

**INTERMEDIATE EXAMINATION****SET 2****MODEL QUESTION PAPER****TERM – JUNE 2025****PAPER – 5****SYLLABUS 2022****BUSINESS LAWS AND ETHICS****Time Allowed: 3 Hours****Full Marks: 100**

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

SECTION – A (Compulsory)**1. Choose the correct option:****[15×2 = 30]**

- i. On which date was the Constitution of India adopted by Constituent Assembly?
 - a. August 15, 1947
 - b. January 26, 1950
 - c. November 26, 1949
 - d. January 30, 1948
- ii. According to Section 128 of the Indian Contract Act, the liability of a surety is:
 - a. Limited to a specific amount
 - b. Only for the principal sum of the debt
 - c. Co-extensive with that of the principal debtor unless otherwise specified in the contract
 - d. Limited to the interest on the debt
- iii. In the case of a breach by the seller, the buyer may recover interest on the price paid, which is:
 - a. Automatically payable from the date of the contract.
 - b. Recoverable from the date of payment to the seller.
 - c. Payable only if agreed upon in the contract.
 - d. Recoverable only after a court order.
- iv. Which of the following indorsements exclude the right of further negotiation?
 - a. 'Pay the contents to C only'
 - b. 'Pay C for order for the account of B'
 - c. 'Pay C for my use'
 - d. 'Pay C value in account with the Oriental bank'
- v. The dissolution of partnership means:
 - a. It means the change in the relations of the partners
 - b. It means the dissolution of partnership between all the partners of a firm
 - c. It means the reconstitution of the firm.
 - d. None of the above.
- vi. What document must a firm file to apply for conversion into an LLP according to the provisions in the Second Schedule:
 - a. A statement in Form No. 17 containing the firm's details
 - b. A copy of the partnership deed only



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- c. A statement in Form No. 19
d. A certificate of incorporation from the Registrar of Companies
- vii.** ____ is the exact time limit under which a Limited Liability Partnership must file its annual return with the registrar.
a. 15 days
b. 30 days
c. 45 days
d. 60 days
- viii.** Which one of the following amounts to safety measure?
a. Artificial humidification;
b. Ventilation;
c. Fencing of factory;
d. First aid appliances.
- ix.** Nomination is to be made by an employee in Form _____.
a. Form H
b. Form F
c. Form U
d. Form N
- x.** Section 5AA provides for the appointment of _____ by the Central Government to assist the Central Board in the performance of its functions.
a. Assistant Directors
b. Inspectors
c. Officers
d. Executive Committee
- xi.** The term of the members of Medical Benefit Council shall be _____.
a. 4 years.
b. 5 years.
c. 3 years.
d. 2 years.
- xii.** Section 56 talks about the _____.
a. offences by companies.
b. penalties for offences,
c. power of officers
d. composition of offences



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- xiii.** At any general meeting, a resolution put to the vote of the meeting shall be decided on _____.
a. Written vote
b. Show of hands
c. Secret ballot
d. Voice vote
- xiv.** The appointment of an independent director shall be approved by the:
a. General meeting;
b. Board meeting;
c. Registrar of Companies;
d. Central Government.
- xv.** The following is the disadvantage of business ethics:
a. Through increasing morale and trust business can increase their market share
b. Publicity due to well and ethical performance
c. Diversity in achievements
d. Acceptance of products of the company by the public

Section – B

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

2. (a) “Two or more persons are said to be consent when they agree upon the same thing in the same sense” – Discuss with reason the consequences of the absent of consent and free consent. [7]
(b) Examine the rules regarding enforcement of contingent contracts. [7]
3. (a) Analyse the legal provision relating to modes of Dissolution of a firm under Sec. 39 of the Indian Partnership Act, 1932. [7]
(b) Discuss the circumstances when a Bill of Exchange is dishonored and the roll of a notice in this regards. [7]
4. (a) “Chapter V provides the welfare measures to be taken in a factory”-examine the measures prescribed in the Factory’s Act 1948 to be provided by the factory to their workmen. [7]
(b) Demonstrate the process of determining the money due from employers for PF, pension scheme, or insurance scheme. [7]
5. (a) Describe the provisions relating to registration of an Association not for profit under Sec.8 of the Companies Act 2013. [7]



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- (b) "Inspect the procedures for the removal of a director to confirm they align with company policies and legal requirements." [7]
6. (a) How can the provisions of the Audit Committee be applied under Section 177 of the Companies Act, 2013? [7]
- (b) What do you infer from the term 'Key Managerial Personnel'? [7]
7. (a) Explain what an internal code of ethics and its relevance in business. [7]
- (b) Interpret the role of management accounting in relation to the values and attitudes of Professional Accountants. [7]
8. (a) X, Y and Z jointly borrowed ₹50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:
- (i) Y can recover the contribution from X and Z,
 - (ii) Legal representatives of X are liable in case of death of X,
 - (iii) Y can recover the contribution from the assets, in case Z becomes insolvent? [7]
- (b) 'X' was appointed as Managing Director for life by the Articles of Association of a private company incorporated on 1st June, 2005. The articles also empowered 'X' to appoint a successor. 'X' appointed by will 'G' to succeed him after his death. Advice in this connection.
- Can 'G' succeed 'X' as Managing Director after the death of 'X'?
 - Is it possible for the company in general meeting to remove 'X' from his office of directorship during his life time? [7]

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- General meeting
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- Through increasing morale and trust business can increase their market share
 - Publicity due to well and ethical performance
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 - Acceptance of products of the company by the public

Answer:

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

Section – B

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2. (a) “Two or more persons are said to be consent when they agree upon the same thing in the same sense” – Discuss with reason the consequences of the absent of consent and free consent. [7]
- (b) Examine the rules regarding enforcement of contingent contracts. [7]

Answer:

2. (a) “Two or more persons are said to consent when they agree upon the same thing in the same sense.” - [Sec 13]. There will be flaw in consent if it is not free consent. If the parties have not agreed upon the same thing in the same sense, there is no real consent and hence no contract is formed.
- As per section 14 of the Indian Contract Act, 1872 consent is said to be free when it is not caused by:
- Coercion (Sec 15):** The term “Coercion” has been defined in Section 15 of the Act as the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.
 - Undue influence (Sec 16):** Section 16 of the Indian Contract Act defines undue influence as under:
 - A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.



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- ii. In particular, and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—
- Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
 - Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- iii. Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.
- III) **Fraud (Sec 17):** As per section 17 of the Indian Contract Act: “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:
- i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
 - ii) The active concealment of a fact by one having knowledge or belief of the fact;
 - iii) A promise made without any intention of performing it;
 - iv) Any other act fitted to deceive;
 - v) Any such act or omission as the law specially declares to be fraudulent.
- IV) **Misrepresentation (Sec 18):** A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties. A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally, it is misrepresentation and when made intentionally or wilfully it is fraud.
- V) **Mistake, subject to the provisions of Sec 20, 21 and 22:**
- Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act. Mistake can be –
- A) Mistake of law, or (Section 21)
 - 1. Mistake of law of the country
 - 2. Mistake of law of a foreign country
 - B) Mistake of fact (Section 20)
 - 1. Bilateral mistake, or
 - 2. Unilateral mistake

Effect of absence of free consent.



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

- (b) Section 32 provides that contingent contracts to do or not to do anything, if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Examples:

- (i) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced in law unless and until C dies in A's lifetime.
- (ii) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refused to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.
- (iii) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refused to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

Section 33 provides for enforcement of contracts contingent on an event not happening. This section provides that contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Explanation – A agrees to pay B a sum of money, if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

Section 34 discusses about deemed impossible contract. The said section provides that if the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Example: A agrees to pay B a sum of money if B marries C, C marries D. The marriage of B to C must now be considered impossible; although it is possible that D may die and that C may afterwards marry B.

Section 35 provides for the contracts which are contingent on happening of specified event within fixed time. The said section provides that contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible. Contingent contracts to or not to do anything, if a specified uncertain event does not happen within a fixed time,

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may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, if it becomes certain that such event will not happen.

Examples:

- a. A Promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year and becomes void if the ship is burnt within the year;
- b. A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Section 36 provides that contingent agreement to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Example:

- a. A agrees to pay B ₹1,000 if two straight lines should enclose a space. This agreement is void.
- b. A agrees to pay B ₹1,000 if B will marry A's daughter C. C, was dead at the time of the agreement. The agreement is void.

3. (a) **Analyse the legal provision relating to modes of Dissolution of a firm under Sec. 39 of the Indian Partnership Act, 1932.** [7]
- (b) **Discuss the circumstances when a Bill of Exchange is dishonored and the roll of a notice in this regards.** [7]

Answer:

3. (a) Section 39 provides that the dissolution of partnership between all the partners of a firm is called the 'dissolution of the firm'.

Modes of Dissolution of a firm:

1. Dissolution without the order of the court or voluntary dissolution:
 - i) Dissolution by agreement [Section 40]: a firm may be dissolved with the consent of all partners or in accordance with a contract between the parties. A deed of dissolution, signed by five out of six partners cannot amount to a deed of dissolution with the consent of all the partners. Dissolution and winding up are two different concepts. Realization of the assets is a part of winding up and not of dissolution, unless, perhaps, it was, expressly or by necessary implication, agreed upon by the parties that the life of the partnership should be co-terminus with the collection of the last debt.
 - ii) Compulsory dissolution [Section 41]:
Section 41 provides that a firm is dissolved-
 - By the adjudication of all the partners or of all the partners but one as insolvent; or
 - By the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.



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- Where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not cause the dissolution of the firm in respect of its lawful adventures and undertakings.
- iii) Dissolution on the happenings of certain contingencies [Section 42]: Section 42 provides that subject to the contract between the partners, a firm is dissolved-
 - if constituted for a fixed term, by the expiry of that term;
 - if constituted to carry out one or more adventures or undertakings, by the completion thereof;
 - by the death of a partner; and
 - by the adjudication of a partner as an insolvent.
- iv) Dissolution by notice of partnership at will [Section 43]:
Section 43 provides that where the partnership is at will, the firm may be dissolved by any partner giving notice, in writing, to all the other partners, of his intention to dissolve the firm. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of then notice.

2. Dissolution by the court [Section 44]:

Section 44 prescribes the grounds on which the Court may direct dissolution of a firm in a suit as discussed below:

- if a partner has become of unsound mind;
- if a partner has become permanently incapable of performing his duties as partner;
- if a partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business;
- if a partner wilfully or persistently commits breach of agreements relating to- the management of the affairs of the firm or the conduct of its business; or
Otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
- If a partner has in any way-
 - transferred the whole of his interest in the firm to a third party; or
 - has allowed his share to be charged; or
 - has allowed it to be sold in the recovery of the arrears of land revenue; or
 - of any dues recoverable as arrears of land revenue due by the partner;
 - the business of the firm cannot be carried on save at a loss; or
 - on any other ground which renders it just and equitable that the firm should be dissolved.

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

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

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

Roll of a notice:

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

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

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

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

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

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

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

4. (a) **“Chapter V provides the welfare measures to be taken in a factory”-examine the measures prescribed in the Factory’s Act 1948 to be provided by the factory to their workmen. [7]**



- (b) Demonstrate the process of determining the money due from employers for PF, pension scheme, or insurance scheme. [7]

Answer:

4. (a) Chapter V provides the welfare measures to be taken in a factory for the workmen employed in the factory.

The following are the welfare measures prescribed in the Act to be provided by the factory to their workmen-

- washing facilities;
- facilities for storing and drying clothing;
- facilities for sitting;
- first aid appliances;
- canteens;
- shelters, rest rooms and lunch rooms;
- creches;
- appointment of welfare officers.

➤ **Washing facilities:**

Section 42 provides that in every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers. Separate and adequately screened facilities shall be provided for the use of male and female workers. The washing facility shall be conveniently accessible and shall be kept clean.

➤ **Facilities for storing and drying clothing:**

Section 43 provides that the State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

➤ **Facilities for sitting:**

Section 44 provides that suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they make take advantage of any opportunities for rest which may occur in the course of their work.

➤ **First aid appliances:**

Section 45 provides that first aid appliances shall be provided and maintained so as to be readily accessible during all working hours or cupboards equipped with the prescribed contents and the number of such boxes or cupboards to be provided and maintained shall not be less than for every 150 workers at any one time in the factory. Each first aid box or cupboard shall be kept in charge of a separate reasonable person who holds a certificate in the first aid treatment recognized by the State Government and he should always be readily available during the working hours of the factor. In a factory where more than 500 workers are employed an ambulance of the prescribed size containing the prescribed equipment, nursing staff etc., shall be provided and made readily available at all times.



➤ **Canteens:**

Section 46 provides that if more than 250 workers are employed in a factory a canteen or canteens shall be provided and maintained by the occupier for the user of the workers. The items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs shall be borne by the employer.

➤ **Shelters, rest rooms and lunch rooms:**

Section 47 provides that if more than 150 workers are employed adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water shall be provided and maintained for the use of the workers. The same shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

➤ **Creches:**

Section 48 provides that if more than 30 women workers are employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such women. The same shall be adequately ventilated and shall be maintained in clear and sanitary conditions and under the charge of women trained in the care of children and infants.

➤ **Welfare Officers:**

Section 49 provides that if 500 or more than workers are employed in a factory, the occupier shall employ in the factory such number of welfare officers as may be prescribed.

(b) **Determination of moneys due from employers:**

Section 7A provides that in case where a dispute arises regarding the applicability of this Act to an establishment, the Authority concerned may conduct such enquiry as he may deem necessary decide such dispute and determine the amount due from any employer under the provision of this Act, the scheme or the Pension Scheme or the Insurance Scheme as the case may be. Before passing such order the employer concerned shall be given a reasonable opportunity of representing his case.

For the purpose of conducting inquiry the Authority shall have the same powers as are vested in a court under CPC for trying a suit in respect of the following matters-

- enforcing the attendance of any person or examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavit;
- Issuing commissions for the examination of witnesses.

Where the employer, employee or any other person required to attend the inquiry, fails to attend such inquiry, the Authority shall decide the case ex-parte and pass orders based on the available documents put forth before him. The employer, within three months from the date of communication of such order, may apply to the Authority to set aside the ex-parte order showing that there are sufficient causes for not enabling him to attend the hearing on the prescribed date. If the Authority is satisfied, he may set aside the ex-parte order and shall appoint a date for proceeding with the inquiry.

In ‘S.K. Nasiruddin Beedi Merchant Limited V. Central Provident Fund Commissioner’ – AIR 2001 SC850 it was held that the applicability of the Act to any class of employees is not determined and

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decided by any proceeding under Section 7A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7A of the Act is only determination of quantification of the same.

5. (a) **Describe the provisions relating to registration of an Association not for profit under Sec.8 of the Companies Act 2013.** [7]
- (b) **"Inspect the procedures for the removal of a director to confirm they align with company policies and legal requirements."** [7]

Answer:

5. (a) Section 8 of the Companies Act, 2013 lays down provisions relating to companies that do not have a share capital. the section talks about the formulation of companies with charitable objects, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company –
- has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
 - intends to apply its profits, if any, or other income in promoting its objects; and
 - intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

Such a company registered under this section enjoys all the privileges and is subject to all the obligations of limited companies. A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. Also, among other provisions, the Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word “Limited” or the words “Private Limited”, as the case may be, to its name.

In India, a non-profit organization can be registered as Trust by executing a Trust deed or as a Society under the Registrar of Societies, or as a private limited non-profit company under Section 8 Company under the Companies Act, 2013. A Section 8 Company is the same as the popular Section 25 of the old Companies Act, 1956, which was one of the most popular forms of Non- Profit Organizations in India.

There are many exemptions that a Section 8 company enjoys, such as, appointment of a qualified



company secretary is not mandatory in such companies. Moreover, a general meeting of a Section 8 company can be held by giving 14 days' notice instead of the mandatory 21 days' notice, also, the provisions relating to appointment of directors under Section 149 regarding maximum and minimum number of directors is not applicable to such companies. Multiple compliance aspects have also been relaxed for such companies under the Companies Act, 2013.

(b) Section 169 of the Companies Act, 2013:

Directors can be either removed by shareholders or by Tribunal. Under Section 169 of Companies Act, 2013, shareholders have been given the inherent right to remove the directors appointed by them. It is not necessary that there should be proof of mismanagement, breach of trust, misfeasance or other misconduct on the part of the directors. Where the shareholders feel the policies pursued by the directors or any of them are not to their liking, they have the option to remove the directors by passing an ordinary resolution in the same way as they have the right to appoint directors by passing an ordinary resolution.

Process for Removing a Director:

A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard. The vacancy is created under this section after the removal of the director then in the same meeting of the removal another director is being appointed for time being, and a special notice of the intended appointment is provided. The newly appointed director has to hold the post until the duration up to the new formal appointment of the director is made.

Effect of Removal:

When a director is removed as aforementioned, his office vacates automatically u/s 167. The removed director is liable for the damages and compensation which is required to be payable to him in lieu of his removal or termination according to the prescribed terms and conditions of the appointment.

In *Queen Kuries & Loans (p.) Ltd. vs Sheena Jose* [1993], it was held that the notice must disclose the ground on which the director is proposed to be removed.

Section 242 of the Companies Act, 2013:

Under Section 242 of the Companies Act, 2013, where an application has been made to the Tribunal under Section 241, against oppression and mismanagement of a company's affairs, the Tribunal may order for the termination or setting aside of an agreement which the company might have made with any of its directors. It may also order the removal of any of the directors of the company. A director so removed shall not be entitled to claim any compensation from the company for the loss of office under Section 243. Additionally, such a director shall not be entitled to serve as a manger, managing director or director of the company without leave of the Tribunal for a period of five years from the date of Tribunal's order terminating or setting aside his contract with the company.

6. (a) **How can the provisions of the Audit Committee be applied under Section 177 of the Companies Act, 2013?** [7]

**(b) What do you infer from the term ‘Key Managerial Personnel’?****[7]****Answer:**

- 6. (a)**
1. The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
 2. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority, provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
 3. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
 4. Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include—
 - the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - review and monitor the auditor’s independence and performance, and effectiveness of audit process;
 - examination of the financial statement and the auditors’ report thereon;
 - approval or any subsequent modification of transactions of the company with related parties;
 - scrutiny of inter-corporate loans and investments;
 - valuation of undertakings or assets of the company, wherever it is necessary;
 - evaluation of internal financial controls and risk management systems;
 - monitoring the end use of funds raised through public offers and related matter
 5. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
 6. The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
 7. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor’s report but shall not have the right to vote.
 8. The Board’s report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefore.
 9. Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may

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be prescribed.

10. The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.

(b) The Companies Act, 2013 ('Act') mandates to appoint Key Managerial Personnel (KMP). Section 203 of the Act provides that certain classes of companies must appoint the KMP, which includes:

- The Managing Director or manager or Chief Executive Officer,
- The company secretary and
- Chief Financial Officer.

The company must appoint a whole-time director if it does not have a Chief Executive Officer, manager or Managing Director. Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides the class of companies that must appoint the whole-time KMP, which are as follows:

1. Every listed company
2. A public company having a paid-up share capital of Rs 10 crore or more
3. Further, a private company having a paid-up share capital of Rs. 10 crore or more must appoint a whole-time company secretary.

Every whole-time KMP is appointed through a resolution of the board containing the conditions and terms of appointment, including remuneration. A whole-time KMP must not simultaneously hold office in more than one company except its subsidiary company.

The board is responsible for filling the vacancies in the post of KMP within six months of the vacancy. A company can appoint or re-appoint a person as its managing director, whole-time director or manager for a maximum of five years.

The Act states that a company cannot continue KMP as the employment or appoint a managing director, whole-time director or manager when such person:

- Has attained 70 years or is below 21 years
- Has been convicted as an insolvent or is an uncharged insolvent
- Has suspended payment to the creditors at any time
- Has been convicted for an offence by a court and sentenced to more than six months' period.
- Such other officers, designated by the Board as KMP but are not more than one level below the directors in whole-time employment such other officer as may be prescribed.

A. Chief Executive Officer, manager or Managing Director are responsible for running the company and defined as a director having substantial powers over the company management and its affairs. A Managing Director is appointed through any of the following means:

- By the Articles of Association
- An agreement with the company
- A resolution passed in a general meeting

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- By the company board of directors

The Act defines a manager as the individual who manages the whole company affairs, subject to the board of directors' direction, control and superintendence.

- B. Company secretary is responsible for looking after the efficient administration of the company. They take care of the company's compliance and regulatory requirements. The Company Secretaries Act defines a Company Secretary as a person who is a member of the Institute of Company Secretaries of India (ICSI). The company secretary should ensure that the company complies with secretarial standards.
- C. Under the Act, a Whole-Time Director is defined as a director who is in whole-time employment of the company. They are different from an independent director as they are part of the daily operation and have a significant stake in the company. A Managing Director can also be a Whole-Time Director.
- D. A Chief Financial Officer is responsible for handling the company's financial status. They keep a tab on cash flow operations, create contingency plans for financial crises and do financial planning. They lead the treasury and financial functions of the company.

7. (a) **Explain what an internal code of ethics and its relevance in business.**

[7]

(b) **Interpret the role of management accounting in relation to the values and attitudes of Professional Accountants.**

[7]

Answer:

7. (a) A code of ethics in business is a set of guiding principles intended to ensure a business and its employees act with honesty and integrity in all facets of its day-to-day operations and to only engage in acts that promote a benefit to society. All companies will have a different code of ethics with different areas of interest, based on the industry they are involved in, but the five areas that companies typically focus on include integrity, objectivity, professional competence, confidentiality, and professional behavior. Many firms and organizations have adopted a Code of Ethics.

According to the CFAI's website, Members of CFA Institute, including CFA, and candidates for the CFA designation must adhere to the following Code of Ethics:

- Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
- Place the integrity of the investment profession and the interests of clients above their own personal interests.
- Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.
- Practice and encourage others to practice professionally and ethically that will reflect credit on themselves and the profession.

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- Promote the integrity and viability of the global capital markets for the ultimate benefit of society.
- Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

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

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

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

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

8. (a) X, Y and Z jointly borrowed ₹50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

- (i) Y can recover the contribution from X and Z,**
- (ii) Legal representatives of X are liable in case of death of X,**
- (iii) Y can recover the contribution from the assets, in case Z becomes insolvent? [7]**

(b) 'X' was appointed as Managing Director for life by the Articles of Association of a private company incorporated on 1st June, 2005. The articles also empowered 'X' to appoint a successor. 'X' appointed by will 'G' to succeed him after his death. Advice in this connection.

- **Can 'G' succeed 'X' as Managing Director after the death of 'X'?**
- **Is it possible for the company in general meeting to remove 'X' from his office of directorship during his life time? [7]**

**Answer:**

8. (a) Section 42 of the Indian Contract Act, 1872 requires that “when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.” Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". In the absence of express agreement to the contrary, the promisee may compel anyone or more of the joint promisors to perform the whole of the promise. Section 43 also deals with the contribution among joint promisors. A joint promisor, who has performed the contract than his share, may compel every other joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. As per the provisions of above sections,
- (i) Y can recover the contribution from X and Z because XYZ are joint promisors.
 - (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
 - (iii) Y also can recover the contribution from Z's assets.
- (b)
- Under section 196(2) of the Companies Act, 2013 lays down that no company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time. No concession or exception is allowed by the Act to private companies. Hence, ‘X’ cannot be appointed as Managing Director for life in a private company. Further, section 196(4) of the Companies Act, 2013 provides that a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V of the Act. From the above, it is clear that ‘X’ cannot legally appoint anyone including ‘G’ to succeed him as the Managing director of the company and consequently ‘G’ cannot succeed ‘X’ as Managing Director of the company after the death of ‘X’.
 - Section 169(1) of the Companies Act, 2013 empowers the company to remove a director, by ordinary resolution before the expiry of his period of office after giving him an opportunity of being heard. This section applies to both public and private companies. It applies to all directors except a director appointed by the Tribunal under section 242 of the Act. The above provision applies to the Managing Director also as he is a director of the company and the member of its Board of Directors. Hence, it is possible for the company in general meeting to remove ‘X’ before the expiry of his term of office by an ordinary resolution.