

GROUP I

PAPER 6

WORK BOOK



LAWS & ETHICS



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

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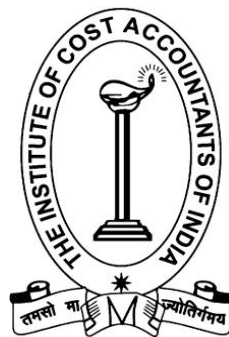
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INDEX

Sl. No.	Section – A : Commercial Laws	Page No.
1	Indian Contract Act, 1872	1 – 12
2	Sale of Goods Act, 1930	13 – 20
3	Negotiable Instruments Act, 1881	21 – 26
4	Indian Partnership Act, 1932	27 – 28
5	Limited Liability Partnership Act, 2008	29 – 31
	Section – B : Industrial Laws	
6	Factories Act, 1948	32 – 35
7	Payment of Gratuity Act, 1972	36 – 39
8	Employees Provident Fund and Miscellaneous Provisions Act, 1952	40 – 41
9	Employees State Insurance Act, 1948	42 – 44
10	Payment of Bonus Act, 1965	45 – 46
11	Minimum Wages Act, 1948	47 – 49
12	Payment of Wages Act, 1936	50 – 51
	Section – C : Corporate Law	
13	Companies Act, 2013	52 – 68
	Section – D : Ethics	
14	Business Ethics	69 – 78



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Study Note – 1

INDIAN CONTRACT ACT, 1872

A. Fill in the blanks:

1. The breach of contract may be _____
(a) Actual (b) Anticipatory (c) none of the above (d) either of the above
2. Section ____ of Indian Contract Act, 1872 define 'proposal'.
(a) 2(a) (b) 2(b) (c) 2(d) (d) 2(e)
3. Section 2(j) of the Indian Contract Act, 1872 defined _____
(a) valid contract (b) void contract (c) voidable contract (d) quasi contract
4. The person to whom the proposal is made is called the _____
(a) offerer (b) offeree (c) proposer (d) promisor
5. Consideration can be classified into ____ types.
(a) four (b) five (c) six (d) three
6. An agreement with a party who is not competent to contract is _____
(a) void (b) voidable (c) valid (d) illegal
7. Contingent contract is defined in section ____ of Indian Contract Act
(a) 30 (b) 31 (c) 32 (d) 34
8. Pledge is a special kind of _____
(a) bailment (b) Rule (c) business (d) product
9. 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
10. 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
11. Which of the following statements is true _____
(A) Contract=agreement+ enforceability at law (B) agreement = offer+ acceptance
(C) both (D) none of the above



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12. 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
13. 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.
14. Mistake of Fact can be two types _____
 (A) Own and foreign (B) Unilateral & Bilateral (C) Unilateral & Foreign (D) Own and bilateral
15. 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
16. Quantum Meruit means _____
 (A) as much as earned (B) as much as performed (C) as much as found (D) as much as worked
17. 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
18. 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

Answer:

Question No	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Answer	D	A	B	B	D	A	B	A	B	A	A	A	D	B	A	A	A	B

B. Answer the following questions:

1. State the essential elements of a valid contract.

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?

Answer:

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 ` 1000 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

5. Writes short notes on –

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

[b] Lapse of offer



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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 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 Principle of English Common law to India in its decision in *Jamna Das V Ram Avtar Pandey* which was affirmed by the Honourable Supreme Court of India in the case of *MC Chako v State Bank of Travancore*.

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

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

[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 is 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



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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.

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 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.



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8. 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;
- (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.

9. 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.



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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 Bilateral mistake? State 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:
- Physical impossibility: A contract is void if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.
 - Legal impossibility: A contract is void if it provides that something shall be done which as a matter of law cannot be done.

11. 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.



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12. 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';
- 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.

13. 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 indemnified and the indemnifier	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.

14. What is discharge of contracts? What are the various modes of discharge of contracts?

Ans.

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.



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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

15. 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 pledgee 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 pledgee. Delivery of goods is necessary to complete a pledge.

16. 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.

17. Explain the Rights of principal with suitable example.

Answer:

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



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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 fact, 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 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

A. Fill in the blanks:

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

Answer:

Question No	1	2	3	4	5	6	7
Answer	B	B	A	B	A	B	A

B. Answer the following questions:

- 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



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		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.

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.
- (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.

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



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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

S. 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, con not be treated as a breach of a condition.

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. Elucidate 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 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.



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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 remainder.

Rules for the delivery

Section 36 provides rules for the delivery as detailed below:

- 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
- 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;



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- 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 fulfilment or tender of the price in cases where:

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

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



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(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

- (i) when the buyer becomes insolvent; and
- (ii) the 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:



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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

A. Fill in the blank:

1. Negotiable Instrument 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)
5. Features of Negotiable instruments are _____
(A) Written and signed (B) Recovery (C) Freely transferable (D) All of the above
6. An instrument is ___ by ___ as per N.I Act, 1881
(A) Discharged/ Cancellation (B) Closed/ release (C) Closed/ Payment (D) None
7. 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
8. The ___ of Promissory Note has been given in section _____
(A) scope, 2 (B) definitions, 4 (C) role, 3 (D) function, 5
9. 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
10. 28 Who may negotiate _____
(A) drawer (B) payee (C) All of the joint makers (D) Any of (a) to (c)

Question No	1	2	3	4	5	6	7	8	9	10
Answer	B	D	D	A	D	A	B	B	B	D



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B. Answer the following questions:

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 the 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;
- Promissory note - Khironath Gountia V. Arjun Panda' – (1971) 2 Cut. W.R. 223
- A benefit under a letter of credit – Joseph Pyke & Son V. Kedarnath- AIR 1962 Cal.326.

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:
 - (a) by mere delivery; and
 - (b) by 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 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.	It contains a Promise to pay.	3.	It contains an order to pay.
4.	No conditions shall be made in a promissory note.	4.	A bill may be accepted conditionally.
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.
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



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[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">• Drawer.• Drawee.• Payee.	2.	There are three parties: <ul style="list-style-type: none">• Drawer.• Drawee.• Payee.
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 baker.
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. Thus the question of acceptance does not arise in case of cheque.
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.



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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:



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- 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 necessary?

Answer:

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



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Study Note – 4

INDIAN PARTNERSHIP ACT, 1932

A. 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
- 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 defend 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

Question No	1	2	3	4	5	6	7
Answer	A	C	B	B	A	B	D

B. Answer the following questions:

- What is partnership? State the difference between partnership and company.



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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

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

Basis	Partnership	Company
Legal entity	It is not a separate legal entity.	A company 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

A. Fill in the blanks:

- LLP defined in the LLP Act, 2008 under section ____
(a) 2(1)(n) (b) 2(1)(e) (c) 2(2) (d) 2(1)(a)
- Incorporation documents and subscribers statement provided in ____
(a) E-form 1 (b) E-form 2 (c) E-form 3 (d) E-form 4
- 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
- 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
- Some of the advantages of LLP are ____
(A) easy to incorporate (B) body corporate
(C) easy to manage (D) all of the above
- For Application for reservation of name two prerequisites are ____
(A) DIN & PAN (B) PAN & DSC (C) DIN & DSC (D) PAN & TAN

Answer:

Question No	1	2	3	4	5	6
Answer	A	B	B	B	D	C

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B. Answer the following questions:

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

Answer:

Base	Partnership	Limited Liability Partnership
Legal entity	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 LLP is limited.
Number of members	Minimum required is two. Maximum number is 100 subject to some exceptions	Minimum number of members for a LLP is 2 and no limit for maximum numbers.
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
Compliance of law	Lesser compliance	More compliance under LLP Act.
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 LLPACT 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.



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3. 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.

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 may be specified in the notice.



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Study Note – 6 FACTORIES ACT, 1948

A. Fill in the blanks:

1. An _____ of a factory is the person who has the ultimate control over the affairs of the factory.
2. The occupier shall, at least _____ before he begins to occupy or use any premises as a factory, send to the Chief Inspector of factories, a written notice.
3. No child who has not completed _____ year shall be required or allowed to work in any factory.
4. 4. No adult worker shall be required or allowed to work in a factory for more than _____ in a day.
5. Every adult worker who has worked for a period of _____ in a factory during a calendar year shall be allowed leave of one day with wages for every _____ of work performed by him during the previous calendar year.

Answer:

1. Occupier
2. 15 days
3. his 14th
4. nine hours
5. 240 days or more / 20 days

B. 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 of internal walls and roofs of a factory should be carried out at least once in every period of 12 months - **False**
3. Correct Answer: It should be carried out at least once in every period of 14 months.
4. A factory worker is entitled to overtime wage at twice his ordinary wage rate if he works for more than 12 hours in a day or 72 hours in a week – **False**
5. Correct Answer: It would be 9 hours in a day or 48 hours in a week.

Answer:

1. True
2. False
3. False
4. False
5. False

C. Answer the following questions:

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' and 'hazardous process' as per Factories Act, 1948.

Answer:

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.

Section 2(cb) defines the expression 'hazardous process' as any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes, or effluents thereof would-

- cause material impairment to the health of the persons engaged in or connected therewith, or
- result in the pollution of the general environment.

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



Work Book : Laws & Ethics

- 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.
- For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;
- For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

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 -

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;



Work Book : Laws & Ethics

- (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.

In relation to hazardous processes, Section 41C provides for specific responsibilities of occupier as maintaining the health records of the employees, appointing experienced persons who possess specified qualifications in handling hazardous substances and competent enough in supervising such handling within the factory.



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Study Note – 7

PAYMENT OF GRATUITY ACT, 1972

A. Fill in the blanks:

1. Where an employer intends to close down the business, he shall submit a notice in _____ to the controlling authority of the area at least _____ before the intended closure.
2. The right of receiving the gratuity by the employee is the _____.
3. 'Gratuity' is the _____ made by the employer to the employee at the time of _____ either by _____ or on _____ or on _____.
4. The employer shall arrange to pay the amount of gratuity within _____ from the date of its becoming payable.

Answer:

1. Form C / sixty days
2. Statutory right
3. Lump sum payment / termination of his service / retirement or on superannuation / resignation / his death or disablement due to accident or disease
4. 30 days

B. True or False

1. The term 'wages' include 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.
2. The employer shall display an abstract of the Act and the Rules in Form 'N'.
3. Teachers in educational institutions are not considered as 'employee' under the Payment of Gratuity Act.

Answer:

1. False
Correct Answer: 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.



Work Book : Laws & Ethics

2. False

Correct Answer: The employer shall display an abstract of the Act and the Rules in **Form 'U'**.

3. False

Correct Answer: 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.

C. Answer the following questions:

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.

The explanation to this section provides that where the personal law of an employee permits the adoption by him of a child, any lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful such child shall be deemed to be excluded from the family of the employees.

2. What do you understand 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 provisions of the Act relating to payment of Gratuity to employees.



Work Book : Laws & Ethics

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 10 lakhs (with effect from 08.04.2010). Formula for calculation of gratuity = Last wage drawn x $15/26$ x completed years of service. In calculation of gratuity one month is taken as 26 days.

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. What do you mean by 'continuous service' in the context of payment of gratuity?

Answer:

According to Section 2A -

1. an employee shall be said to be in 'continuous service' for a period if he has, for that period been in uninterrupted service, including service which may be interrupted on account of sickness, accident leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay off, strike or a lock out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act;
2. where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of one year or six month, he shall be deemed to be in continuous service under the employer:
 - (a) for the said period of one year, if the employee during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) 190 days in the case of an employee employed below the ground in mine or in an establishment which works for less than 6 days a week; and
 - (ii) 240 days in any other case;

Work Book : Laws & Ethics

- (b) for the period of 6 months, if the employee during the period of 6 calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than-
- (i) 95 days, in the case of an employee below the ground in a mine or in an establishment which works for less than 6 days in a week; and
 - (ii) 120 days in any other case.

The explanation to this section provide that for the purpose of clause (2), the number of days on which the employee has actually worked under an employer shall include the days on which-

- he has been laid off under an agreement or as permitted by the standing orders made under the Industrial Establishment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
 - he has been on leave with full wages, earned in the previous year;
 - he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
 - in the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed 12 weeks.
3. Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75%, of the number of days on which the establishment was in operation during such period.

5. 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.

If circumstances require forfeiting either partially or fully a specific order shall be passed by the employer in this regard. For this purpose the employer shall issue a show cause notice to the employee indicating the grounds for forfeiture of gratuity and he shall be given a reasonable opportunity of being heard. The final decision will be taken on the basis of reply, if any, given by the employer and the order of forfeiture shall be passed and intimated to the employee.



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Study Note – 8

EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

A. Fill in the blanks:

1. Employees Provident Fund and Miscellaneous Provisions Act is now applicable to employees drawing pay _____ per month.
2. The contribution to insurance fund is to be remitted by the employer within _____ 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 _____

Answer:

1. Not exceeding 15,000
2. 15 days
3. 25%

B. True or False:

1. If an employee is transferred from one employment to another, the balance to his credit in his PF Account cannot be transferred to the new establishment.
2. The maximum contribution of the employer to the deposit linked insurance fund is 1% of the aggregate of every employee's basic wages, dearness allowance and retaining allowance.

Answer:

1. False

Correct Answer: If an employee is transferred from one employment to another, the balance to his credit in his PF Account can be transferred to the new establishment.

2. True

C. Answer the following questions:

1. What do you mean by the term 'contribution' towards the Employees Provident Fund?

Answer:

As per Section 6 of Employees Provident Fund and Miscellaneous Provisions Act, 1952, the contribution paid by the employer to the Fund shall be 10%, of 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.



Work Book : Laws & Ethics

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.

Each contribution shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

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 drawn against 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)

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

Answer:

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.



Work Book : Laws & Ethics

Study Note – 9

EMPLOYEES STATE INSURANCE ACT, 1948

A. 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 4.75% and 1.75% of workers' wages by employers and employees respectively.

Answer:

1. Social protection
2. Two years
3. 4.75% / 1.75%

B. 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.
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.
3. An employer may dismiss or punish the employee during sickness etc.

Answer:

1. False

Correct Answer: 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. False

Correct Answer: The contribution shall be paid in a bank duly authorized corporation within **21 days** of the last day of the calendar month in which the contribution falls due for any wage period.

3. **False**

Correct Answer: Under Employees State Insurance Act, 1948, Section 73 provides that no employer shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit.



Work Book : Laws & Ethics

C. Answer the following questions:

1. 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 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.

2. 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.



Work Book : Laws & Ethics

3. List the benefits that the insured persons are entitled to under this Act.

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;
- (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.



Work Book : Laws & Ethics

Study Note – 10

PAYMENT OF BONUS ACT, 1965

A. Fill in the blanks:

1. Under Payment of Bonus Act, 1965, the term 'establishment in public sector' is defined as an establishment owned, controlled or managed by a corporation in which not less than _____ 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. Under Payment of Bonus Act, 1965 every employee shall be entitled to receive bonus from his employer in an accounting year provided he has worked in the establishment for not less _____ in that accounting year.

Answer:

1. 40%
2. Thirty workings days

B. True or False:

1. Annual return is to be filed under Payment of Bonus Act, 1965 in Form 'U' – False.
2. The maximum bonus payable during an accounting year is 15% of the salary or wage earned by an employee – False.

Answer:

1. False
Correct Answer: Annual return is to be filed under Payment of Bonus Act, 1965 in **Form D**.
2. False
Correct Answer: The maximum bonus payable during an accounting year is 20% of the salary or wage earned by an employee.

C. 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



Work Book : Laws & Ethics

- (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.

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 for receiving bonus?

Answer:

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. What does 'salary or wage' include for the purpose of computation of bonus?

Answer:

According to Section 2(21) of the Act, 'salary or wage' includes all remuneration except over time allowance payable to an employee in respect of his employment. Salary includes dearness allowance, but does not include-

- any other allowance which the employee is for the time being entitled;
- the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- any travelling concession;
- any bonus, including incentive, production and attendance bonus;
- any contribution to provident fund or pension fund under any law for the time being in force;
- any retrenchment compensation or gratuity or other retirement benefits payable to the employee or any *ex-gratia* payment made to him;
- any commission payable to the employee.

Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage of such employee.



Work Book : Laws & Ethics

Study Note – 11

MINIMUM WAGES ACT, 1948

A. Fill in the blanks:

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

Answer:

1. Fourteen year / eighteen year
2. Five years

B. 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.
2. As per Minimum Wages Act, 1948, payment for work on a day of rest should be at a rate not less than the minimum wage rate.
3. The wages of a worker in any scheduled employment in such establishments employing more than 1000 persons 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.

Answer:

1. False

Correct Answer: 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. **False**

Correct Answer: For payment on a day of rest, the rate should not be less than the **overtime** rate.

3. **False**

Correct Answer: 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.



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C. Answer the following questions:

1. Define 'Wages' and 'Minimum Wages' as per Minimum Wages Act, 1948.

Answer:

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. How minimum rate of wages may be fixed by the appropriate government?

Answer:

Section 4(1) of Minimum Wages Act, 1948, provides that any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employments may consist of –

a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers; or

a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of suppliers of essential commodities at concession rates, where so authorized; or

an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.



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3. Discuss the provisions relating to payment of overtime wage 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 overtime wage is paid for a particular month a NIL entry should be made.

4. What are the different types of registers and records 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;

Form V : Muster Roll;

Form IX-A : Notice

Form X : Register of Wages;

Form XI : Wage slip.



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Study Note – 12

PAYMENT OF WAGES ACT, 1936

A. 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 _____ 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 _____ for any actor omission.

Answer:

1. Second working day
2. Fifteen years

B. 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.
2. An appeal against the order dismissing either wholly or in part an application made by an employee for contravention of the provisions of the Act may be filed to the District Court within 45 days.

Answer:

1. False
Correct Answer: 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. False
Correct Answer: The appeal may be filed within **30 days**.

C. 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?

Answer:

In payment of wages, it is important to fix the wage period. Section 4 of the Act provides that every 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.



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

Ans:

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 for 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.

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

COMPANIES ACT, 2013

(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
2. What is the minimum net profit required for applicability of Corporate Social Responsibility on a Company?
 - (a) ₹ 100 crore
 - (b) ₹ 500 crore
 - (c) ₹ 10 crore
 - (d) ₹ 1000 crore
3. In which e-Form, appointment of Secretarial Auditor is done?
 - (a) MGT-14
 - (b) MGT-15
 - (c) MR-1
 - (d) MR-2
4. Which of the following section deals with Private Placement of shares?
 - (a) Section 48
 - (b) Section 43
 - (c) Section 62
 - (d) Section 42
5. What is the duration during which the approved name is available for formation of the Company?
 - (a) 90 Days
 - (b) 60 Days
 - (c) 30 Days
 - (d) 15 Days
6. In which e-form Balance Sheet & Profit and Loss Account is filed by the Company during the year?
 - (a) AOC-4
 - (b) MGT-7
 - (c) MGT-14
 - (d) GNL-2



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7. 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.
8. 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 practicing company secretary 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
9. What is the Quorum of a Public Company having 3000 members?
- (a) Two (2)
 - (b) Three (3)
 - (c) Fifteen (15)
 - (d) Ten (10)
10. Total managerial remuneration payable by a public company to its directors, including Managing Director and a Whole time director in respect of any financial year shall not exceed ____?
- (a) 05 % of the net profits of the company.
 - (b) 11% of the net profits of the company.
 - (c) 01% of the net profits of the company.
 - (d) 10 % of the net profits of the company.
11. What is the fee required for name application of Company in e-form INC-1?
- (a) ₹ 200/-
 - (b) ₹ 500/-
 - (c) ₹ 2000/-
 - (d) ₹ 1000/-

Answer:

- 1. (a)
- 2. (b)
- 3. (a)
- 4. (d)
- 5. (b)



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6. (a)
7. (c)
8. (b)
9. (c)
10. (b)
11. (d)

(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 Appointment of Auditor by 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 out of which not more than _____ shall be public companies.
6. A practicing company secretary can sign MGT-8 of _____ as 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 _____.

Answer:

1. 15 (Fifteen)
2. 182 Days (One Hundred and Eighty Two Days)
3. ADT-1
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



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(C) Match the following:

	Column 'A'		Column 'B'
1.	Private Placement	A.	SPICE e-form
2.	Incorporation of Company	B.	Paid Up R100 Crores or Turnover R300 Crores.
3.	Appointment of Auditor	C.	Section 149(6)
4.	Independent Director	D.	Section 42.
5.	Corporate Social Responsibility	E.	ADT-1
6.	Disqualification of Director	F.	PAS-3
7.	Women Director	G.	Section 164
8.	Return of Allotment	H.	2% of average 3 years net profit

Answer:

	Column 'A'		Column 'B'
1.	Private Placement	D.	Section 42.
2.	Incorporation of Company	A.	SPICE e-form
3.	Appointment of Auditor	E.	ADT-1
4.	Independent Director	C.	Section 149(6)
5.	Corporate Social Responsibility	H.	2% of average 3 years net profit
6.	Disqualification of Director	G.	Section 164
7.	Women Director	B.	Paid Up ₹ 100 Crores or Turnover ₹ 300 Crores.
8.	Return of Allotment	F.	PAS-3

D. 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 = R 130 Crore

Turnover = R 320 Crore

Average Profit of last 3 years = R 7.5 Crore

Borrowings = R75 Crore

- Is the Company required to appoint Independent Director and Women Director? Explain the composition of Board.
- Whether CSR provisions are applicable on the Company as per Section 135? If yes, then explain the composition of CSR committee and the percentage of amount the Company can spend on CSR activities.



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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. As per such provisions, 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 at least 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 are more than the criteria mentioned in sec 149(4), so therefore the Company is required to appoint at least 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, has Paid-Up Share Capital of ₹ 130 Crore, Turnover of ₹ 320 Crore, which are more than the criteria mentioned in Section 149(1), so therefore the Company is required to have at least 1 Women 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) Yes, provisions on Corporate Social Responsibility are also applicable on the Company as per Section 135 of the Companies Act, 2013. The following classes of companies are required have a CSR Committee:
- Net Worth of ₹ 500 Crore; or
 - Turnover of ₹ 1000 Crore; or
 - Net Profit of ₹ 5 Crore

So as we see in the case study Shambhav Media Limited fulfills the criteria of Net profit of ₹ 7.5 Crore which is more than the criteria of ₹ 5 Crore mentioned in Section 135, therefore the Company has to



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constitute a CSR Committee through which they can make the CSR expenditure in the CSR activities mentioned in Schedule VII of Companies Act, 2013.

The Composition of the Board of CSR Committee shall consist of three or more directors, out of which at least one director shall be an Independent Director and where a company is not required to appoint an Independent Director under sub-section (4) of Section 149, it shall have in its Corporate Social Responsibility Committee at least two or more directors. In the given case of Sambhav Media Limited which is an Unlisted Public Company, where appointment of Independent Director is Mandatory as per Section 149(4), the Composition of the CSR committee of the Company will be at least three or more directors, out of which at least one director shall be an Independent Director. And the Company has to spend 2% of the average net profit of the company of previous 3 years calculated as per Section 198 of the Act on the CSR activities mentioned under Schedule VII of the Companies Act, 2013.

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.



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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 punishable with fine which shall not be less than ₹ 5000 (five thousand) but which may extend to ₹ 25000 (twenty-five thousand) for every day after the first year during which the contravention continues.

3. a) Specify the classes of companies which are required to constitute an Audit Committee.
b) What should be the composition of an Audit Committee?
c) Specify the role of Audit Committee of a Company?

Answer:

- a) The Board of Directors of every Listed Companies and the following classes of companies, as prescribed under Rule 6 of Companies (Meetings of Board and its powers) Rules, 2014 shall constitute an Audit Committee:
- (i) All Public Companies with a paid-up capital of ₹ 10 Crore or more;
 - (ii) All Public Companies having turnover of ₹ 100 Crore or more;
 - (iii) All Public Companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding ₹ 50 Crore or more.
- b) The Composition of an Audit Committee of a Company falling under the criteria of Section 177 of the Companies Act, 2013 shall consist of minimum 3 directors with Independent Directors appointed under section 149(4) forming a majority.
- c) The functions of Audit Committee of companies are:
- (i) recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - (ii) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
 - (iii) examination of the financial statement and the auditors' report thereon;
 - (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.

The powers of Audit Committee are as follows:

- To call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board.



Work Book : Laws & Ethics

- To discuss any related issues with the internal and statutory auditors and the management of the company.
- To investigate into any matter in relation to the items or referred to it by the Board.
- To obtain professional advice from external sources.
- To have full access to information contained in the records of the company.

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?

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 electronic 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.



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(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
 - (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 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.



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5. Write short notes on (any three):

- i) Section 42
- ii) Internal Audit
- iii) Independent Director u/s 149(6)
- iv) Schedule VII of Corporate Social Responsibility
- v) Disqualification of Director u/s 164
- vi) 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
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



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- ii. **Internal Audit:** As per section 138 of Companies Act, 2013 read with Rule 13 of Companies (Accounts) Rules, 2014, certain classes of companies required to appoint Internal Auditors as follows-
- (a) Every Listed Company - Always applicable
 - (b) Every Unlisted Public Company having—
 - Paid-up Share Capital of ₹ 50 crore or more during the preceding financial year; or
 - Turnover(income) of ₹ 200 crore or more during the preceding financial year; or
 - Outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year; or
 - Outstanding deposits of ₹ 25 crore or more at any point of time during the preceding financial year; and
 - (c) Every Private Company having—
 - Turnover of ₹ 200 crore or more during the preceding financial year; or
 - Outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100crore or more at any point of time during the preceding financial year:

iii. **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



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- (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.

iv. **Schedule VII of Companies Act, 2013:**

Schedule VII of Companies Act, 2013 lists the activities which may be included by companies in their Corporate Social Responsibility Policies. Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed.

v. **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;
 - (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;



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- (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.

vi. 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 30days 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.



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7. Advice:

- a) C Limited sent the notice of EGM on 30th September, 2017 for a meeting to be held on 24th October, 2017 through courier. Explain whether the notice was sent as per Section 101 of the Act.
- b) 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.
- c) 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 at least 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 (2nd October), Independence Day (15th August) and Republic Day (26th January).

So as we can see in the given case study C Limited has sent notice on 30th September, 2017 for a meeting to be held on 24th October so the Day of sending notice and the day of meeting are excluded and further there is a National Holiday on 2nd 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.



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- (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 ₹ 100000/- with the company as a security deposit which shall be refunded once Mr. C becomes the director of gets at least 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 5th June 2015 of the Companies Act, 2013 which granted exemption to private companies from Section 160.



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Study Note – 14

BUSINESS ETHICS

Section-A

1. (a) Multiple Choice Questions:

- (i) The following is not one of the 7 principles of public life.
- Motivation
 - Selflessness
 - Honesty
 - Objectivity
- (ii) 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
- (iii) In which year the Seven Principles of Public Life were set out by Lord Nolan?
- 1985
 - 1993
 - 1995
 - 1997
- (iv) The process by which human behaviour, 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
- (v) 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
- (vi) An ethic based on evaluation of the moral character of persons or groups is known as---
- Ethics of Care
 - Ethics of Virtue
 - Utilitarianism
 - Egalitarianism



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- (vii) 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
- (viii) 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
- (ix) Which type of justice deals with blaming or punishing persons fairly for doing wrong?
- Distributive Justice
 - Justice & fairness
 - Retributive Justice
 - Compensatory Justice
- (x) 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

Answer:

- (i) (a)
(ii) (c)
(iii) (c)
(iv) (b)
(v) (c)
(vi) (b)
(vii) (d)
(viii) (b)
(ix) (c)
(x) (a)

(b) Fill in the Blanks:

- (i) The word Ethics is derived from the Latin word _____.
- (ii) The word Kaizen means _____.
- (iii) The Seven Principles of Public Life were set out by _____.
- (iv) British Govt. had established the Committee on Standards in Public Life in the year _____.



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- (v) Kohlberg's three levels of moral developments are _____
- (vi) A study to explain the situation without any intention to reach conclusions is known as _____.
- (vii) _____ emphasizes caring for the concentrate well being of those near to us
- (viii) _____ tells that everyone should be given an equal chance to qualify for the more privileged positions in society's institutions.
- (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 _____.

Answer:

- (i) ethos
- (ii) continuous improvement
- (iii) Lord Nolan
- (iv) 1994
- (v) Preconventional, conventional and postconventional
- (vi) Descriptive study
- (vii) Ethics of care(d)
- (viii) Principle of Equal opportunity
- (ix) Moral virtue

(c) True or False:

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

Answer:

- (i) False
- (ii) True
- (iii) True



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- (iv) False
- (v) False
- (vi) False
- (vii) True
- (viii) 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

Answer: 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

Answer: 1-B, 2-A, 3-D, 4-C

(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

Answer: 1-D, 2-C, 3-B, 4-A



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(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

Answer: 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?**

Answer:

Business ethics are 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.

General Principles of business ethics:-

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



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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 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



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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

- 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



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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.

(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



Work Book : Laws & Ethics

- 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
 - 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



Work Book : Laws & Ethics

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.



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