

**INTERMEDIATE EXAMINATION****SET 2****MODEL QUESTION PAPER TERM – DECEMBER 2024****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.

Where considered necessary, suitable assumptions may be made and clearly indicated in the answer.

SECTION – A (Compulsory)**1. Multiple Choice Questions:****[2 × 15 = 30]**

- (i) Which of the following words is not mentioned in the Preamble to the Indian Constitution?
 - a. Sovereign.
 - b. Socialist.
 - c. Democratic.
 - d. Indians.
- (ii) If only a part of the consideration or object is unlawful, the contract under Section 24 shall be:
 - a. Valid
 - b. Voidable
 - c. Void
 - d. Illegal
- (iii) Which of the following result/results in an offer?
 - a. A declaration of intention.
 - b. An invitation to offer.
 - c. An advertisement offering reward to anyone who finds the lost dog of the advertiser.
 - d. An offer made in a joke.
- (iv) The undertaking contained in a promissory note, to pay a certain sum of money is:
 - a. Conditional
 - b. Unconditional
 - c. May be conditional or unconditional depending upon the circumstances.
 - d. None of the above.
- (v) The maximum number of partners in a firm carrying on banking business cannot exceed _____.
 - a. 5.
 - b. 10.
 - c. 15.
 - d. 20.
- (vi) The audit of accounts of every LLP is not compulsory if its:
 - a. Turnover does not exceed in any financial year, ₹40 lakh or whose contribution does not exceed ₹25 lakh.
 - b. Turnover does not exceed, in any financial year, ₹30 lakh, or whose contribution does not exceed ₹25 lakh.
 - c. Turnover does not exceed, in any financial year, ₹20 lakh, or whose contribution does not exceed ₹25 lakh.



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- d. Turnover does not exceed, in any financial year, ₹10 lakh, or whose contribution does not exceed ₹25 lakh.
- (vii) Where more than _____ workers are employed provision shall be made for cool drinking water during hot weather.
- 100
 - 250
 - 500
 - 1000
- (viii) Which one of the following is to be included in the definition of 'wage'?
- Dearness allowance;
 - Overtime allowance;
 - Commission;
 - House rent allowance.
- (ix) Withdrawal from PF may be allowed for:
- Marriage of the employer;
 - Post matriculation education of children;
 - For the purchase of a dwelling place;
 - For illness in certain cases.
- (x) Who, among the following, is not the Principal Employer?
- Occupier of the factory;
 - Owner of the factory;
 - Legal representative of the owner;
 - Legal representative of the contractor.
- (xi) Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section of the Indian Penal Code.:
- 15;
 - 18;
 - 21;
 - 26;
- (xii) The Bonus shares may be issued out of the:
- Free reserves;
 - Securities premium account;
 - Capital redemption reserve account;
 - Any of the above.
- (xiii) What is the paid up share capital fixed for the appointment of a woman director?
- ₹100 crores
 - ₹300 crores;
 - ₹500 crores.



INTERMEDIATE EXAMINATION

SET 2

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d. None of the above.

(xiv) Ethics are the set of moral principles that guide a person's:

- a. Behaviour.
- b. Philosophy.
- c. Religion.
- d. Profession.

(xv) While filing appeal to EPF Appellate Tribunal the employer has to deposit _____ of the amount due from him.

- a. 25%
- b. 50%
- c. 75%
- d. None of the above.

SECTION - B

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

[5x14=70]

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|----|-----|--|-----|
| 2. | (a) | Analyze the conditions of enforceability of the standard form of contracts. | [7] |
| | (b) | Examine the rules regarding enforcement of contingent contracts. | [7] |
| 3. | (a) | Demonstrate the concept of implied authority of a partner. | [7] |
| | (b) | Examine the validity of the condition "Issuing a cheque that bounces is an Offence". | [7] |
| 4. | (a) | Discuss the procedures to be adopted on the safety of working place in a factory under Chapter IV of the factories act 1948. | [7] |
| | (b) | What do you infer from the word "Employees" under the Employees State Insurance Act, 1948? | [7] |
| 5. | (a) | Describe the particulars to be incorporated in the Annual Return under Companies Act, 2013. | [7] |
| | (b) | Analyze the legal provision relating to the company under section 169 of Companies Act 2013. | [7] |
| 6. | (a) | Demonstrate the provision of Audit Committee under section 177 of the Companies Act 2013. | [7] |
| | (b) | What do you infer from the term 'Key Managerial Personnel'? | [7] |
| 7. | (a) | Summarize the concept of emotional intelligence. | [7] |

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- (b) Interpret the standards of ethical conduct for practitioners fixed by The Institute of Cost Accountants of India. [7]
8. (a) Raju is the holder of a bill of exchange made payable to the order of Ram. The bill of exchange contains the following endorsements in blank:
- (i) First endorsement Ram
 - (ii) Second endorsement Ganesh.
 - (iii) Third endorsement Naresh and
 - (iv) Fourth endorsement Bakul
- Raju strikes out, without Bakul's consent, the endorsements by Ganesh and Naresh. Describe with reasons whether Raju is entitled to recover anything from Bakul under the provisions of Negotiable Instruments Act, 1881. [7]
- (b) Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013:
- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.
 - (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn. [7]

**INTERMEDIATE EXAMINATION****SET 2****MODEL ANSWERS****TERM – DECEMBER 2024****PAPER - 5****SYLLABUS-2022****BUSINESS LAWS AND ETHICS****Time Allowed: 3 Hours****Full Marks: 100**

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(xv) While filing appeal to EPF Appellate Tribunal the employer has to deposit _____ of the amount due from him.

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- b. 50%
- c. 75%
- d. None of the above.

Answer:

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

SECTION - B

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

[5x14=70]

2. (a) Analyze the conditions of enforceability of the standard form of contracts. [7]
- (b) Examine the rules regarding enforcement of contingent contracts. [7]

Answer:

- (a) A standard form contract is a pre-drafted contract containing set terms and conditions, offered by one party on a "take it or leave it" basis, without negotiation or customization to the transaction or parties involved. They are also known as contracts of adhesion, signifying the weaker party simply adheres to the terms presented with little choice, or boilerplate contracts, containing standard boilerplate terms. Businesses use standard forms to maximize efficiency in mass contracting. However, they limit the free exercise of contracting powers and are prone to overreach.

Under section 10 of the Indian Contract Act, 1872, standard forms constitute valid contracts. The parties objectively manifest assent through signature or conduct. However, additional requirements may apply:

1. Reasonable notice of terms – Unexpected or surprising terms may be unenforceable if the adherent lacks reasonable notice.
2. Incorporation into contract – Terms must be incorporated into the contract rather than merely stated on an ancillary document like a receipt.
3. Absence of misrepresentation/fraud – If there is misrepresentation or fraud regarding the terms of the contract, this will vitiate consent and render the contract voidable at the instance of the affected party. This aligns with the Indian Contract Act, which

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makes a contract voidable if consent is obtained by misrepresentation or fraud (Section 19 and 17 of the Indian Contract Act).

4. Fundamental breach – Exclusion clauses cannot protect a party committing a fundamental breach. This means that if one party commits a major violation of the contract's terms, an exclusion clause (such as a clause that limits liability for breach) will not protect them
5. Contra proferentem –The contra proferentem rule is applicable in interpreting ambiguous terms in a contract. This rule dictates that any ambiguity in the terms of a contract will be interpreted against the party that drafted the contract, typically the proferens (the offeror).
6. Contemporaneous notice – Notice of terms must be given at the time of contract formation.

These requirements flowing from fairness and public policy principles can limit oppressive terms in standard form contracts under Indian law.

- (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:

- a) 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.
- b) 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.
- c) A contract to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

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

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event becomes impossible. Contingent contracts to or not to do anything, if a specified uncertain event does not happen within a fixed time, 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) **Demonstrate the concept of implied authority of a partner.** [7]
- (b) **Examine the validity of the condition "Issuing a cheque that bounces is an Offence".** [7]

Answer:

- (a) Section 22 provides that in order to bind a firm, an act or instrument, done or executed by a partner or other person on behalf of the firm, shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.
- Section 19 provides that subject to the provisions of Section 22, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by firm, binds the firm.
- The authority of a partner to bind the firm, conferred by this section, is called his 'implied authority'. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
- submit a dispute relating to the business of the firm to arbitration;
 - open a banking account on behalf of the firm in his own name;
 - compromise or relinquish any claim or portion of a claim by the firm;
 - withdraw a suit or proceeding filed on behalf of the firm;
 - admit any liability in a suit or proceeding against the firm;
 - acquire immovable property on behalf of the firm;
 - transfer immovable property belonging to the firm; or
 - enter into partnership on behalf of the firm. Extension and restriction of implied authority

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Section 20 provides that the partners may extend or restrict the implied authority of any partner by contract between the partners. Despite such restrictions, any act done by a partner on behalf of the firm, which falls within his implied authority, binds the firm unless the person, with whom he is dealing, knows of the restriction or does not know or believe that partner to be a partner.

- (b) Section 138 provides penalty for dishonour of cheque for insufficiency etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any money to another person from out of that account for the discharge, in whole or in part, of any 'debt or other liability' (a legally enforceable debt or other liability) is returned by the bank unpaid, -

- either because of the amount of money standing to the credit of that account is insufficient to honor the cheque; or
- that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to 2 years or with fine which may extend to twice the amount of the cheque, or with both.

The penal provision in this cheque shall not apply unless-

- the cheque has been presented to the bank within a period of three months (with effect from 01.04.2012, before that it is six months) from the date on which it is drawn or within the period of its validity, whichever is earlier;
- the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheques as unpaid; and
- the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice. Conditions precedent

In 'Kusum Ingots & Alloys Limited V. Pennar Peterson Securities Limited' – AIR 2000 SC 954, the Supreme Court held that the ingredients which are to be satisfied for making out a case under Section 138 of the Act, are-

- a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for discharge of any debt or other liability;
- that cheque has been presented to the bank within a period of six months (now three months) from the date on which it is drawn or within the period its validity whichever is earlier;
- that the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
- the payee or holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15

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days (now 30 days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

- the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Section 139 provides that it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability.

In 'B. Mohan Krishna V. Union of India' – 1996 CrLJ 683 (AP DB), the Andhra Pradesh High Court Division Bench held that the presumption in Section 139 in favor of the holder of a cheque is not violative of Article 20(3) of the Constitution which incorporates immunity against self-incrimination.

Section 140 provides that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in the section.

4. (a) **Discuss the procedures to be adopted on the safety of working place in a factory under Chapter IV of the factories act 1948.** [7]
- (b) **What do you infer from the word "Employees" under the Employees State Insurance Act, 1948?** [7]

Answer:

- (a) Chapter IV of the Factories Act, 1948 (sections 21 to 41) prescribes the procedures to be adopted on the safety of the working place in a factory. The factory is to take safety measures in respect of the following-
- Fencing of machinery-
 - Work on or near machinery in motion -
 - Employment of young persons on dangerous machines;
 - Striking gear and devices for cutting off power;
 - Self-acting machines;
 - Casing of a new machinery;
 - Prohibition of employment of women and children near cotton openers;
 - Lifting machines, chains, ropes and lifting tackles;
 - Revolving machinery;
 - Floors, stairs and means of access;
 - Pits, sumps openings in floors etc.,
 - Excessive weights;
 - Protection of eyes;
 - Precaution against dangerous fumes, gases, etc.,
 - Precautions regarding the use of portable electric light;
 - Explosive or inflammable dust, gas etc.,
 - Precaution in case of fire;

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- Safety on buildings and machinery;
- Maintenance of buildings;
- Appointment of safety officers.

(b) Section 2(9) defines the term ‘employee’ as any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and-

- who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
- who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
- whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the productions of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time but does not include-
 - ✓ any member of the Indian naval, military or air forces; or
 - ✓ any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government provided that an employee whose wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

In ‘Director, Hassan Co-operative Milk Producer’s Society Union Limited V. Assistant Regional Director, Employees’ State Insurance Corporation’ AIR 2010 SC 2109 it was held that merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be an ‘employee’; he must not only be employed in connection with the work of the establishment but also be shown to be employed in or other of the three categories mentioned in Section 2(9) of the Act.

In ‘Employees’ State Insurance Corporation V. Tata Engineering & Locomotive Co., Limited’ – AIR 1976 SC 66 it was held that an apprentice who is mere trainee for a distinct purpose is not an employee.

In ‘Regional Director, Employees’ State Insurance Corporation V. Ramanuja Match Industries’ – AIR 1985 SC 278 it was held that a partner is not an employee.

The following categories are coming under the purview of the term ‘employee’-

- Canteen workers – Employees State Insurance Corporation V. Shri Ram Chemical Industries’ – (1978) 2 LLN 227 (Raj);
- Employees who are working in a show room or sales office – ‘Bhopal Motors Private Limited V. Employees’ State Insurance Corporation’ – (1982) 2 LLN 827 (MP);
- Workers rendering services outside the place of establishment or shop – ‘Hindu Jea Band V. Regional Director, Employees’ State Insurance Corporation’ – 1986 LLR 95;

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- Part time employees employed on daily rate basis – ‘Hindu Jea Band’ (supra);
- Casual workers – ‘Regional Director, Employees’ State Insurance Corporation V. South India Flour Mill (Pvt) Limited’ – AIR 1986 SC 1686.

5. (a) Describe the particulars to be incorporated in the Annual Return under Companies Act, 2013. [7]
- (b) Analyze the legal provision relating to the company under section 169 of Companies Act 2013. [7]

Answer:

- (a) Section 92 of the Companies Act, 2013 requires a company to file Annual Return. This section provides that every company shall prepare an Annual Return in Form No. MGT-7. The Annual Return shall contain the following particulars as they stood at the end of the financial year-

- its registered office, its principal business activities, particulars of its holding, subsidiary and associate companies;
- its shares, debentures and other securities and shareholding pattern;
- its indebtedness;
- its members and debenture holders along with changes therein since the close of the previous financial year;
- its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- meetings of members or a class thereof, Board and its various committees along with attendance details;
- remuneration paid to Directors and Key Managerial Personnel;
- penalty and punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- matters relating to certification of companies, disclosures as may be prescribed;
- details in respect of shares held by or on behalf of the Foreign Institutional Investors; and
- such other matters as may be prescribed.

The return shall be signed by a director and the Company Secretary. Where there is no company secretary, then it, shall be signed by a Company Secretary in practice.

The proviso to Section 92(1) provides that the annual return of an OPC and small company, shall be signed by the Company Secretary or where there is no Company Secretary by the director of the Company.

- (b) 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

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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.

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. 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.

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 manager, 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) **Demonstrate the provision of Audit Committee under section 177 of the Companies Act 2013.** [7]
(b) **What do you infer from the term 'Key Managerial Personnel'?** [7]

Answer:

- (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—

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- i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - iii) examination of the financial statement and the auditors' report thereon;
 - iv) approval or any subsequent modification of transactions of the company with related parties;
 - v) scrutiny of inter-corporate loans and investments;
 - vi) valuation of undertakings or assets of the company, wherever it is necessary;
 - vii) evaluation of internal financial controls and risk management systems;
 - viii) monitoring the end use of funds raised through public offers and related matters.
5. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
6. The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
7. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.
8. The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons 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 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:

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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
- 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.

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- 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) Summarize the concept of emotional intelligence. [7]
- (b) Interpret the standards of ethical conduct for practitioners fixed by The Institute of Cost Accountants of India. [7]

Answers:

- (a) Emotional intelligence also known as emotional quotient or EQ, is the ability to understand, use, and manage your own emotions in positive ways to relieve stress, communicate effectively, empathize with others, overcome challenges and defuse conflict. Emotional intelligence helps you build stronger relationships, succeed at school and work, and achieve your career and personal goals. It can also help you to connect with your feelings, turn intention into action, and make informed decisions about what matters most to you.

Emotional intelligence is commonly defined by four attributes

- ⦿ Self-management – You're able to control impulsive feelings and behaviours, manage your emotions in healthy ways, take initiative, follow through on commitments, and adapt to changing circumstances.
- ⦿ Self-awareness – You recognize your own emotions and how they affect your thoughts and behaviour. You know your strengths and weaknesses, and have self-confidence.
- ⦿ Social awareness – You have empathy. You can understand the emotions, needs, and concerns of other people, pick up on emotional cues, feel comfortable socially, and recognize the power dynamics in a group or organization.
- ⦿ Relationship management – You know how to develop and maintain good relationships, communicate clearly, inspire and influence others, work well in a team, and manage conflict.

As we know, it's not the smartest people who are the most successful or the most fulfilled in life. You probably know people who are academically brilliant and yet are socially inept and unsuccessful at work or in their personal relationships. Intellectual ability or your intelligence quotient (IQ) isn't enough on its own to achieve success in life. Yes, your IQ can help you get into college, but it's your EQ that will help you manage the stress and emotions when facing your final exams. IQ and EQ exist in tandem and are most effective when they build off one another.

Emotional intelligence affects:

- **Your performance at school or work:** High emotional intelligence can help you navigate the social complexities of the workplace, lead and motivate others, and excel in your career. In fact, when it comes to gauging important job candidates, many

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companies now rate emotional intelligence as important as technical ability and employ EQ testing before hiring.

- **Your physical health:** If you're unable to manage your emotions, you are probably not managing your stress either. This can lead to serious health problems. Uncontrolled stress raises blood pressure, suppresses the immune system, increases the risk of heart attacks and strokes, contributes to infertility, and speeds up the aging process. The first step to improving emotional intelligence is to learn how to manage stress.
- **Your mental health:** Uncontrolled emotions and stress can also impact your mental health, making you vulnerable to anxiety and depression. If you are unable to understand, get comfortable with, or manage your emotions, you'll also struggle to form strong relationships. This in turn can leave you feeling lonely and isolated and further exacerbate any mental health problems.
- **Your relationships:** By understanding your emotions and how to control them, you're better able to express how you feel and understand how others are feeling. This allows you to communicate more effectively and forge stronger relationships, both at work and in your personal life.

Conclusion

Business ethics is important to practice good ethical behaviour. One of the most formidable challenges is avoiding immoral management, and transitioning from an amoral to a moral management mode of leadership, behaviour, decision making, policies and practices. Moral management requires ethical leadership. It entails more than just 'not doing wrong'. Moral management requires that managers search out of those vulnerable situations in which amorality may reign if careful, thoughtful reflection is not given by management. Moral management requires that managers understand, and be sensitive to, all the stakeholders of the organization and their stakes. If the moral management model is to be achieved, managers need to integrate ethical wisdom with their managerial wisdom and take steps to create and sustain an ethical climate in their organizations.

- (b) The Institute has promulgated the following standards of ethical conduct for practitioners-
- maintain at all times independence of thought and action;
 - not to express an opinion on cost / financial reports or statements without 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 with the knowledge of all the facts;
 - 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 misleading, acquire sufficient information to warrant an expression of opinion and 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

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proceeding or against alleged professional misconduct by order of lawful authority or any committee of the Society in the proper exercise of their duties but only to the extent necessary for such purpose;

- inform his or her employer or client of any business connections or interests of which such Member's employer or client would reasonably expect to be informed;
- not, in the course of exercising his or her duties on behalf of such Member's employer or client, hold, receive, bargain for or acquire any fee, remuneration or benefit without such employer's or client's knowledge and consent; and
- take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter.
- conduct himself or herself toward other Members with courtesy and good faith;
- not to accept any engagement to review the work of another Member for the same employer except with the knowledge of that Member, or except where the connection of that Member with the work has been terminated, unless the Member reviews the work of others as a normal part of his or her responsibilities;
- not to attempt to gain an advantage over other Members by paying or accepting a commission in securing management accounting work;
- not to act maliciously or in any other way which may adversely reflect on the public or professional reputation or business of another Member;
- at all times maintain the standards of competence expressed by the Institute from time to time;
- undertake only such work as he or she is competent to perform by virtue of his or her training and experience and will, where it would be in the best interests of an employer or client, engage, or advise the employer or client to engage, other specialists;

8. (a) **Raju is the holder of a bill of exchange made payable to the order of Ram. The bill of exchange contains the following endorsements in blank:**

- (i) **First endorsement Ram**
- (ii) **Second endorsement Ganesh.**
- (iii) **Third endorsement Naresh and**
- (iv) **Fourth endorsement Bakul**

Raju strikes out, without Bakul's consent, the endorsements by Ganesh and Naresh. Describe with reasons whether Raju is entitled to recover anything from Bakul under the provisions of Negotiable Instruments Act, 1881. [7]

- (b) **Examine the validity of the following decisions of the Board of Directors with reference to the provisions of the Companies Act, 2013.**

- (i) **In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.**
- (ii) **In an annual general meeting, during the process of poll, the members who**



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earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn. [7]

Answer:

- (a) According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

In the given question, Raju is the holder of a bill of exchange of which Ram is the payee and it contains the following endorsement in blank:

First endorsement = Ram

Second endorsement = Ganesh

Third endorsement = Naresh

Fourth endorsement = Bakul

Raju, the holder, may intentionally strike out the endorsement by Ganesh and Naresh, in that case the liability of Ganesh and Naresh upon the bill will come to an end. But if the endorsements of Ganesh and Naresh are struck out without the consent of Bakul, Raju will not be entitled to recover anything from Bakul. The reason being that as between Naresh and Bakul, Naresh is the principal debtor and Bakul is surety. If Naresh is released by the holder under Section 39 of the Act, Bakul, being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if Raju strikes out, without Bakul's consent, the endorsements by Ganesh and Naresh, Bakul will also be discharged.

- (b) Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:

- In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one - tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid - up; and
- In the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:



INTERMEDIATE EXAMINATION

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- (i) The chairman cannot reject the demand for poll subject to provision in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.