



Time Allowed: 3 Hours

Full Marks: 100

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

SECTION – A (Compulsory)

1. Choose the correct option: [15 × 2 = 30]
- i. What does "Estoppel" mean in legal terms?
 - a. The right to enforce a contract
 - b. The ability to break a contract without penalty
 - c. The right to sue for damages
 - d. The act of being prevented from denying something

 - ii. Agreements of wagers are _____
 - a. Void and unenforceable
 - b. Valid and enforceable
 - c. Only valid if written
 - d. Enforceable in some circumstances

 - iii. What does Section 17 of the Indian Contract Act, 1872 deal with?
 - a. Mistake in contracts
 - b. Fraud
 - c. Coercion
 - d. Misrepresentation

 - iv. Which of the following statements is true regarding conditions and warranties?
 - a. Breach of a condition allows for termination of the contract; breach of a warranty does not.
 - b. Breach of a warranty allows for termination of the contract; breach of a condition does not.
 - c. Both conditions and warranties allow for termination of the contract.
 - d. Neither conditions nor warranties allow for termination of the contract.

 - v. If the amount is paid after the due date and no interest rate has been specified in the instrument, the interest is payable at:
 - a. 10%
 - b. 15%
 - c. 18%
 - d. 12%

 - vi. Under Section 52, if a contract creating a partnership is rescinded due to fraud or misrepresentation, the party entitled to rescind is entitled to:



- a. A lien on the surplus assets of the firm for any sum paid for the purchase of a share in the firm and for any capital contributed by them.
- b. Rank as a creditor of the firm for any payment made towards the debts of the firm.
- c. Be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm
- d. All of the above.
- vii. What is the purpose of the certificate issued under Form No. 19?
- a. To provide approval for the business name
- b. Notice of meeting of creditors
- c. To grant permission for conducting business outside India
- d. To confirm the LLP's registration under the Act
- viii. A Safety Officer is required to be appointed where more than _____ workers are ordinarily employed.
- a. 500;
- b. 1000;
- c. 800;
- d. 300;
- ix. The employer shall display an abstract of the Act and the Rules in Form No-.
- a. H
- b. O
- c. U
- d. N
- x. An employee, within _____ of acquiring a family, shall submit a fresh nomination.
- a. 30 days
- b. 60 days
- c. 90 days
- d. 180 days
- xi. The Employees' Deposit Linked Insurance Scheme applies to all establishments, except which of the following?
- a. Manufacturing companies;
- b. Tea factories in the State of Assam
- c. Government offices
- d. Retail businesses



- xii. Who is the ex-officio Chairman of the Medical Benefit Council under Section 10?
- a. The Director General of ESI.
 - b. The Director General of Health Services
 - c. The Medical Commissioner of the Corporation
 - d. The Minister of Health
- xiii. Which one cannot be transacted through postal ballot?
- a. Appointment of auditor;
 - b. Election of a Director;
 - c. Buy back of shares by a company;
 - d. Change in place of registered office outside the local limits of any city, town or village.
- xiv. If any inspection is refused or if any copy required is not furnished within the specified time, the company shall be liable to a penalty of ` _____
- a. ₹10,000;
 - b. ₹15,000;
 - c. ₹25000;
 - d. ₹50000;
- xv. Which principle emphasizes those public office holders must make decisions impartially, fairly, and based on merit?
- a. Integrity
 - b. Objectivity
 - c. Accountability
 - d. Leadership

Answer:

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

SECTION – B

(Answer any 5 questions out of 7 questions given. Each question carries 14 marks.)

[5 x 14 = 70]

2. (a) Discuss the different modes of terminating contractual relationship between the parties. [7]
(b) Examine the contract of indemnity and the right of indemnity holder when they sue. [7]

**Answer:**

- (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:**

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

- (a) Actual performance
- (b) Attempted performance.

Actual performance is the fulfilment 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.
- e. 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.
- f. 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 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.

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

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

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

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



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

In 'Pepin V. Chandra Seekur', ILR 5 Cal. 811 it was held that in the case of contract of indemnity, the liability of the party indemnified to a third person is not only contemplated at the time of indemnity, but is the very moving cause of that contract and in case of such a nature, the costs reasonably incurred in resisting or reducing or ascertaining the claim may be recovered.

3. (a) Demonstrate the procedure relating to winding up of an LLP by the tribunal. [7]
(b) Explain the exceptions of the rule "Nemo dat quod non habet" under Sale of Goods Act. [7]

Answer:

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

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

Procedure for winding up of an LLP by a Tribunal:-

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

Step 1: Petition for Winding Up

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



Government

Step 2: Tribunal's Decision to Wind Up

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

Step 3: Appointment of Liquidator

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

Step 4: Public Announcement:

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

Step 5: Settlement of Claims:

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

Step 6: Liquidation of Assets:

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

Step 7: Distribution of Assets:

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

Step 8: Dissolution of LLP:

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

Step 9: Filing of Order with Registrar:

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

- (b) Sale by a mercantile agent: If a mercantile agent is authorized by the owner of the goods to sell on his behalf, then such sale shall be valid. In such cases, the buyer can acquire a good title of the goods. This exception



will be implemented subject to fulfilment of the following conditions:-

- The person must be in possession of goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of his owner.
- The person must sell the goods while acting in the ordinary course of business.
- The buyer must act in good faith without having any notice, at the time of contract that the mercantile agent has no authority to sell the goods.

Transfer of title by Estoppels: This exception is based on the principle of personal estoppels. Sometime, the real owner may lead the buyers by virtue of his conduct or words or by act to believe that the seller is the owner of the goods or has the authority to sell them. In such case, he may not thereafter deny the seller's authority to sell.

Sale by a joint owner: As per Section 28, if there are several joint owners of goods, one of them if has sole possession of the goods by permission of the co-owners, then the property in goods is transferred to any person who buys them from such joint owner. In order to apply this exception, following conditions must be fulfilled:

- i. One of the several owners must be in sole possession of the goods.
- ii. The joint owner must have permission of co-owners.
- iii. The buyer must purchase goods in good faith.
- iv. The buyer should not have notice regarding the matter that the seller has no authority to sell.

Sale by person in possession under voidable contract: According to the Section 29 a person in possession of goods under a voidable contract which is not rescinded, can transfer a good title to the buyer. The buyer should purchase the goods in good faith and without notice of the seller's defective title.

Sale by seller in possession after sale: Under Section 30(1) it is laid down that where a person has sold goods but he continues in possession of goods or of the documents of title to the goods, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, the person can get a good title to them. In order to apply this exception, the seller must be in possession after sale of goods and there must be delivery or transfer of the goods or documents of title by the seller.

Sale by buyer in possession after sale: Under Section 30(2), it is laid down that where a buyer having bought or having agreed to buy goods, obtain with the consent of the seller the possession of the goods or documents of title to the goods, he can resell the goods to a bona fide transfer. If at the time of this sale, buyer was not in possession, then this exception will not apply.

Sale by an unpaid seller: If the unpaid seller has exercised right of lien or stoppage in transit, resells the goods, then the buyer acquires a good title as against the original buyer, even though the resale is not justified in the circumstances.



Exception under other Acts: According to some Acts, a person although he is not the owner of the goods may sell the goods and pass a better title than he himself has. As for example-

- i. Under Section 169 of the Indian Contract Act, a finder of the goods has the right to sell.
- ii. Under Section 176 of the Indian Contract Act, a pawnee of goods has the right to sell the
- iii. goods pawned subject to satisfying some conditions.
- iv. In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate, custom officers for dues and duties remaining unpaid etc.
- v. A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.

4. (a) **Inspect the provisions of the Code regarding the appointment of Inspector cum- Facilitators and explain their powers.** [7]

(b) **Analyze the various purposes for which the State Insurance Fund may be expended according to Section 28 of the Act.** [7]

Answer:

(a) Section 51 specifically talks about the appointment of Inspector-cum-Facilitators and their powers. It lays down that:

- The appropriate Government may, by notification, appoint Inspector-cum- Facilitators for the purposes of this Code who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.
- The appropriate Government may, by notification, lay down an inspection scheme which may also provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically.
- Without prejudice to the provisions of sub-section (2), the appropriate Government may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of this Code to the Inspector-cum-Facilitator as may be specified in such notification.
- Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.
- The Inspector-cum-Facilitator may:
 - a) advice to employers and workers relating to compliance with the provisions of this code;
 - b) inspect the establishments as assigned to him by the appropriate Government, subject to the instruction or guidelines issued by the appropriate Government from time to time.
- Subject to the provisions of sub-section (4), the Inspector-cum-Facilitator may,;
 - a) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe, is a worker of the establishment;
 - b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;



- c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;
- d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and.
- e) exercise such other powers as may be prescribed.

- Any person required to produce any document or to give any information required by an Inspector-cum-Facilitator under sub-section (5) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.
- The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-section (5) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

The present code talks about provisions relating to offences and their corresponding penalties. The Code specifies penalties for offences committed by an employer, such as:

- a) paying less than the due wages, or
- b) for contravening any provision of the Code.

Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees.

(b) 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 and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;
- 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 and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;
- 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 and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;



- 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;
- 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
- defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken 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;
- such other purposes as may be authorized by the Corporation with the previous approval of the Central Government

5. (a) State the procedure of alteration of Memorandum of Association as per the Companies Act, 2013? [7]
- (b) Enumerate the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director. [7]

Answer:

(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 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.
- a. 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;
 - 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.
- b. 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.
- 9. 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.
- 10. 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.
- (b) Disqualifications of Director:**

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 :

- he is of unsound mind and stands so declared by a competent court.



- he is an undischarged insolvent;
- he has applied to be adjudicated as an insolvent and his application is pending;
- 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;
- an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- 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;
- 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
- he has not complied with sub-section (3) of section 152.
- 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) Demonstrate the duties and responsibilities of an auditor while preparing an audit report. [7]
(b) Describe the rights of shareholders under sec 2(55) of the Companies Act 2013? [7]

Answer:

(a) Duties and Responsibilities of an Auditor while Preparing an Audit Report:

1. Compliance with Laws and Standards:

- The auditor ensures that the financial statements are maintained in accordance with relevant laws such as the Companies Act 2013 and accounting standards.
- This ensures that the company's financial records are consistent with legal and regulatory requirements.

2. True and Fair View:

- The auditor is responsible for ensuring that the financial statements depict a true and fair view of the company's financial position.
- The auditor evaluates the accounting practices to ensure they align with prescribed standards.

3. Issuing Opinions:



- If the financial statements are misleading or inaccurate, the auditor can issue an adverse opinion, indicating that the financial statements do not provide an accurate reflection of the company's financial health.
- In cases where the auditor lacks sufficient information, they may issue a disclaimer of opinion, signaling uncertainty or incomplete data. The auditor must clearly state the reasons for such opinions.

4. Inquiries and Investigations:

- The auditor makes necessary inquiries, such as examining loans and advances, ensuring no personal expenses are charged to the Revenue Account, and verifying compliance with accounting standards.
- Any irregularities or discrepancies are investigated to ensure that all financial activities are properly recorded

5. Branch Audit Assistance:

- When the auditor is responsible for auditing a branch, they assist the main auditor by preparing a report based on the branch's accounts.
- This report is incorporated into the company's overall audit report, ensuring accurate representation of the financial position of all branches.

6. Compliance with Auditing Standards and Ethical Codes:

- Auditors must follow auditing standards issued by the government, which help improve efficiency and accuracy during the audit process.
- They also adhere to a Code of Ethics, ensuring integrity through confidentiality, professional skepticism, and due care.

7. Reporting of Fraud:

- If the auditor detects fraud or irregularities during the audit process, they are required to report the findings to the Central Government immediately, as per the provisions of the Act.
- This ensures that fraudulent activities are addressed and that the company's financial integrity is maintained.

8. Assistance in Investigations:

- If the company is under investigation, the auditor is required to assist the authorities by providing necessary information.
- This demonstrates the broad and far-reaching impact of the auditor's duties beyond just preparing the audit report.

9. Impact on Stakeholder Assurance:

- The auditor's work provides a high degree of assurance regarding the accuracy and reliability of financial statements, which is crucial for stakeholders such as investors, creditors, and regulators.
- The auditor's independent opinion helps ensure trust and transparency in the company's financial reporting.



10. Ongoing Monitoring and Feedback:

- Auditors must not only perform an audit once but should also engage in continuous monitoring during the audit period. They may provide feedback to the management about areas of improvement in financial controls or accounting practices.
- This ongoing oversight helps the company maintain accurate financial reporting practices and reduces the risk of errors or fraud.

(b) Section 2(55) of the Companies Act, 2013 defines a member as:

1. The Subscribers to the Memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as member in its register of members.
2. Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall be a member of the company.

In *Herdilia Unimers Ltd. v. Renu Jain* [1995], it was held that the moment the shares were allotted and share certificate signed and the name entered in the Register of the allottee became the shareholder irrespective of the allottee receiving the shares or not.

A person whose name is not entered into register of members of company cannot be treated as member or deemed member-*Sant Chemicals (P) Ltd. v Aviat Chemicals (P). Ltd.* [2000].

3. Every person holding shares of the company and whose name is entered as beneficial owner in the records of a depository.

A person who is a shareholder of a company has many rights under the Act. Some of them are:

The right to vote at all meetings [Sec.47];

- i. The right to requisition an extraordinary general meeting of the company [Sec.100]
- ii. The right to receive notice of a general meeting [Sec.101];
- iii. The right to appoint proxy and inspect proxy register [Sec.105]
- iv. In the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf [Sec.113]; and
- v. The right to require the company to circulate resolution [Sec.111].
- vi. To have certificate of share held ready for delivery to him within two months from the date of allotment[Sec.56]
- vii. To Transfer shares subject to the provisions of the Act and Article of Association [Sec.44].
- viii. To inspect the Register of members and Register of debenture-holders and get extracts therefrom [Sec.94].
- ix. To obtain, on request, minutes of proceedings at general meetings as also to inspect the minutes [Sec.119].
- x. To apply to the Tribunal to have any variation of shareholders rights set aside [Sec.48].
- xi. To participate in the removal of directors by passing an ordinary resolution [Sec.169]
- xii. The right to requisition an extraordinary general meeting of the company [Sec.100];

Certain other rights of a member spelt out by the Supreme Court in *Life Insurance Corporation of India v. Escorts Ltd.* [1986] are:



BUSINESS LAWS AND ETHICS

- i) To elect directors and thus to participate in the management through them;
- ii) To enjoy the profits of the company in the shape of dividends;
- iii) To apply to the court (now Tribunal) for relief in case of oppression;
- iv) To apply to the court (now Tribunal) for relief in case of mismanagement;
- v) To apply to the court (now Tribunal) for winding-up of the company; and
- vi) To share in the surplus on winding-up.

- 7 (a) Interpret the standards of ethical conduct for practitioners fixed by the Institute of Cost Accountants of India? [7]**
- (b) Identify the need and importance of business ethics [7]**

Answer:

- (a)** 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 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;



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- 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;

(b) The following points discuss the need and importance of business ethics-

- **To stop business malpractice:** Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration, cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims of representations about their products etc., These business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
- **To improve customers' confidence:** Business ethics are needed to improve the customers' confidence about the quality, quantity, price etc., of the products. The customs have more trust and confidence in the businessmen who follow ethical rules. They feel that such businessmen will not cheat them.
- **For the survival of the business:** Business ethics are mandatory for the survival of business. The businessmen who do not follow it will have short term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman. He will also tell others not to buy from that businessman. So this will defame his image and provoke a negative publicity. This will result in failure of the business. Therefore, if the businessmen do not follow ethical rules, he will fail in the market. So, it is always better to follow appropriate code of conduct to survive in the market.
- **To protect employees and shareholders:** Business ethics are required to protect the interest of employees, shareholders, competitors, dealers, suppliers etc. It protects them from exploitation through unfair trade practices.
- **To develop good relations:** Business ethics are important to develop good and friendly relations between business and society. This will result in a regular supply of good quality goods and services at low prices to the society. It will also result in profits for the businesses thereby resulting in growth of economy.
- **Importance of labor:** Labor, i.e., employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees. The business must give them proper wages and salaries and provide them with better working conditions. There must be good relations between employer and employees. The employees must also be given proper welfare facilities.
- **Healthy competition :** The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. Healthy competition brings about efficiency, breaks complacency and leads to optimal utilization of scarce resources, hence is always welcome. They must not do cut- throat competition. Similarly, they must give equal opportunities to small scale business. They must avoid monopoly. This is because a monopoly is harmful to the consumers.
- **Consumer satisfaction:** Today the consumer is the king of the market. Any business simply cannot survive without the consumers. Therefore, the main aim or objective of business is consumer satisfaction.



If the consumer is not satisfied, then there will be no sales and thus no profits too. Consumers will be satisfied only if the business follows all the business ethics and hence are highly needed.

- 8 (a) Miss Jyoti, a singer, enters into a contract with the manager of Mumbai Gate Club, to sing in the Club for two concerts every week during the next two months and the club agrees to pay her at the rate ₹ 20,000 for each concert. On the seventh concert she wilfully absents herself. With the assent of the manager of the club, she sings for eighth concert. But on the following day, the club, puts an end to the contract. Can Miss. Jyoti claim damages for the breach of contract? Advise [7]
- (b) A Ltd. issued a notice for holding of its AGM on 7th November 2022. The Notice was posted to the members on 16th October, 2022. Some of the members alleged that the company had not complied with provisions of the Act with regard to the period of notice and such the meeting was not validity called. Decide.
- (i) Whether the meeting has been validly called?
(ii) If there is a shortfall in the number of days by which the notice falls short of statutory requirement, explain by how many days the notice falls short of statutory requirement? Can the shortfall, if any, condoned? [7]

Answer:

- (a) On the seventh Concert when Miss Jyoti wilfully absents herself, the club is at liberty to put an end to the contract, if Miss. Jyoti sings on the eighth Concert with the consent of the club. The club is entitled to compensation for the damage sustained because of Miss. Jyoti failure to sing on the seventh concert. If the club puts an end to the contract, Miss Jyoti can claim damages for breach of contract [sec. 39 of the The Indian Contract Act, 1872].
- (b)
- | | |
|---------------------------|---------------------|
| Day of holding the AGM | 7th November, 2022. |
| Day of despatch of notice | 16th October, 2022. |
- Days to be excluded
- Day of holding the AGM (i.e., 7th November, 2022)
 - Day of despatch of notice (16th October, 2022)
 - 2 days for service of notice (i.e., 17th and 18th October, 2022)
- | | |
|---|------------|
| Number of days' notice given | = 19 days. |
| Number of days' notice required u/s 101 | = 21 days. |
- (a) AGM has not been validly called - since 21 days' notice of the AGM has not been given to the members
- (b) The notice is short - by 2 days.
- (c) The shortfall may be condoned - if consent is given for such shorter notice by at least 95% of the members entitled to vote at such AGM.