sovereignty and integrity of India, the security of the state or public order.
 - If the Limited Liability Partnership has made a default in filing with the Registrar the statement of account and solvency or annual return for any five consecutive financial years; or
 - If the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.
 - If the Limited Liability Partnership is unable to pay its debts.

3.(b) Doctrine of Caveat Emptor:

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 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”. 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), 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 himself regarding the health of the pigs.

However, there are some exceptions to Section 16 which are as under:

- Where the buyer, expressly or by implication, makes it known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller’s skill or judgment, and the goods are of a description which it is in the course of the seller’s business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably be fit for such purpose. However, in the case of a contract for the sale of a specified article under its patent or other trade name, there are no implied conditions as to its fitness for any particular purpose.
- Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. However, if the buyer has



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examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed. In order to apply the implied condition as to merchantability the following requirements must be satisfied:

- i) the seller should be dealer in goods of that description;
 - ii) the buyer must have not opportunity to examine the goods or there must be some latent defect in the goods which would not be apparent on reasonable examination of the same.
- c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In some cases, the purpose for which the goods are required may be ascertained from the acts and conducts of the parties to the sale or from the nature of the description of the article purchased. For example, if a hot water bottle is purchased, the purpose for which it is purchased is implied in the thing itself. In such a case the buyer need not tell the seller the purpose for which the bottle is purchased. Similarly, if a thermometer is purchased in common usage, the purpose of thermometer is well known, the buyer need not tell the seller.
- d) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

4.(a) Discuss the time limit for payment of wages under the Code on Wages, 2019? [7]

4.(b) Discuss the procedure for determination of the amount of gratuity as per Section 7 of the Payment of Gratuity Act, 1972? [7]

Answer:

4.(a) Time limit for payment of wages under Section 17

1. The employer shall pay or cause to be paid wages to the employees, engaged on:
 - a) daily basis, at the end of the shift;
 - b) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;
 - c) fortnightly basis, before the end of the second day after the end of the fortnight;
 - d) monthly basis, before the expiry of the seventh day of the succeeding month.
2. Where an employee has been:
 - a) removed or dismissed from service; or
 - b) retrenched or has resigned from service, or became unemployed due to closure of the establishment, the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.
3. Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.
4. Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

4.(b) Procedure for determination of the amount of Gratuity under Section 7 of the payment of Gratuity Act, 1972:

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Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period, the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.

If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

5.(a) State the procedure of alteration of Memorandum of Association as per the Companies Act, 2013? [7]

5.(b) Enumerate the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director. [7]

Answer:

5.(a) Procedure of alteration of memorandum (under Sec. 13)

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

- 1. Alteration by special resolution:** Company may alter the provisions of its memorandum with the approval of the members by a special resolution.
- 2. Name Change of the company:** Any change in the name of a company shall be effected only with the approval of Central Government in writing.
However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word "Private", consequent on the conversion of any one class of companies to another class.
- 3. Entry in register of companies:** On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate
- 4. Change in the registered office:** The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.
- 5. Disposal of the application of change of place of the registered office:** The Central Government shall dispose of the application of change of place of the registered office

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within a period of sixty days. Before passing of order, the Central Government may satisfy itself that:-

- the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
 - that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or adequate security has been provided for such discharge.
6. **Filing with Registrar:** A company shall, in relation to any alteration of its memorandum, file with the Registrar –
- the special resolution passed by the company under sub-section (1) of Section 13;
 - the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.
7. **Filing of the certified copy of the order with the registrar of the states:** Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.
8. **Issue of fresh certificate of incorporation:** The Registrar of the State where the registered office is being shifted to, shall issue afresh certificate of incorporation indicating the alteration.
9. **Change in the object of the company:** A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and —
- the details, in respect to of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;
 - he dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
10. **Registrar to certify the registration on the alteration of the objects:** The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.
11. **Alteration to be registered:** No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
12. **Only member have a right to participate in the divisible profits of the company:** Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

5.(b) Disqualifications of Director:



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Section 164 (1) of the Companies Act, 2013 provides that 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;
- 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.
- i) he has not complied with the provisions of sub-section (1) of section 165

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 debenture 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.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

In addition to the aforementioned, private companies can include other disqualifications within their articles of association if they so wish.

- 6.(a) Explain the seven principles of public life. [7]**
- 6.(b) Interpret the standards of ethical conduct for practitioners fixed by the Institute of Cost Accountants of India? [7]**

Answer:

6.(a) Seven Principles of Public Life:



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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-

- (a) **Selflessness** – Holders of public office should act solely in terms of the public interest.
- (b) **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.
- (c) **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- (d) **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.
- (e) **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.
- (f) **Honesty** - Holders of public office should be truthful.
- (g) **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.

- 6.(b) The Institute 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 defense 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

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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;

7.(a) Write briefly about Audit Committee according to Section 177 of Companies Act, 2013? [7]

7.(b) Mr. Sohit, a Director of PQR Limited proceeding on a long foreign tour, appointed Mr. Sohan as an alternate director to act for him during his absence. The articles of the company provide for appointment of alternate directors. Mr. Sohit claims that he has a right to appoint alternate director. Demonstrate whether Mr. Sohit is correct based on legal provisions? [7]

Answer:

7.(a) Audit Committee: Sec. 177 of Companies Act, 2013

1. The Board of Directors of 1[every listed public company] and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
2. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:
Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
3. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
4. Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include, –
 - i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - iii) examination of the financial statement and the auditors' report thereon;



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- iv) approval or any subsequent modification of transactions of the company with related parties;
 - v) scrutiny of inter-corporate loans and investments;
 - vi) valuation of undertakings or assets of the company, wherever it is necessary;
 - vii) evaluation of internal financial controls and risk management systems;
 - viii) monitoring the end use of funds raised through public offers and related matters.
5. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
6. The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
7. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.
8. The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.
9. Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.
10. The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases:

Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with section 177 (2).

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, among other things, include, the recommendation for appointment, remuneration and terms of appointment of auditors of the company; review

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

However, the Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

Additionally, the Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

Moreover, every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed. The vigil mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.

- 7.(b)** Appointment of alternate director can be done by the BOD and not by any individual director. Mr. Sohit is not correct based on legal provision.

Section 161(2) of the Companies Act, 2013 provides that the Board of Directors of a company may, if authorized by its Articles or by resolution passed by the company in general meeting, appoint an alternate director to act for a director during his absence for a period of not less than 3 months from the State in which the meetings of the Board are ordinarily held. The alternate director can be appointed only by the Board of Directors and only in cases where the Board is authorized by Articles or by the company in General Meeting.

Hence Mr. Sohit the director in question, is not competent to appoint alternate director and the appointment of Mr. Mohan as alternative director is not valid.

- 8.(a)** 'A' contracts with 'B' for a fixed price to construct a house for 'B' with in stipulated time. 'B' would supply the necessary material to be used in the construction. 'C' guarantees A's performance of the contract. 'B' does not supply the material as



per the agreement. Is 'C' discharged from his liability. Analyse the situation and discuss. [7]

- 8.(b) The management of Ambika Properties Ltd., has decided to take up the business of chemical processing activity because of the downward trend in real estate business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in the object clause in the light of Companies Act, 2013. [7]

Answer:

8.(a)

- In this case C is surety for A's performance. Performance of A depends on the supply of material by B. B does not supply the required material which makes A unable to perform his part of contract.
- According to Section 134 of the Indian Contract Act, 1872 the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.
- In the given case, B omits to supply the necessary material.
- Hence, C is discharged from his liability.

8.(b) According to Section 13(8) of the Companies Act, 2013, a company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and:

- (i) The prescribed details in respect of such resolution are published in the newspapers (one in English and one in Vernacular language) which is in circulation at the place where the registered office of the company is situated and are also placed on the website of the company, if any, indicating herein the justification for such change.
- (ii) The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

The Registrar shall register the alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

It may be noted that no alteration with respect to objects shall have any effect until it has been registered as aforesaid. [Sec. 13(10)].



INTERMEDIAR EXAMINATION

SET - 1

MODEL ANSWERS

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SYLLABUS 2022

BUSINESS LAWS AND ETHICS