PROFESSIONAL ETHICS AND AUDITOR'S LIABILITIES

DESCRIPTIVE QUESTIONS

Q 1. The audit team is preparing to conduct audit for Preksha Company Ltd. for the period ending 31.3.2024. However, the audit team has not received its audit fees from Preksha Company Ltd. for its audit concluded for ended 31.3.2023. The audit team might be tempted to issue a favourable report so that Preksha Company Ltd. is able to secure a loan to settle the fees outstanding for their 31.3.2023 audit. The audit team is not complying the fundamental principles of auditing hence hindering the Auditor's Independence. Explain the types of threats that may hinder Auditor's Independence while issuing Audit Report.

[Jan. 21 (5 Marks)]

Ans: Threats that may hinder Auditor's Independence:

1. **Self-interest threats:** The threat that a financial or other interest will inappropriately influence a professional accountant's judgment or behaviour.
2. **Self-review threats:** The threat that a professional accountant will not appropriately evaluate the results of a previous judgment made; or an activity performed by the accountant, or by another individual within the accountant's firm or employing organization, on which the accountant will rely when forming a judgment as part of performing a current activity.
3. **Advocacy threats:** The threat that a professional accountant will promote a client's or employing organization's position to the point that the accountant's objectivity is compromised.
4. **Familiarity threats:** The threat that due to a long or close relationship with a client, or employing organization, a professional accountant will be too sympathetic to their interests or too accepting of their work.
5. **Intimidation threats:** The threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the accountant.

Q 2. Mr. Hitesh, a newly qualified chartered accountant started his practice in February 2023 by setting up an office in the hill station Kodaikanal. Initially, since he was getting very less assignments, he decided to set up a temporary office in the nearby city Madurai, situated at about 100 kms from the main office. As planned, he took an office space on rent for the months of Dec. Jan. and Feb. During these months, his regular office was not closed and Mr. Ajay was in-charge for both the offices. Mrs. Ishika, another newly qualified chartered accountant who is also in practice in Madurai came to know about the new office of Mr. Ajay. Thinking that he could be a potential competitor, she informed the institute stating that Mr. Ajay had violated the provisions of the Chartered Accountant Act. As a member of the Board of Discipline of ICAI, you are requested to analyse this complaint.

[MTP-March 21]

Ans: Maintenance of Branch office:

- In terms of Sec. 27 of CA Act, 1949, if a CA in practice has more than one office in India, each one of such offices should be in the separate charge of a member of the Institute. This condition applies to any additional office situated at a place beyond 50 kms from the municipal limits in which any office is situated.
- However, exemption has been given to members in practicing in hill areas subject to certain conditions such as:
    1. Such member be allowed to open temporary offices in a city in the plains for a limited period not exceeding 3 months in a year.
    2. The regular office need not be closed during this period and all correspondence can continue to be made at the regular office.
    3. The name board of the firm in temporary office should not be displayed at times other than the period such office is permitted to function.
    4. The temporary office should not be mentioned in letter head, visiting card, any other documents as a place of business of the member/ firm.
    5. Before commencement of every winter, it shall be obligatory on the member/firm to inform the Institute that he/it is opening the temporary office from a particular date and after the office is closed at the expiry of the period of permission, an intimation to that effect should also be sent to the office of the Institute by registered post.
- In the given case, Mr. Ajay has set up his regular office in the hill area of Kodaikanal, he decided to set up a temporary office in the nearby city Madurai, situated at about 100 kms from the main office. As planned, he took an office space on rent for the months of Dec. Jan. and Feb. During these months, his regular office was not closed. Further he was in-charge for both the offices.
- In view of above mentioned criteria's, he is eligible to avail the benefits of the above exemptions. Also, it is given that the temporary office was open in Madurai for only 3 months and not beyond that. The fact that Mr. Ajay is in-charge for both the offices, the temporary office being set-up in the plains which is 100 kms away and the regular office kept open during the 3 months does not constitute any violation of the provisions of the Chartered Accountant Act. Assuming Mr. Ajay has informed the Institute regarding such temporary office in the prescribed manner.

Conclusion: No penal action needs to be taken on the basis of complaint registered by Mrs. Ishika, as Mr. Ajay is not guilty of professional misconduct.

Q.3. Give your comments with reference to the Chartered Accountants Act, 1949 and Schedules thereto: Manish, a practicing Chartered Accountant gave 50% of the audit fees received by him to Devang, who was not a Chartered Accountant, under the nomenclature of office allowance and such an arrangement continued for a number of years. [MTP-Oct. 19]

Ans: Sharing Fees with Employees:

As per clause (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than :

- a member of the Institute or
- a partner or
- a retired partner or
- the legal representative of a deceased partner,
- or a member of any other professional body or
- with such other persons having such qualification as may be prescribed,

for the purpose of rendering such professional services from time to time in or outside India.

In the given case Manish, a practicing CA has shared his profit and therefore, is guilty of professional misconduct under the clause. It is not the nomenclature to a transaction that is material but it is the substance of the transaction, which has to be looked into.

Conclusion: Mr. Manish be will be deemed to be guilty of professional misconduct under Clause 2 of Part I of First Schedule.

Q 4. CA. S and CA. M are two partners of the CA firm 'SM & Co. Being very pious, CA. S organised a religious ceremony at his home for which he instructed his printing agent to add his designation Chartered Accountant" with his name in the invitation cards. Later on, the invitations were distributed to all the relatives, close friends and clients of both the partners.

Ans: Using designation "Chartered Accountant" on invitation cards:

- As per Clause 6, Part I of First Schedule of Chartered Accountants Act, 1949, a CA in practice shall be deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means.
- Guidelines issued by the Council of ICAI under Clause 6 allowed a member to use designation "Chartered Accountant" as well as name of firm in greeting cards, invitations for marriages and religious ceremonies and any invitation for opening or inauguration of office, or letters regarding change in office premises or telephone numbers provided these are sent only to clients, relatives and close friends of concerned member.
- In the present case, CA. S is adding the designation Chartered Accountant with his name on invitation cards and these cards were distributed to his and his partner's relatives, close friends and clients.

Conclusion: CA. S shall be deemed to be guilty of professional misconduct for sending the invitation cards using designation chartered accountant to partner's relatives, close friends and clients.

Q 5. Give your comments with reference to the Chartered Accountants Act, and schedules thereto: Mr. Binod, a Chartered Accountant and the proprietor of Binod & Co., wrote several letters to the Assistant Registrar of Co-operative Societies stating that though his firm was on the panel of auditors, no audit work was allotted to the firm and further requested him to look into the matter.

Ans: Soliciting Professional Work:

- As per Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means.
- In the given case, Mr. Binod, a Chartered Accountant and proprietor of M/s X and Co, wrote several letters to the Assistant Registrar of Cooperative Societies, requesting for allotment of audit work.
- The writing of continuous letter to ascertain the reasons for not getting the work is quite alright but request for allowing the work does not appear to be correct.

Conclusion: Mr. Binod would be held guilty under clause 6 of Part 1 of First Schedule of the CA Act, 1949.

Q 6. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: Lalit, a Chartered Accountant in practice, empanelled as IP (Insolvency Professional) has mentioned the same on his visiting cards, letterheads and other communications also. Mr. Lalit, who is residing in his neighbourhood has filed a complaint for professional misconduct against the said member for such mention of insolvency professional on circulations.

[May 19 (4 Marks), MTP-March 22]

Ans: Using designation other than Chartered Accountant:

- As per clause 7 of Part I of First Schedule, a CA in practice is deemed to be guilty of professional misconduct if he
  - (i) advertises his professional attainments or services or
  - (ii) uses any designation or expressions other than "Chartered Accountant" on professional documents, visiting cards, letterheads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.
- In present case, a Chartered Accountant in practice, empanelled as IP (Insolvency Professional) has mentioned the same on his visiting cards, letterheads and other communications also. Mr. A, who is residing In his neighbourhood has filed a complaint for professional misconduct against the said member for such mention of insolvency professional on circulations.

Conclusion: Lalit, a Chartered Accountant empanelled as IP (Insolvency Professional) can mention 'Insolvency Professional' on his visiting cards, Letterheads and other communication, as this is a title recognised by the Central Government in terms of Clause 7 of Part I of First Schedule to the Chartered Accountants Act, 1949. Thus, complaint of neighbour is not enforceable/valid.

Q 7. Distinguish: Self-interest threat from self-review threat in an assurance engagement. [May 18 (4 Marks)]

Ans: Self Interest Threat:

The threat that a financial or other interest will inappropriately influence a professional accountant's judgment or behaviour is known as Self Interest threat. As per Code of Ethics, examples of facts and circumstances that might create self-interest threats for a professional accountant when undertaking a professional service includes the following:

1. A professional accountant having a direct financial interest in a client
2. A professional accountant quoting a low fee to obtain a new engagement and the fee is so low that it might be difficult to perform the professional service in accordance with applicable technical and professional standards for that price.
3. A professional accountant having a close business relationship with a client.
4. A professional accountant having access to confidential information that might be used for personal gain.
5. A professional accountant discovering a significant error when evaluating the results of a previous professional service performed by a member of the accountant's firm.

Self-review Threat:

The threat that a professional accountant will not appropriately evaluate the results of a previous judgment made; or an activity performed by the accountant, or by another individual within the accountant's firm or employing organization, on which the accountant will rely when forming a judgment as part of performing a current activity is known as Self review Threat.

As per Code of Ethics, examples of facts and circumstances that might create self-interest threats for a professional accountant when undertaking a professional service includes the following:

1. A professional accountant issuing an assurance report on the effectiveness of the operation of financial systems after implementing the systems.
2. A professional accountant having prepared the original data used to generate records that are the subject matter of the assurance engagement.

Q 8. Mr. Sheetal is a practicing chartered accountant. Due to natural calamities and misfortune during the year 2021, he lost almost all of his wealth and became undischarged insolvent. After a few court hearings, finally, in the year 2023, he was declared discharged insolvent and obtained a certificate from the court stating that his insolvency was caused by misfortune without any misconduct on his part. You are required to comment on the above situation with reference to the Chartered Accountants Act, 1949 and Schedules

thereto, (especially from the point of section 8: Entry of name in Register of Members).
[MTP-April 23]

Ans: Disabilities for the Purpose of Membership:

- As per Sec. 8 of Chartered Accountants Act, a person is debarred from having his name entered in or borne on the Register of Members, if he, being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part. Here it may be noted that a person who has been removed from membership for a specified period shall not be entitled to have his name entered in the Register until the expiry of such period.
- In addition, failure on part of a person to disclose fact that he suffers from any one of the disabilities would constitute professional misconduct. The name of the person, who is found to have been subject at any time to any of the disabilities discussed in Sec. 8, can be removed from the Register of Members by the Council.
- In the given case, it is clearly stated that Mr. Sheetal was discharged insolvent, and he has also obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part.

Conclusion: Mr. Sheetal has not violated the provisions of Section 8, and he is not debarred from having his name entered in the Register of Members.

Q 9. Mr. Abdul, a practicing Chartered Accountant was ordered to surrender his certificate of practice and he was suspended for one year on certain professional misconduct against him. During the period of suspension, Mr. Abdul, designating himself as GST consultant, did the work of filing GST returns and made appearance as a consultant before various related authorities. He contended that there is nothing wrong in it as he, like any other GST consultant, could take such work and his engagement as such in no way violate the order of suspension inflicted on him. Is he right in his contention? [May 18 (4 Marks)]

Ans: Undertaking Tax Representation Work:

- A CA not holding CoP cannot take up any other work in the capacity of CA in practice because it would amount to violation of provisions of the CA Act, 1949.
- In case a member is suspended and is not holding CoP, he cannot in any other capacity take up any practice separable from his capacity to practices as a member of the Institute. This is because once a member becomes a member of the Institute, he is bound by the provisions of the CA Act, 1949 and its Regulations.
- In case he files GST returns and appears as a consultant before various related authorities in his capacity as a CA and a member of the Institute, having bound himself by the said Act and its Regulations made thereunder, he cannot then set the Regulations at naught by contending that even though he continues to be a member and has been punished by suspension, he would be entitled to practice in some other capacity. But if he is doing so in any other capacity such as GST Consultant wherein his capacity is not CA in practice, he will not be held guilty for misconduct.

- In the instant case, Mr. Abdul was a Practicing CA and he was ordered to surrender his certificate of practice and was suspended for one year. Mr. Abdul is doing the work of filing GST returns and has appeared as a consultant before various related authorities as GST Consultant which is not in capacity of a Practicing CA rather in capacity of authorized representative. Any person who has been authorized to act as a GST Practitioner on behalf of the concerned registered person can become authorized representative.

Conclusion: Filing GST return and appearing as GST Consultant by Mr. Abdul is not professional misconduct. Therefore, Mr. Abdul will not be held guilty for misconduct.

Q 10. A Chartered Accountant in practice has been suspended from practice for a period of 6 months and he had surrendered his Certificate of Practice for the said period. During said period of suspension, though the member did not undertake any audit assignments, he undertook representation assignments for income tax whereby he would appear before the tax authorities in his capacity as a Chartered Accountant

Ans: Undertaking Tax Representation Work:

- A CA not holding CoP cannot take up any other work because it would be violation of provisions of the CA Act, 1949.
- In case a member is suspended and is not holding CoP, he cannot in any other capacity take up any practice separable from his capacity to practice as a member of the Institute. This is because once a person becomes a member of the Institute; he is bound by the provisions of the CA Act, 1949 and its Regulations.
- If he appears before the income tax authorities, he is only doing so in his capacity as a chartered accountant and a member of the Institute. Having bound himself by the said Act and its Regulations made there under, he cannot then set the Regulations at naught by contending that even though he continues to be a member and has been punished by suspension, he would be entitled to practice in some other capacity.

Conclusion: CA would not be allowed to represent before the income tax authorities for the period he remains suspended. Accordingly, in the present case he is guilty of professional misconduct.

Q 11. Comment with respect to Chartered Accountants Act, 1949: Mr. Tanish, a Chartered Accountant obtains registration as category IV merchant banker under the SEBI's Rules and Regulations and act as Advisor to a capital issue of MB Co. Ltd. He designated himself under the caption "Merchant banker" in client offer documents and 'Advisor to issue' in his own letterheads, visiting cards and professional documents.

Ans: Using designation other than Chartered Accountant:

- As per clause 7 of Part I of First Schedule, a CA in practice is deemed to be guilty of professional misconduct if he

  (i) advertises his professional attainments or services or

  (ii) uses any designation or expressions other than "Chartered Accountant" on professional documents, visiting cards, letterheads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.

- A Chartered Accountant is allowed to act as advisor to a capital issue and offer document of client company may specify the name of address of chartered accountant under the caption "Advisor to issue". However, it is specifically prohibited that member concerned should not use the designation either "Merchant Banker" or "Advisor to issue" in their own letterheads, visiting cards and professional documents.
- In the present case, Mr. Tanish designated himself under the caption "Merchant banker" in client offer documents and 'Advisor to issue' in his own letterheads, visiting cards and professional documents.

Conclusion: Mr. Tanish is guilty of Professional Misconduct under Clause 7 of Part I of First Schedule due to use of designation other than Chartered Accountant.

Q 12. Comment with the reference to the Chartered Accountants Act, 1949 and schedules thereto: Rakshass, a practicing Chartered Accountant, is a Director in Sky Ltd; a Public Company. The prospectus of Sky Ltd. Mentions the name of Mr. Rakshass as a director along with his various professional attainments, his areas of specialization and expertise in the fields of international taxation. [Nov. 18 (4 Marks)]

Ans: Advertisements of professional attainments:

- As per clause 7 of Part I of First Schedule, a CA in practice is deemed to be guilty of professional misconduct if he
  - (i) advertises his professional attainments or services or
  - (ii) uses any designation or expressions other than "Chartered Accountant" on professional documents, visiting cards, letterheads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.
- As per guidelines issued under Clause 7, name of CA acting as director in the company is permissible to appear in the prospectus of the company, however descriptions regarding his expertise, specialisation and knowledge in any particular field is not permitted.
- In the present case, Rakshass, a practicing Chartered Accountant, is a Director in Sky Ltd. A Public Company. The prospectus of Sky Ltd. Mentions the name of Mr. Rakshass as a director along with his various professional attainments, his areas of specialization and expertise in the fields of international taxation.

Conclusion: Mr. Rakshass will be deemed to be guilty of professional misconduct under Clause 7, Part I of First Schedule.

Q 13. A professional accountant in public practice is always subject to various threats in compliance with fundamental principles of his profession and you, as a professional

accountant, is worried about engagement specific threat in your audit assignment of M/s Soft Ltd. And want to implement some measures to eliminate and reduce the same. Enumerate some safeguards which you may introduce to ward off such threats.

[May 19 (5 Marks)]

Ans: Safeguards to be introduced to ward off threats in compliance with fundamental principles:

Safeguards are actions, individually or in combination, that the professional accountant takes that effectively reduce threats to compliance with the fundamental principles to an acceptable level.

Safeguards vary depending on the facts and circumstances. Examples of actions that in certain circumstances might be safeguards to address threats include:

1. Assigning additional time and qualified personnel to required tasks when an engagement has been accepted might address a self-interest threat.
2. Having an appropriate reviewer who was not a member of the team review the work performed or advise as necessary might address a self-review threat.
3. Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client might address self-review, advocacy or familiarity threats.
4. Involving another firm to perform or reperform part of the engagement might address self-interest, self-review, advocacy, familiarity or intimidation threats.
5. Separating teams when dealing with matters of a confidential nature might address a self-interest threat.

Q 14. Mr. Piyush, a Chartered Accountant did not maintain books of account for his professional work on the ground that his income is assessed u/s 44ADA of the Income-tax Act, 1961. Comment with reference to the Chartered Accountants Act, 1949 and Schedules thereto.

[Nov. 22 (4 Marks)]

OR

Kantilal, a chartered accountant did not maintain books of account for his professional earnings on the ground that his income is less than the limits prescribed u/s 44AA of the Income Tax Act, 1961.

Ans: Maintenance of Books of Account:

- As per Clause 1 of Part II of Second Schedule, a member of the Institute will be held guilty of professional misconduct if he Contravenes any of the provisions of this act or the regulations made there under or any guidelines issued by the council.
- Chapter V of the Council General Guidelines, 2008 specifies that a member of the Institute in practice or the firm of Chartered Accountants of which he is a partner shall maintain and keep in respect of his/its professional practice, proper books of account including the following:

  (i) a Cash Book

  (ii) a Ledger

- In the instant case, Mr. Piyush did not maintain books of account for his professional work on the ground that his income is assessed u/s 44ADA of the Income-tax Act, 1961.

Conclusion: Mr. Piyush will be held guilty for professional misconduct for violation of Council General Guidelines, 2008.

Q 15. Manav, who conducts the tax audit u/s 44AB of the Income-tax Act, 1961 of M/s Green, a partnership firm, has received the audit fees of ₹ 2,50,000 on progressive basis in respect of the tax audit for the year ended on 31.3.2023. The audit report was, however, signed on 25.5.2023. Comment.

Ans: Appointment of an auditor when he is indebted to the concern:

- As per Clause 1 of Part II of Second Schedule, a member of the Institute will be held guilty of professional misconduct if he Contravenes any of the provisions of this act or the regulations made thereunder or any guidelines issued by the council.
- Council General Guidelines, 2008 specifies that a member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding ₹ 1,00,000.
- As per Explanation to Sec. 288 to Income-tax Act, 1961, an individual who, or his relative or partner is indebted to the assessee cannot conduct tax audit, provided that the relative may be indebted to the assessee for an amount not exceeding ₹ 1,00,000.
- In the instant Case, Manav is appointed to conduct a tax audit u/s 44AB of the Income-tax Act, 1961 and received the audit fees of ₹ 2,50,000 on progressive basis.

Conclusion: As the fees were recovered on progressive basis, amount received will not be considered as indebtedness. Hence, no professional misconduct arises on part of Mr. Manav.

Q 16. A member of the institute shall not accept in a year more than the specified number of tax audits under section 44AB of the Income-tax Act. Mr. Gaurav is a partner in M/s Sky & Co., a firm of Chartered Accountants with 6 partners. During the assessment year 2022-23, Mr. Gaurav alone had signed 290 tax audit reports consisting of both corporate and non-corporate assessees. [Nov. 16 (4 Marks)]

Ans: Signing of Tax Audit Report:

- As per Chapter VI of Council General Guidelines 2008, a member of the Institute in practice shall not accept, in a financial year, more than the "specified number of tax audit assignments" u/s 44AB of the Income-tax Act, 1961.
- In the case of a firm of CAs in practice, the "specified number of tax audit assignments" shall be construed as the specified number of tax audit assignments for every partner of the firm.
- The specified number of tax audit assignments in the case of firm of CAs in practice, 60 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assessees.

- It is further clarified by the Council of ICAI that tax audit report accepted by the firm of Chartered Accountants can be signed by any partner on the behalf of the firm.
- In the present case, there are six partners in the firm and hence the firm can accept 360 tax audit assignment and any partner can sign the tax audit report on the behalf of the firm.

Conclusion: Mr. Gaurav can sign the 290 tax audit reports on behalf of the firm.

Q 17. Give your comments with reference to Chartered Accountants Act, 1949 and Schedules thereto: Mr. 'Chirag', a Chartered Accountant holds a certificate of practice while in employment also, recommends a particular lawyer to his employer in respect of a case. The lawyer, out of the professional fee received from employer paid a particular sum as referral fee to Mr. 'Chirag'.

OR

Mr. 'C', a Chartered Accountant employed as Senior executive in charge of Tax in a company, and not holding certificate of practice recommends a particular lawyer to his employer in respect of a case. The lawyer, out of the professional fee received from the employer of Mr. 'C' paid a particular sum as referral fee to Mr. 'C'. Comment with reference to the CA Act, 1949 and schedules thereto.

[Nov. 19 (5 Marks)]

OR

C, a member of the Institute of Chartered Accountants of India, not holding certificate of practice, is employed with a firm of Chartered Accountants. He recommends a particular lawyer to his firm for some client related litigation being handled by the firm. The lawyer, out of the professional fee received by him from the said client, paid a certain sum as referral fee to C. Is A guilty of misconduct under the Chartered Accountants' Act, 1949?

[Nov. 19 (4 Marks)]

Ans: Referral Fee from Lawyer:

- As per Clause 2 of Part II of First Schedule of the CA Act, 1949, a member of the Institute (other than a member in practice) shall be guilty of professional misconduct, if he being an employee of any company, firm or person accepts or agrees to accept any part of fee, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.
- In the present case, Mr. Chirag who besides holding a certificate of practice, is also an employee and by referring a lawyer to the company in respect of a case, he receives a particular sum as referral fee from the lawyer out of his professional fee.

Conclusion: Mr. Chirag is guilty of professional misconduct by virtue of clause 2 of Part II of First schedule for accepting referral fees from the lawyer of his employer.

Q 18. Comment with reference to the Chartered Accountants Act, 1949 and schedules thereto:

A special notice has been issued for a resolution at 3rd AGM of LED Ltd., providing expressly that CA Rajesh shall not be reappointed as an auditor of the company. Consequently, CA Rajesh submitted a representation in writing to the company with a request to circulate to the members. In the detailed representation, CA. Rajesh included the contributions made by him in strengthening the control procedures of the company during his association with the company and also indicated his willingness to continue as an auditor if reappointed by the shareholders of the company.

[Nov. 19 (4 Marks)]

Ans: Right of representation:

- As per Clause 6 of Part I of First Schedule to the Chartered Accountants Act, 1949, a member shall be held guilty if a Chartered Accountant in practice solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.
- Section 140(4) of the Companies Act, 2013 permits an auditor to make a representation in writing (not exceeding a reasonable length) to the company. The proposition of the auditor to highlight contributions made by the firm in strengthening the control procedures in the representation is not acceptable because the representation letter should not be prepared in a manner so as to seek publicity.
- The Code of Ethics issued by the Institute makes it amply clear that the right to make representation does not mean that an auditor has any prescriptive right or a lien on an audit.
- The wording of his representation should be such that, apart from the opportunity not being abused to secure needless publicity, it does not tantamount directly or indirectly to canvassing or soliciting for his continuance as an auditor. The letter should merely set out in a dignified manner how he has been acting independently and conscientiously through the term of office and may in addition, indicate if he so chooses his willingness to continue as auditor if reappointed by the shareholders.

Conclusion: Mr. Rajesh will be guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, as including contributions made by him in strengthening the control procedures of the company, amounts to solicitation of work which is not permitted.

Q 19. M/s Kunal & Co., a firm of Chartered Accountants responded to a tender from a State Government for appointment of GST Auditor wherein no minimum fee was prescribed. For this purpose, the Firm also paid ₹50,000 as earnest deposit as part of the terms of the tender. Comment on the above with reference to the Chartered Accountants Act, 1949, Code of Ethics and Schedules to the Act.

[Nov. 20 (5 Marks)]

Ans: Responding to tenders:

- Clause (6) of Part 1 of the First Schedule to the Chartered Accountants Act, 1949 lays down Guidelines for responding to tenders, etc. As per the Guideline issued by the Council of the ICAI, a member in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services.

- However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants. Further, in respect of a non-exclusive area, members are permitted to pay reasonable amount towards earnest money/security deposits.
- In the given case, M/s Kunal & Co., a firm of Chartered Accountants responded to a tender from a State Government for appoint of GST Auditor and for this purpose, the firm also paid ₹ 50,000 as earnest deposit as part of the terms of the tender.

Conclusion: Since GST Audit does not fall within exclusive areas for chartered accountants, M/s Kunal & Co. can respond to tender as well as deposit ₹50,000 as earnest deposit and shall not have committed any professional misconduct.

Q 20. The professional accountants need to observe certain fundamental principles, which are covered in the Code of Ethics of the ICAI. Briefly explain each of the five principles which needs to be complied by the Chartered Accountants?

[Nov. 22 (5 Marks)]

Ans: Fundamental Principles as per Code of Ethics:

1. **Integrity:** A professional accountant should be straightforward and honest in all professional and relationship.
2. **Objectivity:** A professional accountant should not compromise professional or business judgments because of bias, conflict of interest or undue influence of others.
3. **Professional Competence and Due Care:** A professional accountant has a continuing duty to attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation. A professional accountant should act diligently and in accordance with applicable technical and professional standards.
4. **Confidentiality:** A professional accountant should respect the confidentiality of information acquired as a result of professional and business relationships.
5. **Professional Behaviour:** A professional accountant should comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.

Q 21. CA Vasu started his practice from August 15, 2023. On 16th August 2023, one female candidate approached him for articleship. In addition to monthly stipend, CA Vasu also offered her 2% profits of his CA firm. She agreed to take both 2% profits of the CA firm and stipend as per the rate prescribed by the ICAI. The Institute of Chartered Accountants of India sent a letter to CA Vasu objecting the payment of 2% profits. CA. Vasu replies to the ICAI stating that he is paying 2% profits of his firm over and above the stipend to help the articled clerk as the financial position of the articled clerk is very weak.

Is CA Vasu liable to professional misconduct? Comment with reference to the Chartered Accountants Act, 1949, and Schedules thereto.
[MTP-Oct. 22]

Ans: Sharing Fees with an Articled Clerk:

As per Clause (2) of Part I of First Schedule to the Chartered Accountants Act 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than

- a member of the Institute or
- a partner or
- a retired partner or
- the legal representative of a deceased partner, or
- a member of any other professional body or
- with such other persons having such qualification as may be prescribed,

for the purpose of rendering such professional services from time to time in or outside India.

Based on the above stated provisions, the objections of the Institute are correct and reply of CA Vasu, stating that he is paying 2% profits of his firm over and above the stipend to help the articled clerk as the position of the articled clerk is weak, is not tenable.

Conclusion: CA Vasu is guilty of professional misconduct in terms of Clause (2) of Part I of First Schedule to the Chartered Accountants Act 1949.

Q 22. CA Sandeep, the auditor of Sharma Pvt. Ltd. Has delegated following works to his articles and staff:

- **Raising of bills and issuing acknowledgements for money receipts.**
- **Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.**
- **Issuing acknowledgements for records produced.**
- **Signing financial statements of the company.**

Is this correct as per the Professional Ethics and ICAI's guidelines and pronouncements?
[RTP-May 21]

Ans: Delegation of Certification work:

- As per Clause 12 of Part 1 of the First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he allows a person not being a member of the institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements.
- The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed may be delegated in the following instances and such delegation will not attract provisions of this clause:

(i) Issue of audit queries during the course of audit.

(ii) Asking for information or issue of questionnaire.

(iii) Letter forwarding draft observations/financial statements.

(iv) Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.

(v) Acknowledging and carrying on routine correspondence with clients.

(vi) Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.

(vii) Issuing acknowledgements for records produced.

(viii) Raising of bills and issuing acknowledgements for money receipts.

(ix) Attending to routine matters in tax practice, subject to provisions of Section 288 of Income Tax Act.

(x) Any other matter incidental to the office administration and routine work involved in practice of accountancy.

- In the instant case, CA Sandeep, the auditor of Sharma Pvt. Ltd. Has delegated certain task to his articles and staff such as raising of bills and issuing acknowledgements for money receipts, initiating and stamping of vouchers and of schedules prepared for the purpose of audit and issuing acknowledgements for records produced and signing financial statements of the company.
- Therefore, CA Sandeep is correct in allowing first three tasks i.e., raising of bills and issuing acknowledgements for money receipts, initiating and stamping of vouchers and of schedules prepared for the purpose of audit.
- However, if the person signing the financial statements on his behalf is not a member of the institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, CA Sandeep is not right in delegating signing of financial statements to his staff.

Conclusion: In view of this, CA Sandeep would be guilty of professional misconduct for allowing the person signing the financial statements on his behalf to his articles and staff under Clause 12 of Part 1 of First Schedule of the Chartered Accountants Act, 1949.

Q 23. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: The manager of Tata (P) Ltd. Approached CA Ravi in the need of a certificate in respect of a consumption statement of raw material. Without having Certificate of Practice (COP), CA Ravi issued the certificate to the manager of the company, acting as a CA in Practice and applied for the Cop to the Institute on very next day to avoid any dispute.

[RTP-May 18]

Ans: Contravening Provisions of the Act:

- As per Clause (1) of Part II of Second Schedule to the CA Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council.

- Section 6 of Chartered Accountants Act, 1949 provides that no member of the Institute shall be entitled to practice (whether in India or elsewhere) unless he has obtained from the Council a certificate of practice.
- In the given case, CA. Ravi has issued a certificate in respect of a consumption statement of raw material to the manager of Tata (P) Ltd., as a Chartered Accountant in practice when he had not even applied for the CoP to the Institute, thereby contravening the provisions of section 6 of the Chartered Accountants Act, 1949.

Conclusion: Mr. Ravi has violated the provisions of Sec. 6 of CA Act, 1949 and hence would be guilty of professional misconduct under Clause 1, Part II of Second Schedule.

Q 24. Mr. Girish, a Chartered Accountant in practice, delivered a speech in the national conference organized by the Ministry of Information Technology. While delivering the speech, he told to the audience that he is a Cybersecurity Expert and his firm provides services of cloud accounting, IT governance, risk compliance, and information security at reasonable rates. He also requested the audience to approach his firm of chartered accountants for these services and at the request of the audience he also distributed his business cards and telephone number of his firm to those in the audience. Comment in the light of professional Code of Ethics.

[May 22 (4 Marks)]

Ans: Solicitation of Professional Work and Advertisement:

- Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means.
- Section 7 of the Chartered Accountants Act, 1949 read with Clause 7 of Part I of the First Schedule to the said Act prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public.
- Guidelines issued under clauses 6 & 7 permits a practicing member to give lectures at forums and may give their names and describe themselves as Chartered Accountants, but no reference should be made, to the name and address or services of his firm.
- In the present case, Mr. Girish uses the designation of "Cybersecurity Expert' and also made reference to the services provided by his firm of Chartered Accountants at reasonable rates and distribute business cards to audience.

Conclusion: Mr. Girish will be held guilty of professional misconduct under clauses 6 & 7 of Part 1 of First Schedule to the CA Act, 1949 due to solicitation of professional work and advertisement of services rendered by his firm.

Q 25. Mr. Suraj a chartered Accountant accepted his appointment as tax auditor of a firm u/s 44AB of Income tax Act and commenced the tax audit within 2 days of his appointment since the client was in a hurry to file return of income before the due date. After commencing the audit, Mr. Suraj realised his mistake of accepting this tax audit without sending any communication to the previous tax auditor. In order to rectify his mistake, before signing the tax audit report, he sent a registered post to the previous auditor and obtained the postal acknowledgement. Will Mr. Suraj be held guilty under the CA Act?

Ans: Prior Communication with the previous auditor:

- As per Clause 8 of Part I of First Schedule to the CA Act, 1949, a chartered accountant in practice is deemed to be guilty of professional misconduct if he accepts a position as auditor previously held by another chartered accountant without first communicating with him in writing.
- Object of incoming auditor communicating in writing with retiring auditor is to ascertain whether there are any circumstances which warrant him not to accept appointment, for example, whether previous auditor has been changed on account of having qualified the report or he had expressed a wish not to continue on account of something inherently wrong with administration of business.
- The retiring auditor may even give out information regarding the condition of the accounts of the client or the reason that impelled him to qualify his report. Under all circumstances, it would be essential for the incoming auditor to carefully consider the facts before deciding whether or not he should accept the audit. As a matter of professional courtesy and professional obligation it is necessary for the new auditor appointed to communicate with such earlier auditor.

Conclusion: Mr. Suraj is guilty of professional misconduct by virtue of clause 8 of Part I of First Schedule.

Q 26. Jaynil, a practicing Chartered Accountant has not maintained the records of audit assignments of the companies on the ground that he is conducting lesser number of audits prescribed under Section 141(3)(g) of the Companies Act, 2013.

[Nov. 18 (4 Marks)]

Ans: Record of Audit Assignments:

- As per Clause 1 of Part II of Second Schedule, a member of the Institute will be held guilty of professional misconduct if he Contravenes any of the provisions of this act or the regulations made thereunder or any guidelines issued by the council.
- Chapter VIII of Council General Guidelines, 2008 requires a Chartered Accountant in practice as well as firm of Chartered Accountants in practice to maintain a record of the audit assignments accepted by him or by the firm of Chartered Accountants, or by any of the partners of the firm in his individual name or as a partner of any other firm, as far as possible, in the following format:

S. No.	Name of the Company	Registration No.	Date of Appointment	Date of Acceptance	Date on which Form ADT-1 Filed with ROC
1	2	3	4	5	6

- In the present case, Jaynil, a practicing Chartered Accountant has not maintained the records of audit assignments of the companies on the ground that he is conducting lesser number of audits prescribed under Section 141(3)(g) of the Companies Act, 2013.

Conclusion: Ground of Mr. Jaynil is not admissible and he will be held guilty of professional misconduct by virtue of Clause 1 of Part II of Second Schedule, due to contravention of Chapter VIII of Council General Guidelines, 2008 for not maintaining of record of audit assignments.

Q 27. Mr. Rachit, a CA in practice and statutory auditor of True Ltd., advised the Managing Director of the company to include in sales, "Orders under negotiation" to reflect a better financial position for obtaining bank loan. Mr. Rachit, thereafter, gave clean reports on the balance sheet prepared accordingly without examining the accounts. Comment with reference to Chartered Accountants Act, 1949 and Schedules thereto.

[MTP-March 23]

Ans: Auditor's negligence in performance of duties:

- As per clause 7 of Part I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he "does not exercise due diligence or is grossly negligent in the conduct of his professional duties".
- Furthermore, Clause (2) of Part IV of the First Schedule to the said Act states that a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he, in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.
- In the present case, Mr. Rachit, a partner of Blue & Co., advised the M.D. of True Ltd. To include in sales, orders under negotiations to reflect a better financial position for obtaining bank loan.

Conclusion: Mr. Rachit is guilty of professional misconduct under Clause 7 of Part I, Second Schedule to the CA Act, 1949, as he has acted in a negligent manner.

He will also be deemed guilty of other misconduct under Clause (2) of part IV of First Schedule for advising unethical practice to the client.

Q 28. Comment on the following with reference to the CA Act, 1949 and schedules thereto: M/s XYZ a firm of Chartered Accountants received ₹ 2 lakhs in January, 2022 on behalf of one of their clients, who has gone abroad and deposited the amount in their Bank account, so that they can return the money to the client in July, 2022, when he is due to return to India.

[RTP-Nov. 19]

Ans: Deposit of Client's Money in Separate Bank account:

- As per Clause 10 of Part I of Second Schedule to the CA Act, 1949, a CA in practice will be deemed to be guilty of professional misconduct if he fails to keep moneys of his client other than the fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.
- The term reasonable time would depend upon the circumstances of the case. Moneys which are intended to be spent within a reasonably short time need not be put in a separate bank account.
- In the instant case, M/s XYZ should have kept the amount in a separate bank account.

Conclusion: M/s XYZ will be deemed to be guilty of professional misconduct by virtue of clause 10 of Part I of Second Schedule as the money is required to be kept in a separate bank account.

Q 29. In the course of his assignment in M/s Bailey Ltd., CA Imran came to know that the company, due to financial crunch and unable to meet employees salary, has taken a loan of ₹ 50 lakhs from Employees Gratuity Fund. The said loan was not reflected in the books of account of the company and the auditor ignored this transaction in his report.

Comment with reference to the Chartered Accountants Act, 1949 and Regulations there to.

[May 18 (4 Marks)]

Ans: Failure to Disclose Material Facts:

- As per Clause (5) of Part I of Second Schedule to the CA Act, 1949, a CA in practice will be held liable for misconduct if he fails to disclose a material fact known to him, which is not disclosed in the financial statements but disclosure of which is necessary to make the financial statements not misleading.
- In this case, CA Imran has come across an information that a loan has been taken by the company from Employees PF and the said loan has not been reflected in the books of account and hence not disclosed in the financial statements.

Conclusion: If CA Imran fails to disclose the fact stated above in his report, he will be attracted by the provisions of professional misconduct under Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

However, if he discloses the fact in his report, there will not be any misconduct.

Q 30. CA Naresh was appointed as an auditor of JAL Ltd. The company has branches all over the state of Haryana. CA Naresh, in consultation with management, decided to visit 6 out of 10 branches. Management decided to pay him advance of ₹ 2 Lakhs on visits to be conducted as a part of services rendered. As agreed, ₹ 2 Lakhs was transferred in his bank account from which he met all the expenses. Comment with reference to CA Act, 1949 whether the action of CA Naresh of receiving the advance money in his saving accounts and not keeping it in separate bank account is valid.

[Jan. 21 (4 Marks)]

Ans: Deposit of Client's Money in separate Bank account:

- Clause 10 of Part I of Second Schedule to the CA Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if "he fails to keep money of his clients other than fees or remuneration or money meant to be expended in separate banking account or to use such money for the purpose for which they are intended".
- In connection with compliance of Clause 10, Council has considered some practical difficulties of the members and suggest that an advance received by a Chartered Accountant against services to be rendered does not fall under Clause (10) of Part I of the Second Schedule.
- In the given case, CA Naresh was appointed as an auditor of JAL Ltd. The company has branches all over the state of Haryana. CA Naresh, in consultation with management, decided to visit 6 out of 10 branches. Management decided to pay him advance of ₹ 2 Lakhs on visits to be conducted as a part of services rendered. As agreed, ₹ 2 Lakhs was transferred in his bank account from which he met all the expenses.

Conclusion: An advance received by a CA against services to be rendered does not fall under Clause (10) of Part I of the Second Schedule, hence no misconduct arises on part of CA. Naresh.

Q 31. Mr. Chiranjive accepted the statutory audit of M/s PSU Ltd., whose net worth is negative for the year 202122. The audit was to be conducted for the year 2022-23. The audited accounts for the year 2022-23 showed liability for payment of tax audit fees of ₹ 15,000 in favour of Mr. Vikas, the previous auditor.

Ans: Accepting Appointment as an Auditor:

- As per Clause 1 of Part II of Second Schedule, a member of the Institute will be held guilty of professional misconduct if he Contravenes any of the provisions of this act or the regulations made thereunder or any guidelines issued by the council.
- As per Chapter VII of Council General Guidelines, 2008, a member in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another CA for carrying out the statutory audit under the Companies Act, 2013 or various other statutes has not been paid. As per the proviso, such prohibition shall not apply in case of a sick unit.
- "Sick unit" shall mean a unit registered for not less than 5 years, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.
- In the present case, Mr. Chiranjive accepted the audit of M/s PSU Ltd., though the undisputed fees of previous auditor remain unpaid.

Conclusion: Assuming that M/s PSU Ltd. Falls under the criteria of Sick Unit, Mr. Chiranjive would not be guilty of professional misconduct.

Q 32. Mr. Chand, the auditor of ABC Pvt. Ltd. Has delegated following works to his articles and staff:

- **Issue of audit queries during the course of audit.**
- **Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.**

- **Issue of memorandum of cash verification and other physical verification.**
- **Letter forwarding draft observations/financial statements.**
- **Issuing acknowledgements for records produced.**
- **Raising of bills and issuing acknowledgements for money receipts.**
- **Signing financial statements of the company.**

Is this correct as per the Professional Ethics and ICAI's guidelines and pronouncements?

[MTP-Nov. 21]

Ans: Delegation of Certification work:

- As per Clause (12) of Part I of the First Schedule of the CA Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he allows a person not being a member of the institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements.
- The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed may be delegated in the following instances and such delegation will not attract provisions of this clause:
  - (i) Issue of audit queries during the course of audit.
  - (ii) Asking for information or issue of questionnaire.
  - (iii) Letter forwarding draft observations/financial statements.
  - (iv) Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.
  - (v) Acknowledging and carrying on routine correspondence with clients.
  - (vi) Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.
  - (vii) Issuing acknowledgements for records produced.
  - (viii) Raising of bills and issuing acknowledgements for money receipts.
  - (ix) Attending to routine matters in tax practice, subject to provisions of Section 288 of Income-tax Act.
  - (x) Any other matter incidental to the office administration and routine work involved in practice of accountancy.
- In the instant case, Mr. Chand, auditor of ABC Pvt. Ltd. Has delegated certain task to his articles and staff such as issue of audit queries during the course of audit, issue of memorandum of cash verification and other physical verification, letter forwarding draft observations/financial statements, issuing acknowledgements for records produced and signing financial statements of the company.
- Mr. Chand is correct in allowing first four tasks i.e. issue of audit queries during the course of audit, issue of memorandum of cash verification and other physical verification, letter forwarding draft observations/F.S., issuing acknowledgements for records produced to his staff and articles.

- However, if the person signing the financial statements on his behalf is not a member of the institute in practice or member not being his partner to sign on his behalf or on behalf of his firm, Mr. Chand is wrong in delegating signing of financial statements to his staff.

Conclusion: In view of this, Chand would be guilty of professional misconduct for allowing the person signing the F.S. on his behalf to his articles and staff under Clause 12 of Part 1 of First Schedule of the CA Act, 1949.

Q 33. Mr. Piyush, a Chartered Accountant was invited by the Chamber of Commerce to present a paper in a symposium on the issues facing Indian Leather Industry. During the course of his presentation, he shared some of the vital information of his client's business under the impression that it will help the Nation to compete with other countries at international level.

OR

Mr. Bimal, a chartered accountant in practice was invited to deliver a seminar on GST which was attended by professionals as well as by representatives of various industry to which it pertains. Mr. Bimal enthusiastically explained the issue and elaborated how he actually solved this for his client facing the same issue with worked out examples from the computer storage device using the actual data of one of his clients with full identification of client details being displayed to the group for the sake giving clarity on a topic in a real life situation. Comment his acts in the light of code of conduct.

[May 18 (4 Marks), MTP-April 22]

Ans: Disclosure of Client's Information:

- Clause (1) of Part I of the Second Schedule to CA Act, 1949 deals with professional misconduct relating to the disclosure of information by a CA in practice relating to the business of his clients to any person other than his client without the consent of his client or otherwise than as required by any law for the time being in force would amount to breach of conduct. .
- The Code of Ethics further clarifies that such a duty continues even after completion of the assignment. The Chartered Accountant may however, disclose the information in case it is required as a part of performance of his professional duties.
- In the given case, Mr. Piyush has disclosed vital information of his client's business without the consent of the client under the impression that it will help the nation to compete with other countries at International level.

Conclusion: It is a professional misconduct covered by Clause (1) of Part I of Second Schedule to the CA Act, 1949.

Q 34. Can a practicing Chartered Accountant be held guilty of professional misconduct under the following circumstance: Mayank, a chartered Accountant has sent letters under certificate of posting to the previous auditor informing him his appointment as an auditor before the commencement of audit by him.

Ans: Prior Communication with the previous auditor:

- Clause (8) of Part I of the First Schedule to the CA Act, 1949 requires communication by the incoming auditor with the previous auditor before accepting a position by him.
- Council of the Institute has taken the view that a mere posting of a letter "under certificate of posting" is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with.
- A Chartered Accountant who relies solely upon a letter posted "under certificate of posting" therefore does so at his own risk.
- Since the letters were sent by "Mayank" to the previous auditor informing him of his appointment as an auditor before the commencement of audit by him under Certificate of Posting is not sufficient to prove communication with the retiring auditor. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement Due" or by hand against a written acknowledgement would in the normal course provide positive evidence.

Conclusion: "Mayank" was guilty of professional misconduct under Clause (8) of Part I of First Schedule to the CA Act, 1949.

Q 35. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: Amar, a Practicing CA gives power of attorney to an employee chartered accountant to sign reports and financial statements, on his behalf.

Ans: Delegation of Certification work:

- As per clause 12 of Part 1 of the First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".
- This clause should be read in conjunction with Sec. 26 of CA Act, 1949 which stipulates that no person other than a member of the Institute shall sign any document on behalf of a chartered accountant in practice or a firm of such chartered accountants in his or its professional capacity.
- The term 'Financial Statement' for this purpose would cover an examination of the accounts or financial statements given under a statutory enactment or otherwise.
- Further, Clause (1) of Part II of the Second Schedule to the CA Act, 1949 states that a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council.
- In this case CA 'Amar' gives power of attorney to an employee to sign reports and financial statements on his behalf, which is not permitted as such.

Conclusion: Amar is guilty of professional misconduct under Clause (12) of Part I of First Schedule and also under Clause (1) of Part II of Second Schedule for contravening Sec. 26.

Q 36. Mr. Shantilal, a Chartered Accountant, employed as a paid Assistant with a Chartered Accountant firm, leaves the services of the firm on 31st December, 2023. Despite many reminders from ICAI he fails to reply regarding the date of leaving the services of the firm. Comment with reference to the Chartered Accountants Act, 1949, and Schedules thereto.

[MTP-March 22]

Ans: Failed to supply information called for:

- Clause 2 of Part III of the First Schedule to the Chartered Accountants Act, 1949, a member, whether in practice or not, will be deemed to be guilty of professional misconduct if he does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate authority.
- In the given case, Mr. Shantilal has failed to reply to the letters of the Institute asking him to confirm the date of leaving the service as a paid assistant.

Conclusion: Mr. Shantilal is held guilty of professional misconduct as per Clause 2 of Part III of the First Schedule to the Chartered Accountants Act, 1949.

Q 37. CA Rachit is a chartered accountant in practice. He has an articled trainee Ravi. Rachit has informed Ravi that since his practice and receipt of fees is seasonal, the stipend would not be paid in the months of April to December, but would be paid from January to March and the shortfall for the earlier 9 months will be made good in these 3 months along with interest 5% pa. Comment with reference to the Chartered Accountants Act, 1949.

[Nov. 17 (4 Marks)]

Ans: Contravening Provisions of the Act/Regulations:

- As per Clause (1) of Part II of the Second Schedule to the CA Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct under, if he contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council.
- Regulation 48 of Chartered Accountants Regulations, 1988 requires that payment to articled clerks to be made on monthly basis.
- In the present case, Chartered Accountant has failed to make the payments of stipend to articled assistant every month in accordance with Regulation 48. The fact that the articled assistant will be compensated with extra sum in the form of interest on late payment and the plea that his receipts are seasonal is of no relevance and hence not acceptable.

Conclusion: Regulation 48 of CA Regulations, 1988 has been violated, hence chartered accountant would be guilty of professional misconduct under Clause 1, Part II of Second Schedule.

Q 38. M/S PQR & Co. is a partnership firm of 3 partners P, Q and R. All partners are exclusively associated with the firm in practice and are not doing practice in individual capacity. For the year ended 31st March, 2023, the partners have undertaken audits and signed audit reports under section 44AB/44AD of the Income-tax Act, 1961 as under:

	Under Section 44AB	Under Section 44AD
P	10	15
Q	60	5
R	100	5

Discuss whether there is any professional misconduct by the firm in regard to the aforesaid audits. [Nov. 19 (4 Marks)]

Ans: Signing of Tax Audit Report:

- As per Chapter VI of Council General Guidelines, 2008, a member of the Institute in practice shall not accept, in a financial year, more than the "specified number of tax audit assignments" u/s 44AB of the Income-tax Act, 1961.
- In the case of a firm of CAs in practice, the "specified number of tax audit assignments" shall be construed as the specified number of tax audit assignments for every partner of the firm.
- The specified number of tax audit assignments in the case of firm of CAs in practice, 60 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assessees.
- The audits conducted under Sections 44AD, 44AE, 44AF of the Income-tax Act, 1961 shall not be taken into account for the purpose of reckoning the "specified number of tax audit assignments".
- It is further clarified by the Council of ICAI that tax audit report accepted by the firm of Chartered Accountants can be signed by any partner on the behalf of the firm.
- In the present case, there are three partners in the firm and hence the firm can accept 180 tax audit assignment and any partner can sign the tax audit report on the behalf of the firm. Firm has accepted 170 tax audit assignments other than the audit under section 44AD.

Conclusion: No Misconduct arises on part of Firm or partners.

Q 39. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules there to: Mr. Bhawani a practicing CA expressed his opinion on the financial statements of M/s Supreme Ltd. For the year ended on 31st March, 2022. It was later found that the closing stock was valued arbitrarily by Management which was accepted by him without verification and large amount of revenue expenditure was capitalized.

Ans: Auditor's negligence in performance of duties:

- As per clause 7 of Part I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he "does not exercise due diligence or is grossly negligent in the conduct of his professional duties".
- In the present case, Mr. Bhawani a practicing CA expressed his opinion on the financial statements of M/s Supreme Ltd. And it was found later that the closing stock was valued

arbitrarily by Management which was accepted by him without verification and large amount of revenue expenditure was capitalized.

- Thus, having regard to this, it is reasonable to think that prima facie there is a case against the auditor for gross negligence.

Conclusion: Mr. Bhawani is guilty of gross negligence by virtue Clause 7 of Part 1 of second schedule.

Q 40. Mr. Nishant, a practicing Chartered Accountant did not reply within a reasonable time and without any cause to the letter received from the local Police Station, a public authority, soliciting his suggestions as regards some non-professional work. Comment with reference to CA Act, 1949.

[Jan. 21 (4 Marks)]

Ans: Other Misconduct:

- As per Part IV of First Schedule to Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he
  - (i) is held guilty of any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.
  - (ii) In the opinion of the Council brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.
- One of the situations, where a member may be found guilty of "Other Misconduct", under the aforesaid provisions rendering, himself unfit to be member is non-replying within a reasonable time and without a good cause to the letter of the public authorities.
- In the present case, Mr. Nishant, a practicing Chartered Accountant did not reply within a reasonable time and without any cause to the letter received from the local Police Station, a public authority, soliciting his suggestions as regards some non-professional work.

Conclusion: Mr. Nishant will be deemed to be guilty of other misconduct.

Q 41. The professional accountants need to observe certain fundamental principles, which are covered in the Code of Ethics of the ICAI. Briefly explain each of the five principles which needs to be complied by the Chartered Accountants?

[Nov. 22 (5 Marks)]

Ans: Fundamental Principles as per Code of Ethics:

1. **Integrity:** A professional accountant should be straightforward and honest in all professional and relationship
2. **Objectivity:** A professional accountant should not compromise professional or business judgments because of bias, conflict of interest or undue influence of others.
3. **Professional Competence and Due Care:** A professional accountant has a continuing duty to attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation. A professional

accountant should act diligently and in accordance with applicable technical and professional standards.

4. **Confidentiality:** A professional accountant should respect the confidentiality of information acquired as a result of professional and business relationships.

5. **Professional Behaviour:** A professional accountant should comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.

Q 42. CA Sandeep Sharma is a newly qualified Chartered Accountant in practice and in order to increase his professional practice and client base, entered into an agreement with Mr. Hitesh Pawar, a qualified and experienced registered valuer to share 20% professional fees for all cases of valuation referred to him by CA Sandeep Sharma. Based on this, CA Sandeep received ₹ 1,20,000 during the year 2023-24 from Mr. Hitesh. Is CA Sandeep guilty of misconduct under the Chartered Accountants' Act, 1949?

[Nov. 19 (4 Marks)]

Ans: Sharing Fees of professional work of others:

- As per Clause 3 of Part I of the First Schedule to the Chartered Accountants Act, 1949, a CA in Practice is deemed to be guilty of professional Misconduct if he accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute. However, such a restriction does not apply in respect of member of any other professional bodies or with such other persons having prescribed qualifications.
- Regulation 53A of CA Regulations 1988 prescribes the qualifications of persons with whom profits can be shared.
- In this case, CA Sandeep a practicing Chartered Accountant entered into an agreement with Mr. A, a qualified and experienced registered valuer to share 20% professional fees for all cases of valuation referred to him by CA Sandeep. Based on this, CA Sandeep received ₹ 1,20,000 during the year 2023-24 from Mr. Hitesh.

Conclusion: Mr. Sandeep will be deemed to be guilty of professional misconduct by virtue of Clause 3, Part I of First Schedule as he accepts professional fees from a person who is not a member of ICAI. Further, registered valuers are not recognised for profit sharing purpose under Regulations 53A and 53B.

Q 43. Comment on the following with reference to the CA Act, 1949, and Schedules thereto: A special notice has been issued for a resolution at 6th AGM of F Ltd. providing expressly that CA. S shall not be reappointed as an auditor of the company. Consequently, CA. S submitted a representation in writing to the company as provided under section 140(4)(iii) of the Companies Act, 2013. In the representation, CA. S incorporated his independent working as a professional throughout the term of office and also indicated his willingness to continue as an auditor if reappointed by the shareholders of the Company.

Ans: Sending representation to solicit the professional work:

- As per Clause 6, Part I of First Schedule of Chartered Accountants Act, 1949, a CA in practice shall be deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means.
- Guidelines issued by the Council of ICAI under Clause 6 allowed a member to send representation to the company provided right of Representation should not be used to secure needless publicity. It needs to be set out in a dignified manner how he has been acting independently through his term of office and his willingness to continue as an auditor if reappointed by shareholders.
- In the present case, CA. S has submitted the representation u/s 140(4)(iii) of Companies Act, 2013 in the proper manner.

Conclusion: No misconduct arises on Part of CA. S as guidelines issued under Clause 6 of Part I of First Schedule allows a CA in practice to make the representation u/s 140(4) of Companies Act, 2013 which is not used by the auditor to secure needless publicity.

Q 44. CA Vijay, is appointed to carry out internal audit of Stock brokers, AKE Steel Ltd., listed with NSE. CA Vijay started his work and submitted his first monthly report. CA Manish, a partner of ASL & Co., statutory auditors of AKE Steel Ltd., during his first visit got to see the internal audit report of CA Vijay. CA Manish feels that since CA Vijay did not inform about his appointment as an internal auditor to ASL & Co., this is violation of professional ethics. Comment with reference to the Chartered Accountants Act, 1949 and Schedules thereto.

[July 21 (4 Marks)]

Ans: Prior Communication with the previous auditor:

- As per Clause 8 of Part I of First Schedule to the CA Act, 1949, a chartered accountant in practice is deemed to be guilty of professional misconduct if he accepts a position as auditor previously held by another chartered accountant without first communicating with him in writing.
- This requirement would apply to all types of audit i.e. statutory audit, tax audit, internal audit, concurrent audit, etc.
- Further the requirement of Clause 8 is applicable in situation of replacing of one auditor by another auditor and not in case of parallel positions.
- In the present case, CA Vijay was appointed as Internal Auditor, he owes no duty towards statutory auditor for prior communication.

Conclusion: There is no violation of professional ethics as Clause 8 of Part I of First schedule applies in case of replacement positions and not in case of parallel positions.

Q 45. M/s SS limited is a partly owned subsidiary of M/s HH limited. For the upcoming financial year, M/s DD & Co., Chartered Accountants, were appointed as the statutory auditors of SS limited. The CEO of the holding company was impressed with the knowledge and experience of Mr. D, one of the partners of the firm and hence, he offered Mr. D to take up

the position of Director (not MD/ wholetime director) of HH limited. At the same time, Mr. D's friend approaches him with an assignment to act as a Recovery Consultant for a bank. Mr. D is now confused whether to accept or reject the offers. He approaches you and seeks your advice on the same. Advise what Mr. D about what he can do with the offers with reference to the CA Act, 1949 and Schedules thereto.

[MTP-March 21]

Ans: Engagements in Other Occupations:

- As per Clause (11) of Part I of First Schedule of CA Act, 1949, a member in practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

  Provided nothing contained herein shall disentitle a chartered accountant from being a director of a company (not being MD or whole-time director) unless he or his partners Is interested in such company as auditor.
- The Ethical Standards Board (ESB) noted that public conscience is expected to be ahead of law. Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence. In the view of the above, the Board, via a clarification, decided that the auditor of a Subsidiary company cannot be a Director of its Holding company, as it will affect the independence of the auditor.
- However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary. 'acting as Recovery Consultant in the banking sector' is covered under general permission.
- In the given situation, M/s SS limited is a partly owned subsidiary of M/s HH limited. For the upcoming financial year, M/s DD & Co., Chartered Accountants, were appointed as the statutory auditors of SS limited. The CEO of the holding company was impressed with the knowledge and experience of Mr. D, one of the partners of the firm and hence, he offered Mr. D to take up the position of Director (not MD/whole-time director) of HH limited. Further, Mr. D's friend approached him for an assignment for acting as a Recovery Consultant for a bank.

Conclusion: Based on the provisions as stated above, Mr. D should not accept the offer to be appointed as director of HH Limited. However, he can accept the assignment offered by his friend and can act as a recovery consultant for a bank.

Q 46. Give your comments with reference to Chartered Accountants Act, 1949 and Schedules there to: Mr. 'Giriraj', while applying for a certificate of practice, did not fill in the columns which solicit information about his engagement in other occupation or business, while he was indeed engaged in a business.

Ans: Disclosure of Information:

- As per Clause 2 of Part III of First Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty if a Chartered Accountant, in practice or not, does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee. Quality Review Board or the Appellate Authority;
- In the given case, Mr. "Giriraj", a Chartered Accountant while applying for a certificate of practice, did not fill in the columns which solicit information about his engagement in other occupation or business, while he was indeed engaged in a business.
- Details of engagement in business need to be disclosed while applying for the certificate of practice as it was the information called for in the application, by the Institute.

Conclusion: Mr. Giriraj will be held guilty for professional misconduct under the Clause 2 of Part III of First Schedule for not providing the information to the Institute.

Q 47. Give your comments with reference to Chartered Accountants Act, 1949 and schedules thereto: Mr. Mahesh, a practicing Chartered Accountant, in the course of the audit of a listed company discovered serious violations of the provisions of the Companies Act, 2013, informed the registrar of companies out of public interest.

Ans: Disclosure of Confidential Information:

- As per Clause 1 of Part I of the Second Schedule to the Chartered Accountants Act, 1949 a member in practice will be guilty of professional misconduct if he discloses information acquired in the course of his professional engagement to any person other than his client so engaging him without the consent of his client or otherwise than as required by any law for the time being in force.
- Further, Sec. 143(12) of Companies Act, 2013 requires that if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within 60 days of his knowledge and after following the prescribed procedure.
- In the given case, Mr. Mahesh has disclosed serious violations of the provisions of the Companies Act, 2013 to Registrar of Companies without the consent of the client under the impression that it would be in public interest. It is not clear from the questions whether the violations of provisions involve fraud being committed by officers or employees of the company.
- Hence, in the present case, instead of disclosing the violations to the RoC directly, auditor should mention the violations in his report in due compliance of SA 250 "Consideration of Laws and regulations in an audit of financial statements".

Conclusion: Mr. Mahesh will be guilty of professional misconduct covered by clause 1 of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Q 48. Comment with the reference to the Chartered Accountants Act, 1949 and schedules thereto: David, a practicing Chartered Accountant examined and reported on the

prospective financial statements for one of his clients to obtain a cash credit facility of ₹ 75 lakhs from a Private Bank. The bank has sanctioned the cash credit facility for 60 lakhs to his client. Consequent to the sanction of loan by Bank, he charged a fees of ₹ 60,000 based on 1% of the credit facility sanctioned.

[Nov. 18 (4 Marks)]

Ans: Certification of Financial Forecast and charging fees on a % age basis:

- As per Clause 3 of Part I of Second Schedule to the CA Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast.
- Further SAE 3400 "The Examination of Prospective Financial Information", provides that the management is responsible for the preparation and presentation of the prospective financial information, including the identification and disclosure of the sources of information, the basis of forecasts and the underlying assumptions.
- The auditor may be asked to examine and report on the prospective financial information to enhance its credibility, whether it is intended for use by third parties or for internal purposes. Thus, while making report on projection, the auditor needs to mention that his responsibility is to examine the evidence supporting the assumptions and other information in the prospective financial information, his responsibility does not include verification of the accuracy of the projections, therefore, he does not vouch for the accuracy of the same.
- Clause 10 of Part I to First Schedule to the CA Act, 1949 prohibits a CA in practice to charge, or offers to charge, accept or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment.
- However, this restriction is not applicable where such payment is permitted by the regulations made in this behalf. The Council of the Institute has framed regulation 192 which exempts certain professional services from the operation of clause 10. Charging fees on % age of credit facility is not covered under Regulation 192.

Conclusion: Mr. David will be deemed to be guilty of professional misconduct by virtue of clause 10 of part I of First schedule as he charges fees on % age of credit facility sanctioned.

Q 49. Give your comments with reference to Chartered Accountants Act, 1949 and schedules thereto: Mr. Vinod, a practicing Chartered Accountant, did not complete his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirements.

[RTP-Nov. 18, Nov. 19. MTP-Oct. 20]

Ans: Failure to exercise due diligence:

- As per clause 7 of Part 1 of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he "does not exercise due diligence or is grossly negligent in the conduct of his professional duties".

- Where a CA had not completed his work relating to the audit of the accounts a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirement in this regard, it can be said that the work is carried out with gross negligence.

Conclusion: Mr. Vinod is guilty of professional misconduct by virtue of clause 7 of Part I of Second Schedule to the CA Act, 1949.

Q 50. Mr. Jay and Mr. Viru are running a firm of Chartered Accountants in the name of M/s Sholay & Co. On 23.5.2023, they included the name of Mr. Bhasant, a practicing Chartered Accountant, without his knowledge, as a partner while submitting an application for empanelment as auditor for Public Sector Bank branches to the Institute. However, they added Mr. Bhasant as a partner to their firm offering a share of 25% of the profits, on 25.5.2023.

[MTP-April 18, RTP-May 20]

Ans: Providing False information to ICAI:

- As per clause 3 of Part II of second schedule, a Chartered Accountant whether in practice or not is guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its committees, Directors (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.
- In the instant case Sholay & Co. included another CA name as partner in his firm, in his application for empanelment as Auditor of branches of Public Sector Banks submitted to the Institute. In fact, such a member was not a partner of the said firm on the date of application.

Conclusion: CA Jay & CA Viru will be held guilty of professional misconduct as per Clause 3, Part II of Second Schedule for submitting false information with the Institute.

Q 51. AJ & Associates and PK & Co., chartered accountant firms have joined the Network firm A to Z & Affiliates registered with Institute. AJ & Associates was statutory auditor of B Ltd. For last 10 years. Due to rotation of auditor as per section 139(2) of Companies Act, 2013, B Ltd, retires AJ & Associates and appoints PK & Co., as auditor for the year 2023-24. Comment as per Chartered Accountants Act, 1949 – Guidelines for Networking.

[Dec. 21 (4 Marks)]

Ans: Ethical Compliance in case of Network Firms:

- In accordance with Guidelines for networking, once the relationship of network arises, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time in general and in particular in cases, where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring.

- In the given case, AJ & Associates and PK & Co., chartered accountant firms have joined the Network firm A to Z & Affiliates registered with Institute. AJ & Associates was statutory auditor of B Ltd. For last 10 years. Due to rotation of auditor as per Sec. 139(2) of Companies Act, 2013, B Ltd., retires AJ & Associates and appoints PK & Co., as auditor for the year 2023-24.

Conclusion: PK & Co. cannot accept appointment as an auditor in place of any member firm of the network which is retiring.

Q 52. SAM Yarns Limited a listed Company, having its registered office at Meerut is engaged in manufacturing of various types of yarns to be supplied to the textile mills. The Company has installed pollution control equipment for processing the pollutants so that before discharge of effluents outside factory, the level of pollution is kept at a level below the prescribed standard. The Company managed to get pollution clearance certificate by unfair means, while still there continues to be breach of pollution control laws in matters of discharge of polluting effluents. Amount of ₹ 10.25 Lakhs had been incurred for arranging clearance certificate and the amount incurred unlawfully had been booked as pollution recycling expenditure. The matter had not reached to those in governance, and the Director-Finance who is a Chartered Accountant came to know of these matters on review of major expenditure incurred during the period. Comment the action/responses expected of Director Finance (CA Rahul) referring to any applicable requirements of Responses for NOCLAR under code of ethics.

[May 23 (5 Marks)]

Ans: Responsibility of the senior professional accountants in service relating to NOCLAR:

1. **Obtaining an Understanding of the Matter:** If, during the course of carrying out professional activities, a senior professional accountant becomes aware of any information relating to NOCLAR or suspected NOCLAR, he/she should obtain an understanding of the relevant matter
2. **Addressing the Matter:** If the senior Chartered Accountant identifies or suspects that noncompliance has occurred or might occur, he shall, discuss the matter with the immediate superior, if any.
3. **Determining whether further action is needed**: Senior Chartered Accountant shall assess appropriateness of the response of the accountant's superiors, if any, and TCWG.

   Further action that the senior professional accountant might take includes:
   - Informing the management of the parent entity of the matter, if the employing organisation is a member of a group,
   - Disclosing matter to an appropriate authority as specified under respective law, or
   - Resigning from the employing organisation.
4. **Seeking Advice:** Senior Chartered Accountant might consider consulting internally: Obtaining legal advice to understand the accountant's options and the professional or legal

implications of taking any particular course of action; or consulting on a confidential basis with the Institute.

5. **Determining Whether to Disclose the Matter to an Appropriate Authority:** Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation.

Q 53. Amitabh, a Chartered Accountant in practice provides management consultancy and other services to his clients. During 2023, looking to the growing needs of his clients to invest in the stock markets, he also advised them on Portfolio Management Services whereby he managed portfolios of some of his clients. Is Amitabh guilty of professional misconduct?

OR

CA Natraj, in practice, accepted an assignment as advisor and consultant to the public issue of shares by his client M/s Super Ltd. Besides helping the company as an advisor, he also underwrote the public issue of the company to the extent of 25% at a commission of 1%. Remaining shares were underwritten by banks and other financial institutions at the same rate of commission. He contends that above assignments are part of management consultancy work permitted by the council of the Institute. Do you agree with the view of CA Natraj? Decide in the light of applicable code of conduct.

[May 19 (4 Marks)]

Ans: Advising on Portfolio Management Services:

- The Council of the ICAI pursuant to Section 2(2)(iv) of the CA Act, 1949 has passed a resolution permitting "Management Consultancy and other Services" by a CA in practice.
- A clause of the aforesaid resolution allows CAs in practice to act as advisor or consultant to an issue of securities including such matters as drafting of prospectus, filing of documents with SEBI, preparation of publicity budgets, advice regarding selection of brokers, etc.
- It is, however, specifically stated that CAs in practice are not permitted to undertake the activities of broking, underwriting and portfolio management Services. Thus, a CA in practice is not permitted to manage portfolios of his clients.

Conclusion: Mr. Amitabh would be guilty of misconduct under CA Act, 1949 as a practicing CA is not permitted to render portfolio management services.

Q 54. Mr. Aashish, a practicing Chartered Accountant agreed to select and recruit personnel, conduct training programmes for and on behalf of a client where he is not providing any assurance service. Is this a professional misconduct?

Ans: Providing Management Consultancy and Other Services:

- As per Sec. 2(2)(iv) of the CA Act, 1949, a member of the Institute shall be deemed "to be in practice" when individually or in partnership with CA in practice, he, in consideration of remuneration received or to be received renders such other services as, in the opinion of the Council, are or may be rendered by a CA in practice. Pursuant to Sec. 2(2)(iv) above, the

Council has passed a resolution permitting a CA in practice to render entire range of "Management Consultancy and other Services".

- The definition of the expression "Management Consultancy and other Services" includes Personnel recruitment and selection. Personnel Recruitment and selection includes, development of human resources including designing and conduct of training programmes, work study, job description, job evaluation and evaluations of workloads.

Conclusion: Mr. Aashish is not guilty of professional misconduct.

Q 55. Comment on the following with reference to the CA Act, 1949 and schedules thereto: A Chartered Accountant in practice certified in requisite Form that an articled assistant was undergoing training with him, whereas, he was also employed in a company between 10 a.m. and 6 p.m. on a monthly salary of ₹ 17,000 and attended the office of the Chartered Accountant thereafter until 7 p.m. CA pleaded that the articled assistant was on audit of the company.

[MTP-Oct.18, Oct. 19]

Ans: Failure to Observe Regulations:

- As per Clause 1 of Part II of Second Schedule to the Chartered Accountants Act, 1949, a member shall be held guilty of professional misconduct if he contravenes any of the provisions of the Act or the regulations made thereunder or any guidelines issued by the Council. The chartered accountant, as per Regulations also, is expected to impart proper practical training.
- As per Clause 3 of Part II of Second Schedule to the CA Act, 1949, a member is deemed to be guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.
- In the instant case, the articled assistant is not attending office on timely basis and the explanation of the Chartered Accountant that the articled assistant was on audit of the company cannot be accepted particularly in view of the fact that articled assistant is getting monthly salary from that company.

Conclusion: Chartered Accountant will be deemed to be guilty of professional misconduct under Clause 1 of Part II of Second Schedule for contravention of regulations of the Institute and under Clause 3 of Part II of Second Schedule for submission of false information to the ICAI.

Q 56. Mr. S is a practising chartered accountant based out of Chennai. During the weekends, he involved himself in equity research and used to advise his friends, relatives and other known people who are not his clients. Apart from this, he was also involved as a paper-setter for Accountancy subject in the school in which he studied. He also owned agricultural land and was doing agriculture during his free time. During the year 20X1, heavy losses were incurred in agricultural activity due to natural calamities and misfortune, and he lost almost all of his wealth and became undischarged insolvent. After a few court hearings, finally, in the year 20X3, he was declared discharged insolvent and obtained a certificate

from the court stating that his insolvency was caused by misfortune without any misconduct on his part. You are required to comment on the above situation with reference to the Chartered Accountants Act, 1949 and Schedules thereto, (especially from the point of section 8: Entry of name in Register of Members).

[RTP-May 23]

Ans: Miscellaneous Provisions over Code of Ethics:

Given situation can be visualised in following parts:

(A) Mr. S used to involve himself in equity research and used to advise his friends, relatives and other known people:

As per the recent decisions taken by the Ethical Standards Board of ICAI, a Chartered Accountant in practice may be an equity research adviser, but he cannot publish a retail report, as it would amount to other business or occupation.

In the given case, though Mr. S is involved in doing equity research and in advising people, it is clear that he does not publish any retail report of his research. Hence, this act of Mr. S shall not make him guilty of professional misconduct.

(B) Mr. S is involved in paper-setting for the Accountancy subject in the school where he studied. He also owns agricultural land and does agriculture activities:

As per Clause 11 of Part I of First Schedule of Chartered Accountants Act and regulation 190A of Chartered Accountants Regulations, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage. Further, Regulation 190A mentions the 'Permissions granted Generally' to engage in a certain category of occupations, for which no specific permission of Council is required. Those cases include:

- Valuation of papers, acting as paper-setter, head examiner or a moderator, for any examination.
- Owning agricultural land and carrying out agricultural activities.

Therefore, in the given case, the activities of Mr. S as a paper-setter and involvement in agricultural activities do not make him guilty of professional misconduct.

(C) Mr. S was discharged insolvent: Disabilities for the Purpose of Membership:

Section 8 of the Chartered Accountants Act, 1949 enumerates the circumstances under which a person is debarred from having his name entered in or borne on the Register of Members, If he, being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part. Here it may be noted that a person who has been removed from membership for a specified period shall not be entitled to have his name entered in the Register until the expiry of such period.

In addition, failure on the part of a person to disclose the fact that he suffers from any one of the aforementioned disabilities would constitute professional misconduct. The name of the person, who is found to have been subject at any time to any of the disabilities discussed in section 8, can be removed from the Register of Members by the Council.

In the given case, it is clearly stated that Mr. S was discharged insolvent, and he has also obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part. Hence, Mr. S has not violated the provisions of Section 8, and he is not debarred from having his name entered in the Register of Members.

Q 57. Mr. Naman, a Chartered Accountant in practice as a sole proprietor has an office in Mumbai near Church Gate. Due to increase in professional work, he opens another office in a suburb of Mumbai which is approximately 80 kilometers away from the municipal limits of the city. For running the new office, he employs three retired Income-tax Officers. Is Mr. Naman guilty of professional misconduct?

Ans: Maintenance of Branch office:

- In terms of Sec. 27 of the CA Act, 1949 if a CA in practice has more than one office in India, each one of these offices should be in the separate charge of a member of the Institute.
- There is however an exemption from the above if the second office is located in the same premises, in which the first office is located; or the second office is located in the same city, in which the first office is located; or the second office is located within a distance of 50 kms from the municipal limits of a city, in which the first office is located.

Conclusion: Since the second office is situated beyond 50 kms of municipal limits of Mumbai city, he would be liable for committing a professional misconduct.

Q 58. Mr. Tarun, Chartered Accountant, in practice allowed his brother-in-law Mr. Tarun who is not a Chartered Accountant, to practice in the name of CA Tarun. He also allowed Mr. Mayank who is employee in his firm to practice in the name. Whether Mr. Tarun is correct in allowing his brother-in-law Mr. Tarun and Mr. Mayank employee of his firm to practice in his name.

Ans: Allowing to Practice in a Chartered Accountant's name:

- As per Clause (1) of Part I to the First Schedule to CA Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he allows any person to practice in his name as a CA unless such person is also a CA in practice and is in partnership with or employed by him.
- In given situation Mr. Tarun, CA who is in practice allowed a non-Chartered Accountant his brother-inlaw Mr. Mayank to practice in the name of CA Tarun is not correct in view of Clause 1 of Part I to the First Schedule. However, he can allow Mr. Mayank who is employee in his firm to practice in his name. only if mr. Mayank is CA in P

Conclusion: CA Tarun will be held guilty of professional misconduct for allowing Mr. Mayank who is not a CA to practice in his name as a chartered accountant as per Clause (1) of Part I to the First Schedule.

Q 59. A partner of a firm of chartered accountants during a T.V. interview handed over a bio-data of his firm to the chairperson. Such bio-data detailed the standing of the international firm with which the firm was associated. It also detailed the achievements of the concerned partner and his recognition as an expert in the field of taxation in the country. The chairperson read out the said bio-data during the interview. Discuss whether this action by the Chartered Accountant would amount to misconduct or not.

Ans: Prohibition on solicitation of work

- Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 prohibits solicitation of work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means, would constitute professional misconduct.
- In the present case, bio-data was handed over to the chairperson during the T.V. interview by the Chartered Accountant which included details about the firm and the achievements of the partner as an expert in the field of taxation. The chairperson simply read out the same in detail about association with the international firm as also the achievements of the partner and his recognition as an expert in the field of taxation. Such an act would lead to the promotion of his name and publicity thereof to the firm.

Conclusion: Partner is guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the CA Act, 1949.

Q 60. A company has appointed a practicing Chartered Accountant as an independent director on its board. The said company publishes description about the Chartered Accountant's expertise, specialization and knowledge in any particular field or add appellations or adjectives to his name in the prospectus or public announcements issued by this company. Whether the said publication will be covered under Code of Ethics? What should be the role of the Chartered Accountant in this regard?

[July 21 (4 Marks)]

Ans: Publishing details of practicing CA in a Prospectus:

- The Council of the ICAI has in a communication to members stated that if the prospectus or public announcements issued by these Companies often publish descriptions about the Chartered Accountant's expertise, specialisation and knowledge in any particular field or add appellations or adjectives to their names. It shall constitute a misconduct under Clauses (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act.
- The Council has further stated that in such cases the member concerned has to take necessary steps to ensure that such prospectus or public announcements or public communications do not advertise his professional attainments and also that such prospectus or public announcements or public communications do not directly or indirectly amount to solicitation of clients for professional work by the members.
- It is advisable for a member that as soon as he is appointed as a director on the Board of a Company, he should specifically invite the attention of the management of the Company to the aforesaid provisions and should request that before any such prospectus or public

announcements or public communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him.

- In the given situation, a company has appointed a practicing chartered accountant as independent director on its board. The said company published description about the Chartered Accountant's expertise, specialisation and knowledge in any particular field or add appellations or adjectives to his names in the prospectus or public announcements issued by this Company.
- Thus, in the instant case, Chartered Accountant would be held to be guilty of professional misconduct under Clauses (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and liable for disciplinary action.

Q 61. Vineet & Associates have been offered Statutory Audit of TLP Ltd. As part of ethical requirements of the Institute of Chartered Accountants, CA. V, partner of the firm, communicated with the previous auditor enquiring as to whether any professional reason exists for which he should not accept the audit assignment. Previous auditor informed that he issued a qualified report, so management is changing the auditor. Comment with reference to the provisions of the Chartered Accountants Act, 1949 and schedules thereto as to whether Vineet & Associates can accept the audit.

[July 21 (4 Marks)]

Ans: Acceptance of Audit in case of qualified report by predecessor auditor:

- As per Clause 8, Part I of First Schedule to the CA Act, 1949, a member in practice shall be deemed to be guilty of professional misconduct if he accept a position as Auditor previously held by another chartered accountant or certified auditor without first communicating with him in writing.
- This clause enables a member to know the reasons for the change, in order to safeguard his own interest, public interest and to ensure independence. Professional reasons for not accepting Audit:
  (i) Non-compliance of provisions of Secs. 139 and 140 of Companies Act, 2013.
  (ii) Non-payment of undisputed audit fee (except sick unit). Provision for Audit fees in accounts signed by auditor and the client shall be considered as undisputed.
  (iii) Issuance of a qualified Report.
- In first two cases, acceptance of audit amounts to professional misconduct. In (iii) case, member may accept audit if he thinks that attitude of retiring auditor wasn't proper and justified. But if the report was qualified for good and valid reasons, non-acceptance of audit would be a healthy practice.

Conclusion: Based on the above discussions, Vineet & Associates can accept the audit if attitude of retiring auditor wasn't proper and justified. But if the report was qualified for good and valid reasons, non-acceptance of audit would be a healthy practice.

Q 62. Comment with respect to CA Act, 1949: Mr. Nozar a practicing chartered accountant acting as liquidator of Niraj & Co. charged his professional fees on percentage of the realization of assets.

OR

Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto: Praveen Pvt Ltd. approached CA Naveen, a Chartered Accountant in Practice, for debt recovery services. CA Naveen accepted the work and insisted for fees to be based on 2% of the debt recovered.

OR

Prabhat Ltd. is running into losses and in order to optimize resource utilization and cost reduction, approaches you to carry out the assignment and offers a fee of 5% of benefits derived from the suggestions made by you. Comment with respect to CA Act, 1949 and Regulations there to.

[May 18 (4 Marks)]

OR

Mr. Josh, a Practicing CA, has accepted an appointment as auditor of cooperative society and agreed charge fees @ 7% of the profits of the society during the financial year 2023-24. Comment on action of Mr. Josh with reference to the CA Act, 1949 and Schedules thereto.

[Dec. 21 (4 Marks)]

Ans: Charging Fees on Percentage Basis:

- Clause 10 of Part I of First Schedule to CA Act, 1949, prohibits a CA in practice to charge or offer to charge, accept or offer to accept in respect of any professional work, fees which are based on a percentage of profits or which are contingent upon the findings or result of work.
- However, this restriction is not applicable where such payment is permitted by the regulations made in this behalf. The Council of the Institute has framed regulation 192 which exempts certain professional services from the operation of clause 10.
- As per Regulation 192, in case of a receiver or a liquidator, the fees may be charged on a percentage of the realisation or disbursement of the assets.

Conclusion: No Misconduct arises on part of Mr. Nozar as charging fees as a percentage of realisation of assets while acting as a liquidator is permitted by Regulation 192.

Q 63. Give your comments with reference to CA Act and schedules thereto: Mr. Keshav, a practicing CA, took over as the executive Chairman of a software company on 01.04.2023. On 10.04.2023 he applied to the council for permission.

Ans: Engagements in other occupations:

- As per Clause 11 of Part I of First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice will be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

- In the instant case, Mr. Keshav took over as the executive chairman on 01.04.2023 and applied for permission on 10.04.2023.
- On the basis of these facts, he was engaged in other occupation between the period 01.04.2023 and 10.04.2023, without the permission of the Council.

Conclusion: Mr. Keshav is guilty of professional misconduct in terms of Clause 11 of Part I of First Schedule of the CA Act, 1949 as he accepted the employment without obtaining permission from Council.

Q 64. CA Ajitnath is Special Executive Magistrate. He also took over as the Executive Chairman of Software Company on 1.4.2023. He is also a leading income tax practitioner and consultant for derivative products. He resides in Chennai near to the ION commodity stock exchange and does trading in commodity derivatives. Every day, he invests nearly 40% of his time to settle the commodity transactions. He has not taken any permission for becoming Special Executive Magistrate. However, he has got special permission of Council of ICAI for becoming Executive Chairman. Is CA Ajitnath liable for professional misconduct?

[RTP-May 21, MTP-Nov. 21]

Ans: Engagements in Other Occupations:

- As per Clause (11) of Part I of First Schedule of CA Act, 1949, a member in practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.
- However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary.
- In this case, C.A. Ajitnath is Special Executive Magistrate, engaged in the occupation of trading in commodity derivatives and also took over as the Executive Chairman on 01.04.2022
- In this context, it may be noted that the Special Executive Magistrate which is generally permitted for Members of the Institute in practice, further specific permission is required for holding the position of Executive Chairman and getting engaged in the occupation of trading in commodity derivatives.
- In the given situation, CA Ajitnath is acting as Special Executive Magistrate which is generally permitted for Members of the Institute in practice. Further, he is engaged in the occupation of trading in commodity derivatives which is not covered under the general permission. He also took over as the Executive Chairman for which specific permission is required. CA Ajitnath got the permission for the same from the Council of ICAI.

Conclusion: CA Ajitnath is not guilty for acting as Special Executive Magistrate as it is covered under the general permission. He is also not guilty for holding the position of Executive Chairman after getting specific permission of the Institute.

However, he is guilty of professional misconduct under Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949 for getting engaged in the occupation of trading in commodity derivatives which is not covered under the general permission.

Q 65. Give your comments with reference to the Chartered Accountants Act, 1949 and Schedules thereto: CA Arjit, a practicing Chartered Accountant was on Europe tour between 15-9-23 and 25-9-23. On 18-9-23 a message was received from one of his clients requesting for a stock certificate to be produced to the bank on or before 20-9-23. Due to urgency, CA Arjit directed his assistant, who is also a Chartered Accountant to sign and issue the stock certificate after due verification, on his behalf.

Ans: Signing of Stock Certificate:

- As per clause 12 of Part I of the First Schedule of the CA Act, 1949, a CA in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".
- In this case CA Arjit allowed his assistant who is not a partner but a member of the ICAI to sign stock certificate on his behalf and thereby commits misconduct.

Conclusion: CA Arjit is guilty of professional misconduct under clause 12 of Part I of First Schedule of the CA Act, 1949.

Q 66. Parth Associates, a Chartered Accountants Firm is having a relationship with a multi-national accounting firm in India. The ICAI required that all firms having networking relationship with any other entity need to furnish information online within the stipulated time. Parth Associated failed to respond. Comment on this with reference to professional misconduct, if any.

[Nov. 18 (4 Marks)]

Ans: Failed to supply information called for:

- Clause 2 of Part III of the First Schedule to the Chartered Accountants Act, 1949, a member, whether in practice or not, will be deemed to be guilty of professional misconduct if he does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate authority.
- In the given case, Parth Associates, a Chartered Accountants Firm is having a relationship with a multi-national accounting firm in India. The ICAI required that all firms having networking relationship with any other entity need to furnish information online within the stipulated time. Parth Associated failed to respond.

Conclusion: Parth Associates will be deemed to be guilty of professional misconduct as per Clause 2 of Part III of the First Schedule to the Chartered Accountants Act, 1949.

Q 67. Discuss the following with reference to the Chartered Accountants Act, 1949 and schedules thereto Mr. Rohit, a Chartered Accountant in practice has been elected as the treasurer of a Regional Council of the Institute. The Regional Council had organized an international tour through a tour operator during the year for its members. During the audit of the Regional Council, it was found that Mr. Rohit had received a personal benefit of ₹ 50,000 from the tour operator.

[MTP-Oct. 20, March 23]

Ans: Bringing disrepute to profession:

- Section 21 of the Chartered Accountants Act, 1949 provides that a member is liable for disciplinary action if he is guilty of any professional or "Other Misconduct." Other misconduct has been defined in Part IV of the First Schedule and Part III of the Second Schedule.
- These provisions empower the Council to inquire into any misconduct of a member even it does not arise out of his professional work. This is considered necessary because a chartered accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards, even in his non-professional work, would expose him to disciplinary action.
- The Council has also laid down that among other things "misappropriation by an office-bearer of a Regional Council of the Institute of a large amount and utilization thereof for his personal use" would amount to "other misconduct".
- In the instant case, receipt of personal benefit of ₹ 50,000 from the tour operator by Mr. Rohit for organising an international tour as treasurer of a Regional Council of the Institute would amount to other misconduct as per section 21.

Conclusion: Mr. Rohit would be held guilty for other misconduct.

Q 68. Lion Ltd. Has applied to a bank for loan facilities. The bank on studying the financial statements of the company notices some discrepancies in the books of the company. Upon discussion with the auditor of the company, the bank manager requested for detailed information regarding a few items in the financial statements. The information is available in the working paper file of the auditor. What should be the response of the auditor in this regard?

[Nov. 20 (5 Marks)]

Ans: Divulging information obtained in the course of audit:

- As per Clause (1) of Part I of the Second Schedule to the CA Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct if he discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of the client or otherwise than as required by law for the time being in force.

- SA 200 on “Overall Objectives of Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing” requires that the auditor should respect confidentiality of information acquired in the course of his work and should not disclose any such information to a third party without specific authority or unless there is a legal or professional duty to disclose
- In the instant case, Lion Ltd. Has applied to a bank for loan facilities and the bank has asked the auditor for detailed information regarding few items in the financial statements available in his working papers. Having regard to the position stated earlier, the auditor cannot disclose the information in his possession without specific permission of the client.
- As far as working papers are concerned, working papers are the property of the auditor Auditor may at his discretion, make portions of or extracts from his working papers available to his client.

Conclusion: There is no requirement compelling the auditor to divulge information obtained in the course of audit and included in the working papers to any outside agency except as and when required by any law or permitted by the client.

Q 69. AP & Co., a firm of Chartered Accountants, was appointed by D Ltd., to evaluate the cost of a new product manufactured by it for their information system and fixation of fair market price. Partner ‘P’ of the CA firm is a non-executive director of the Company. Comment with reference to Chartered Accountants Act, 1949 and Regulations there to.

[May 18 (4 Marks)]

OR

Comment on the followings: A firm of CAs were appointed by a company to evaluate the costs of the various products manufactured by it for their operation system. One of the partners of the firm of chartered accountants was a non-executive director of the company.

[Nov. 20 (5 Marks)]

Ans: Evaluation of Cost structure:

- Clause 4 of Part I of the Second Schedule to the Chartered Accountants Act, 1949 desists a chartered accountant in practice to express opinion on financial statements of an enterprise in which he, his firm or a partner in his firm has a substantial interest.
- In the present case, the firm has been appointed to evaluate the costs of the various products manufactured by it for their operation system, not for expressing opinion on F.S., so it cannot be construed to be misconduct, as it is a verification of facts and no opinion is expressed.

Conclusion: There is no professional misconduct in evaluating the costs of a company in which one of the partners of firm is a non-executive director.

However, the firm while accepting the position as auditor in future would have to consider whether it would be possible to act in an independent manner and express opinion on financial statements.

Q 70. Comment with the reference to the Chartered Accountants Act, 1949 and schedules thereto: MASS Ltd; a company registered under the Companies Act, 2013 has created a separate Trust "MASS Employees Gratuity Fund Trust". Both the Company and Trust are under the same management. Mr. Raj is the auditor of both the entities. Mr. Raj has observed that some part of the expenditure was not applied towards the objects of the Trust. He informed the matter to the Board of Trustees through a separate report but did not qualify the Audit Report of the Trust.

[Nov. 18 (4 Marks)]

Ans: Non-disclosure of irregularities

- A chartered Accountant in practice is deemed to be guilty of professional misconduct under clause 5 of Part 1 of the Second Schedule if he "fails to disclose a material fact known to him which is not disclosed in a financial statement but disclosure of which is necessary to make the financial statement not misleading".
- In this case, the Chartered Accountant was aware of the contraventions and irregularities committed by the trust as these were referred to in the confidential report given by the Chartered Accountant to the trustees of the company. However, he had issued the annual accounts without any qualification.

Conclusion: Mr. Raj is guilty of professional misconduct if amount of irregularities is proved material.

Q 71. CA Z who conducted statutory audit of a Haryana daily 'New Era' certified the circulation figures based on Management Information System Report (M.I.S Report) without examining the books of Account.

OR

Give your comments with reference to the CA Act, 1949 and schedules thereto: Mr. Z is a Practicing CA. He issued a certificate of consumption which did not reflect the correct factual position of the consumption of raw material by the concerned entity. It is found that the certificate is given on the basis of data appearing in the minutes of meeting of Board of Directors.

[MTP-Oct. 18]

OR

CA. Z, a practicing Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e., by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printer's bills and by not caring to ascertain how many copies were sold and paid for. Is CA. Z liable to professional misconduct? Comment with reference to the Chartered Accountants Act, 1949, and Schedules thereto.

[MTP-Oct. 22, April 231]

Ans: Failure to exercise due diligence and to obtain necessary information:

- Clause 2 of Part I of Second Schedule of CA Act, 1949 states that a CA in practice shall be guilty of professional misconduct if he Certifies or submits in his name or in the name of his firm a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another CA in practice.
- Clause 7 of Part I of Second Schedule of CA Act, 1949 states that a CA in practice shall be deemed to be guilty of professional misconduct if he "does not exercise due diligence or is grossly negligent in the conduct of his professional duties".
- Clause 8 of Part I of Second Schedule to CA Act, 1949 states that if a CA in practice fails to obtain sufficient information to warrant the expression of an opinion or its exceptions are sufficient material to negate the expression of an opinion, the CA shall be deemed to be guilty of a professional misconduct.
- In the present case, Mr. Z, did not exercise due diligence and is grossly negligent in the conduct of his professional duties since he certified the circulation figures without the examination of records and other required documents. He should not express his opinion before obtaining the required data and information.
- As an auditor, Mr. Z ought to have verified the basic records such as print order, printer's bill. Number of copies sold and paid for, number of copies returned unsold to ensure the correctness of circulation figures.

Conclusion: Mr. Z will be held guilty of professional misconduct as per clauses 2, 7 and 8 of Part 1 of Second Schedule of Chartered Accountants Act, 1949.

Q 72. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: Abhisshek is the auditor of Zyon Ltd., which has a turnover of ₹ 200 crores. The audit fee for the year is fixed at ₹ 50 lakhs. During the year, the company offers Mr. Abhiskek, assignment of management consultancy within the meaning of Section 2(2)(iv) of the CA Act, 1949 for a remuneration of ₹ 1 Crore. A seeks your advice on accepting the assignment.

Ans: Appointment as a statutory auditor of a PSUs'/Govt company/listed company and other public company:

- As per Clause 1 of Part II of Second Schedule, a member of the Institute will be held guilty of professional misconduct if he Contravenes any of the provisions of this act or the regulations made thereunder or any guidelines issued by the council.
- Council General Guidelines, 2008, specifies that a member of the Institute in practice shall be deemed to be guilty of professional misconduct if he accepts the appointment as a statutory auditor of a PSUs'/Govt companies/listed companies and other public company having a turnover of ₹ 50 crores or more in a year and accepts any other work(s) or assignment(s) or service(s) in regard to same undertaking(s) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking.

- For this purpose, the other work/services include Management Consultancy and all other professional services permitted by Council excluding audit under any other statute, Certification work required to be done by the statutory auditor and any representation before an authority.

Conclusion: In view of the above position, it would be a misconduct on Abhishek's part if he accepts the management consultancy assignment.

NOTE

Applicability of Chapter IX of Council General Guidelines, 2008 seems to be redundant in case of companies, because as per Sec. 144 of the Companies Act, 2013, auditor of a company cannot render management services to the company, its holding company or subsidiary company, directly or indirectly.

Q 73. Comment on the following with reference to the Chartered Accountants Act, 1949, and Schedules thereto: M (P) Ltd. Appointed CA. P for some professional assignments like company's ROC work, preparation of minutes, statutory register etc. For this, CA. P charged his fees depending on the complexity and the time spent by him on each assignment.

Later on, M (P) Ltd. Filed a complaint against CA. P to the ICAI that he has charged excessive fees for the assignments comparative to the scale of fees recommended by the Committee as well as duly considered by the Council of ICAI.

[MTP-April 18]

Ans: Charging Excess Fees:

- Prescribed scale of fees for the professional assignments done by the chartered accountants is recommendatory in nature. Fees in any professional assignment depend upon the mutual agreement and understanding between the member and the client.
- Charging fee more than the fees recommended for a professional assignment does not constitute any misconduct in the context of the provisions of the Chartered Accountants Act. 1949 and regulation made thereunder.
- In the given case, CA. P has charged excess fees comparative to the scale of fees recommended by the Committee as well as duly considered by the Council of ICAI.

Conclusion: Scale of fees recommended by the Committee as well as duly considered by the Council of ICAI is only recommendatory and not mandatory, hence no misconduct arise on part of Mr. P.

Q 74. Mr. Kushal, a practicing Chartered Accountant has signed the GST Audit Reports, Tax Audit Reports u/s 44AB of the Income-tax Act, 1961 for the financial year 2022-23 that are filed online using Digital Signature and without generating UDIN on the ground that there is no field for mentioning UDIN on digitally signed online reports. Is the contention of Mr. Kushal valid? Give your comments with reference to the Chartered Accountants Act, 1949 and schedules thereto.

[Nov. 20 (4 Marks)]

Ans: Non-Generation of UDIN:

- As per Clause 1 of Part II of Second Schedule, a member of the Institute will be held guilty of professional misconduct if he Contravenes any of the provisions of this act or the regulations made thereunder or any guidelines issued by the council.
- Chapter XIV of Council General Guidelines, 2008, specifies that a member of the Institute in practice shall generate Unique Document Identification Number (UDIN) for all kinds of the certification, GST and Tax Audit Reports and other Audit, Assurance and Attestation functions undertaken/signed by him which made mandatory from the following dates through announcements published on the website of the ICAI www.icai.org at the relevant time:
  - (i) For all Certificates w.e.f. 1st February, 2019.
  - (ii) For all GST and Tax Audit Reports w.e.f. 1st April, 2019.
  - (iii) For all other Audit, Assurance and Attestation functions w.e.f. 1st July, 2019.

Conclusion: Contention of Mr. Kushal is not valid as non-generating of UDIN amounts to professional misconduct under Clause 1, Part II of Second Schedule due to non-compliance of Council General Guidelines, 2008.

Q 75. CA Dhawan, a chartered accountant In practice availed of a loan against his personal investments from a bank. He issued 2 cheques towards repayment of the said loan as per the instalments due. However, the cheques were returned back by the bank with the remarks "Insufficient funds". Comment reference to the Chartered Accountants Act, 1949.

[Nov. 17 (4 Marks)]

Ans: Bringing disrepute to the profession:

- As per Clause 2 of Part IV of First Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if in the opinion of the council, that member brings disrepute to the profession or the Institute, as a result of his action, whether or not related to his professional work.
- Accordingly, a CA is also expected to maintain the highest standards and integrity even in his personal affairs and any deviation from these standards calls for disciplinary action.
- In the present case, two cheques were dishonoured and returned back with the remarks "Insufficient Funds". Issuing cheques without having sufficient balance in the account is punishable offence under the Negotiable Instruments Act, 1881.

Conclusion: As the cheques were dishonoured due to insufficiency of funds, the drawer will be held guilty of offence under Negotiable Instruments Act, 1881 and consequently he would be held guilty of "Other Misconduct".

Q 76. Masters & Co., a sole proprietary Chartered Accountant firm in practice with an office in a busy belt of a city, had great difficulty in regularly attending to the consultancy needs of his client who are mostly located in an industrial cluster in a nearby outskirt which is situated at a distance of 26 kms from the office of the firm. To mitigate the difficulty and to have ease of business, a facilitation center was opened in the industrial cluster. The proprietor

managed both the office and the facilitation center, by himself. No intimation was made to the institute of chartered accountants of India. Examine whether there is any professional misconduct in this respect.

[May 18 (5 Marks)]

Ans: Maintenance of Separate office:

- In terms of Sec. 27 of CA Act, 1949 if a chartered accountant in practice has more than one office in India, each one of these offices should be in the separate charge of a member of the Institute.
- There is however an exemption from the above if the second office is located in the same premises, in which the first office is located; or the second office is located in the same city, in which the first office is located; or the second office is located within a distance of 50 kms from the municipal limits of a city, in which the first office is located.
- Regulation 189 of CA Regulations, 1988 requires that a CA in practice or a firm of such CAs shall inform the Council within one month of the opening or closing of a branch office.
- In the present case, proprietor of Masters & Co. has opened a new office at a distance of 26 Kms from the existing office and managing both offices by himself. However, no intimation was made to the ICAI.

Conclusion: Though there is no problem in managing both the offices, but misconduct arises due to non-intimation to Council of ICAI.

Q 77. CA Santosh, a newly qualified professional with certificate of practice, approached CA Pant, the auditor of his father's company M/s Max Ltd., to allow him to have some practical and professional knowledge and experience in his firm before he can set up his own professional practice. CA Pant allowed him to sit in his office for 6 months and allotted a small chamber with other office infrastructure facility. In the course of his association with CA Pant's office, he used to provide tax consultancy independently to the client of the firm and also filed few IT and GST return and represented himself before various tax authorities on behalf of the firm although no documents were signed by him. During his association in CA Pant's office he did not get any salary or share of profit or commission but only reimbursement of usual expenses like conveyance, telephone etc. was made to him. After the end of the agreed period, he was given a lump sum amount of ₹ 3,00,000 by CA Pant for his association out of gratitude.

IMP

Examine the case in the light of code of professional misconduct.

[May 19 (5 Marks), MTP-March 22, April 23]

Ans: Allowing Others to use firm's name

- As per Clause (1) of Part 1 of First Schedule to the Chartered Accountants Act, 1949, a CA in Practice is deemed to be guilty of professional Misconduct if he allows any person to practice in his name as a chartered Accountant, unless such person is also a Chartered Accountant in practice, and is in partnership with, or employed by himself.

- The above clause is intended to safeguard the public against unqualified accountant practicing under the cover of qualified accountants. It clause ensures that the work of the accountant will be carried out by a Chartered Accountant who may be his partner, or his employee and would work under his control and supervision.

Clause 2, Part I, First Schedule: For making a payment (₹3 lakh) that may be construed as sharing profits or fees with someone not formally a partner or employee.

- In the present case, CA Pant allowed Mr. Santosh, another Chartered Accountant, holding Certificate of Practice to practice in his firm for a period of 6 months, whereas Mr. Santosh is not a partner or employee. Further after expiry of six months, Mr. Pant also gives Mr. Santosh a lump sum amount of ₹3,00,000 for his association out of gratitude.

Conclusion: Mr. Pant will be guilty of professional misconduct by virtue of Clause 1 of Part I of First Schedule as he allows another person to practice in his firm name, whereas other person (Mr. Santosh) is neither a partner nor an employee.

Q 78. Mr. Qureshi, Chartered Accountant, in practice died in a road accident. His widow proposes to sell the practice of her husband to Mr. Pardeshi, Chartered Accountant, for t 5 lakhs. The price also includes right to use the firm name – Qureshi and Associates. Can widow of Qureshi sell the practice and can Mr. Pardeshi continue to practice in that name as a proprietor?

Ans: Sale of Goodwill:

- With reference to Clause (2) of Part I to the First Schedule to CA Act, 1949, the Council of the Institute considered whether the goodwill of a proprietary concern of chartered accountant can be sold to another member who is otherwise eligible, after the death of the proprietor.
- It lays down that the sale is permitted subject to certain conditions discussed in the above flowchart. It further resolved that the legal heir of the deceased member has to obtain the permission of the Council within a year of the death of the proprietor concerned.
- In given case, the widow of Mr. Qureshi, who has proposed to sell the practice for ₹5 lakhs is in effect proposing the sale of goodwill.

Conclusion: Act of Mrs. Qureshi is permissible and Mr. Pardeshi can continue to practice in that name as a proprietor.

Q 79. Mr. 'Abdulla' is a practicing Chartered Accountant working as proprietor of M/s Abdulla & Co. He went abroad for 3 months. He delegated the authority to Mr. 'Yash' a Chartered Accountant his employee for taking care of routine matters of his office. During his absence Mr. 'Yash' has conducted the under mentioned jobs in the name of M/s Abdulla & Co.

- **He issued the audit queries to client which were raised during the course of audit.**
- **He issued production certificate to a client under GST Laws.**
- **He attended the Income Tax proceedings for a client as authorized representative before Income Tax Authorities.**

Please comment on eligibility of Mr. 'Yash' for conducting such jobs in name of M/s Abdulla & Co. and liability of Mr. 'Abdulla' under the Chartered Accountants Act, 1949.

[MTP-April 18, RTP-Nov. 19]

[Nov. 19 (5 marks)]

Ans: Delegation of Certification work:

- As per clause 12 of Part I of the First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".
- In this case CA 'Abdulla' proprietor of M/s Abdulla & Co, went to abroad and delegated the authority in another Chartered Accountant Mr. Yash, his employee, for taking care of routine matters of his office who is not a partner but a member of the Institute of Chartered Accountants.
- The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed, may he delegated and such delegation will not attract provisions of clause 12. Examples of such instances are issue of audit queries. Asking for information or issue of questionnaire, attending to routine matters in tax practice etc.

Conclusion:

(i) Issuing audit queries during the course of audit falls under routine work, which can be delegated by the auditor. Therefore, there is no misconduct in this case.

(ii) Issuance of production certificate to a client under GST Laws by Mr. "Yash" is not a routine work and it is outside his authorities. Thus, CA 'Abdulla' is guilty of professional misconduct under clause 12 of Part I of First Schedule of the Chartered Accountants Act, 1949.

(iii) Attending Income tax proceedings for a client as authorized representative before Income Tax Authorities falls under routine work, hence Mr. Yash, the employee of M/s Abdulla & Co. can attend to routine matter in tax practice. Therefore, there is no misconduct in this case.

Q 80. Mr. Keshav, Chartered Accountant in practice as a sole proprietor at Chennai has an office in the suburbs of Chennai. Due to increase in the income tax assessment work, he opens another office near the income tax office, which is within the city and at a distance of 30 kms. From his office in the suburb. For running the new office, he has employed a retired Income Tax Commissioner who is not a Chartered Accountant. Comment.

[May 19 (4 Marks)]

Ans: Maintenance Of Branch office:

- In terms of Sec. 27 of the CA Act, 1949 if a CA in practice has more than one office in India, each one of these offices should be in the separate charge of a member of the Institute.

- There is however an exemption from the above if the second office is located in the same premises, in which the first office is located; or the second office is located in the same city, in which the first office is located; or the second office is located within a distance of 50 kms from the municipal limits of a city, in which the first office is located.
- In the given case, Mr. Keshav, CA in practice as a sole proprietor at Chennai has an office in suburbs of Chennai, and due to increase in the work he opened another branch within the city near the income tax office. He also employed a retired income tax commissioner to run the new office and the second office is situated within a distance of 30 kilometers from his office in the suburb.

Conclusion: As the distance between new office and municipal limits of Suburbs (area where existing office is situated) is less than 50 Km., Mr. Keshav would not be liable for any misconduct.

However, he is bound to declare which of the two offices is the main office.

Q 81. CA Ravi, a practising Chartered Accountant, was proprietor of M/s. Ravi & Associates, CA Ravi died on 15th September, 2022 due to cardiac arrest. Only family member left behind CA Ravi was his wife, Roohi. On 30th September, 2023, Roohi sold the practice of her husband to CA Dhruv for ₹25 Lakhs along with right to use the firm name i.e., M/s. Ravi Associates and requested the Institute to consider the effect of such sale. Give your comments on the following issues with reference to the Chartered Accountants Act, 1949 and schedules thereto:

(i) Whether Roohi can sell the practice to CA Dhruv?

(ii) Can CA Dhruv continue to practice as proprietor in name of M/s. Ravi & Associates?

[May 22 (4 Marks)]

Ans: Sharing of Profits with widow of deceased Partner:

With reference to Clause 2 of Part I of First Schedule to CA Act, 1949, in case of sole proprietorship firm, the Council of ICAI has resolved that the sale / transfer of goodwill shall be permitted in respect of cases where the death of the proprietor occurred on or after 30.08.1998 provided:

- ICAI's permission to practice in the deceased's firm name is sought within a year of death. (In such a case, name of the firm is kept in abeyance till one year from the date of death).
- In case there exist a dispute as to the legal heir of the deceased proprietor, information as to the existence of the dispute is received by the Institute within a year of the death. (In such a case, name of the firm is kept in abeyance till one year from the date of settlement of dispute).

In the given case, CA Ravi, a practising Chartered Accountant, was proprietor of M/s. Ravi & Associates, CA Ravi died on 15th September, 2022 due to cardiac arrest. Only family member left behind CA Ravi was his wife, Roohi. On 30th September, 2023, Roohi sold the practice of her husband to CA Dhruv for ₹25 Lakhs along with right to use the firm name i.e., M/s. Ravi & Associates and requested the Institute to consider the effect of such sale.

Conclusion:

- As more than one year elapsed since date of death of Mr. Ravi, Roohi cannot sell the practice to CA Dhruv on 30.9.2023.
- CA Dhruv cannot practice in the name of M/s Ravi & Associates as the transaction of sale of goodwill occurs after one year of death of Mr. Ravi.

Q 82. Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto: M/s Baghwan, a firm of Chartered Accountants created a website www.baghwanindia.com, The website besides containing details of the firm and bio-data of the partners also contains the photographs of all the partners of the firm.

Ans: Hosting Details on Website:

- As per guidelines of the ICAI laid down in Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a firm of chartered accountant can create its own website using any format subject to guidelines.
- However, the website should be so designed that it does not solicit clients or professional work and should not amount to direct or indirect advertisement.
- The guidelines of the ICAI allows a firm to put up the details of the firm, bio-data of partners and display of a passport size photograph.

Conclusion: M/s Bhagwan had complied with all the guidelines and there does not appear any violation of the Chartered Accountants Act, 1949 and its Regulations.

Q 83. Comment with reference to the Chartered Accountants Act, 1949 and schedules thereto: Mr. Vinay, a chartered accountant in practice, created his own website in attractive format and highlighted the contents in purple colour. The website also displayed the nature of assignments handled along with the names of clients without such requirement from any of the regulator. He also circulated the information contained in the website through e-mail to acknowledge public at large about his expertise. However, he did not intimate his website address to the Institute.

[Nov. 20 (4 Marks)]

Ans: Circulating Information Contained in Own Website:

- As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.
- Guidelines issued by the Council of the ICAI permit creation of own website by a chartered accountant in his or his firm name and no standard format or restriction on colours is there.
- As per the guidelines, members or the firm, should ensure that none of the information contained in the website be circulated on their own or through e-mail or by any other mode except on a specific "Pull" request.

- Further, nature of assignments handled can be displayed on the website only on specific “pull” request. Names of clients and fee charged cannot be given without such requirement from any of the regulator.
- The website address of the member be obtained on annual basis in the annual form required to be filed by the member while paying fee and the same be taken as entry on record.
- In the given case, Mr. Vinay has circulated the information contained in the website through e-mail to public at large and has displayed the nature of assignments handled along with the name of clients without such requirement from the regulator.

Conclusion: Mr. Vinay is guilty of professional misconduct under Clause 6 of Part I of First Schedule as name of clients are displayed on the website without any requirement of regulator, website information is circulated through e-mail and website address not intimated to the Institute.

Q 84. Mr. Aayush, a Chartered Accountant in practice, wrote two letters to M/s XY Chartered Accountants a firm of CA’s; requesting them to allot him some professional work. As he did not have a significant practice or clients, he also wrote a letter to M/s ABC, a firm of Chartered Accountants for securing professional work. Mr. Clever, another CA, informed ICAI regarding Mr. Aayush’s approach to secure the professional work. Is Mr. Aayush wrong in soliciting professional work?

[MTP-March 23]

Ans: Solicitation of professional work from another CA:

- As per Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means.
- However, nothing in clause 6 shall be construed as preventing or prohibiting any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice.
- Such a restraint has been put so that the members maintain their independence of judgment and may be able to command respect from their prospective clients.
- In the given case, Mr. Aayush wrote letters only to other CAs, M/s XY and M/s ABC requesting them to allot some professional work to him, which is not prohibited under clause 6.

Conclusion: Mr. Aayush is not wrong in soliciting professional work from another CA, hence there is no professional misconduct.

Q 85. Mr. Purab is a Chartered Accountant accepted the appointment as Statutory Auditor of the Company Chimna Ltd. Without communicating with the previous auditor before accepting the audit. He also failed to ascertain the compliance of requirement of Section 139 and 140 of the Companies Act, 2013 in respect of the appointments have been duly complied with.

Ans: Communication with previous auditor and Compliance of Sections 139 & 140:

- Clause (8) of Part I of the First Schedule to the CA Act, 1949 requires communication by the incoming auditor with the previous auditor before accepting a position by him.
- Clause (9) of Part I of the First Schedule to the CA Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Sections 139 and 140 of the Companies Act, 2013, in respect of such appointment have been duly complied with.
- Under clause (8), it is obligatory on the incoming auditor to communicate with previous auditor and ascertain from the Company that the appropriate procedure in the matter of his appointment has been duly complied with so that no shareholder or retiring auditor may, at a later date, challenge the validity of such appointment.
- In this case Mr. Purab accepted the appointment as Statutory Auditor of the Company Chimna Ltd. Without communicating with the previous auditor. Further, he accepted the appointment without first ascertaining whether the requirement of Sections 139 and 140 of the Companies Act, 2013 in respect of the appointments have been duly complied with.

Conclusion: Therefore, Mr. Purab is liable for misconduct under clause 8 and Clause 9 since he accepted the appointment without communicating with previous auditor as well as for not verifying the compliance of statutory requirements.

Q 86. A Chartered Accountant holding certificate of practice and having four articled clerks registered under him accepts appointment as a full-time lecturer in a college. Also he becomes a partner with his brother in a business. Examine his conduct in light of CA Act, 1949 and regulations thereunder.

Ans: Partnership with a relative and entering into business:

- Clause (11) of Part 1 of the First Schedule to the CA Act, 1949 debars a CA in practice from engaging in any business or occupation other than the profession of chartered accountancy unless permitted by the Council of the Institute so to engage.
- This clause, in effect, has empowered the Council of the Institute to permit chartered accountants in practice to engage in any other business or occupation considered fit and proper. Accordingly, the Council had formulated Regulations 190A and 191 to the Chartered Accountants Regulations, 1988 to provide a basis for considering applications of chartered accountants seeking permission to engage in other business or occupation.
- A member can accept full-time lecturer-ship in a college only after obtaining the specific and prior approval of the Council as also becoming a partner in a business with his brother would require specific permission.

Conclusion: CA is liable for professional misconduct since he failed to obtain specific and prior approval of the Council in each case.

Q 87. Akash, a chartered accountant in practice is owner of three agriculture lands. He lost his father due to Covid Pandemic. After death of his father, he started carrying out agricultural activities. His neighbour Raja who is a farmer, filed a complaint against him to

ICAI that being a member he is carrying out agricultural activities, therefore, he is liable for misconduct. You are required to examine the same with reference to the CA Act, 1949 and Schedules thereto.

[MTP-April 22]

Ans: Engaging into Agricultural Activity:

- As per Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.
- However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary.
- In this case, CA Akash is owner of 3 agriculture lands, and he is carrying out agricultural activities which is covered under the general permission.

Conclusion: CA Akash is not guilty of professional misconduct and complain of neighbour is not justified.

Q 88. Write a short note on Other Misconduct.

Ans: Other Misconduct:

- Other misconduct has been defined in Part IV of the First Schedule and Part III of the Second Schedule. These provisions empower the Council to inquire into any misconduct of a member even it does not arise out of his professional work. This is considered necessary because a CA is expected to maintain highest standards of integrity even in his personal affairs and any deviation from these standards, even in his non-professional work, would expose him to disciplinary action.
- **For example**, a member who is found to have forged will of a relative, would be liable to disciplinary action even though the forgery may not have been done in the course of his professional duty.
- Other misconduct would also relate to conviction by a competent court for an offence involving moral turpitude punishable with transportation or imprisonment to an offence not of a technical nature committed by the member in his professional capacity. [Sec. 8(v)].

Q 89. Mr. Gautam & Mr. Mahaveer, partners of a Chartered Accountant Firm, one in-charge of Head Office and another in-charge of Branch at a distance of 80 km. from the municipal limits, puts up a nameboard of the firm in both premises and also in their respective residences. Comment with reference to the Chartered Accountants Act, 1949, and Schedules thereto.

[MTP-Nov. 21]

Ans: Putting up of name-board:

- Council of the Institute has decided that with regard to the use of the name-board, there will be no bar to the putting up of a name-board in the place of residence of a member with the designation of chartered accountant, provided, it is a name-plate or board of an individual member and not of the firm.

- In the given case, partners of CA Firm, put up a name-board of the firm in both offices and also in their respective residences.

Conclusion: Mr. Gautam & Mr. Mahaveer are guilty of misconduct, as name-board of the firm cannot be put in place of residence.

Q 90. Mr. Umesh is a practising Chartered Accountant. Mr. Yogesh is a practising advocate representing matters in the court of law, Umesh and Yogesh decided to help each other in matters involving their professional expertise. Accordingly, Mr. Umesh recommends Mr. Yogesh in all litigation matters in the court of law and Yogesh consults Umesh in all matters relating to finance and other related matters, which come to him in arguing various cases consequently they started sharing profits of their professional work. Is Mr. Umesh liable for professional misconduct?

[Nov. 22 (4 Marks)]

Ans: Sharing Fees with Advocate:

- As per clause (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services to time in or outside India.

- As per Clause 3 of Part I of the First Schedule to the CA Act, 1949, a CA in Practice is deemed to be guilty of professional Misconduct if he accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute. However, such a restriction does not apply in respect of member of any other professional bodies or with such other persons having prescribed qualifications.

- For the purpose of Clauses (2) & (3), Regulation 53A of CA Regulations, 1988 allows sharing of profit with an advocate.

Conclusion: Mr. Umesh will not be deemed to be guilty of professional misconduct as Clauses (2) & (3) permits a CA in practice for profit sharing with members of any other professional bodies or with such other persons having prescribed qualifications and advocates are prescribed under Regulation 53A.

Q 91. M/s Supreme a firm of Chartered Accountants in practice develops a website "supreme.com". The colour chosen for the website was a very bright green and the website was to run on a "push" technology where the name of the partners of the firm and the major clients were to be displayed on the website without any disclosure obligation from any regulator. Is this website in compliance with guidelines issued by ICAI in this regard?

Ans: Posting of Particulars on Website:

- As per guidelines of the ICAI laid down in Clause (6) of Part I of the First Schedule to the CA Act, 1949, a chartered accountant of the firm can create its own website using any format subject to guidelines.
- However, the website should be so designed that it does not solicit clients or professional work and should not amount to direct or indirect advertisement.
- As per guidelines, there is no restriction on the use of colours. However, the website is required to run on a “pull” technology and not on “push” technology; and the name of clients and fees charged from them is not permitted to be appear on the website.
- Disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator.
- In the present case, M/s Supreme, a firm of Chartered Accountants in practice develops a website “supreme.com”. The colour chosen for the website was a very bright green and the website was to run on a “push” technology where the name of the partners of the firm and the major clients were to be displayed on the website without any disclosure obligation from any regulator.

Conclusion: The firm would be liable for professional misconduct due to running website on Push Technology and displaying name of clients on website without any requirement of regulator.

Q 92. Comment on the following with reference to the Chartered Accountants Act, 1949, Code of Ethics and Schedules to the Act: M/s XYZ, a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid ₹50,000 as earnest deposit as part of the terms of the tender.

[Jan. 21 (4 Marks)]

Ans: Solicitation of Work:

- Clause 6 of Part I of First Schedule allows solicitation of client or professional work through responding to tenders.
- Further Guidelines are being issued by Council allowing therein a member to respond to tenders where minimum fees of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with Chartered Accountants.
- Further, in respect of a non-exclusive area, members are permitted to pay reasonable amount towards earnest money/security deposits.
- In the present case, since computerisation of property records does not fall within exclusive areas for Chartered Accountants, M/s XYZ can respond to tenders as well as deposit ₹50,000 as earnest deposit and shall not have committed any professional misconduct.

Conclusion: There is no professional misconduct on part of M/s XYZ.

Q 93. Discuss whether the following action by a Chartered Accountant would amount to misconduct or not: A practising Chartered Accountant uses a visiting card in which he designates himself, besides as Chartered Accountant, as

(i) Tax Consultant

(ii) Cost Accountant.

Ans: Using designation other than Chartered Accountant:

- Clause 7 of Part I of First Schedule to the CA Act, 1949 provides that a CA in practice is deemed to be guilty of professional misconduct if he
  - (i) advertises his professional attainments or services or
  - (ii) uses any designation or expressions other than "Chartered Accountant" on professional documents, visiting cards, letter heads or sign boards.
- As per Section 7 of Chartered Accountants Act, 1949, every member of the institute in practice shall use the designation of a chartered accountant.
- However, a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council is permitted to be mentioned.
- In the given case, a practising Chartered Accountant uses a visiting card in which he designates himself, besides as Chartered Accountant, as Tax Consultant/Cost Accountant.

Conclusion: Concerned CA shall be held guilty of professional misconduct as per Clause (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.

Q 94. M/s. Blue & Co., Chartered Accountants were appointed as Auditors of Yellow Ltd. For the F.Y. 202223. Since they declined to accept the appointment, the Board of Directors appointed M/s Green & Co., a CA firm as the auditor in the place of M/s. Blue & Co. This was accepted by M/s Green & Co. Discuss this with reference to CA Act, 1949 and Companies Act, 2013.

[July 21 (4 Marks)]

Ans: Violation of Clause 9:

- Board can appoint the auditor in the case of casual vacancy u/s 139(8) of the Companies Act, 2013. The non-acceptance of appointment by CA Blue does not constitute a casual vacancy to be filled by the Board. In this case, it will be deemed that no auditor was appointed in the AGM.
- Further, as per Sec. 139(10) of the Companies Act, 2013 when at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company. The appointment of the auditor by the Board Is defective in law.
- Clause (9) of Part I of First Schedule to the CA Act, 1949 states that a CA is deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 139, 140 and 142

read with Section 141 of the Companies Act, 2013, in respect of such appointment have been fully complied with.

Conclusion: M/s Green & Co. is guilty of professional misconduct as per clause 9 of the First Schedule as he accepted the appointment without verification of statutory requirements.

Q 95. CA Zaid, is a leading income tax practitioner and consultant for derivative products. He resides in Mumbai near to the PQR commodity stock exchange and does trading in commodity derivatives. Every day, he invests nearly 50% of his time settle the commodity transactions. Is CA Zaid liable for professional misconduct?

[RTP-May 18]

Ans: Engagement into other occupation:

- As per clause 11 of Part I of First Schedule of CA Act, 1949, a Chartered Accountant is deemed to be guilty of professional misconduct if he "engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage".
- However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary.
- In this case CA Zaid is engaged in occupation of trading in commodity derivatives which is not covered under general permission, hence specific permission of the Institute has to be obtained.

Conclusion: If CA Zaid has obtained specific permission of the council, then there is no misconduct, otherwise he will be deemed to be guilty of professional misconduct under clause 11 of Part 1 of First Schedule of CA Act, 1949.

Q 96. Give your comments with reference to the Chartered Accountants Act, 1949 and schedules thereto: Yash & Co., a proprietary firm of Chartered Accountants was appointed as concurrent auditor of a bank. Yash used his influence for getting some cheques purchased and thereafter failed to repay the loan/overdraft.

[MTP-March 19]

Ans: Bringing disrepute to profession:

- Clause 2 of Part IV of First Schedule to the Chartered Accountants Act, 1949 states that member of the Institute, whether in practice or not, shall be deemed guilty of other misconduct, if he in the opinion of the Council, brings disrepute to the profession or to the Institute as a result of his action whether or not related to his professional work.
- Accordingly, a CA is also expected to maintain the highest standards and integrity even in his personal affairs and any deviation from these standards calls for disciplinary action.
- In the present case Yash & Co, being a concurrent auditor used his position to obtain the funds and failed to repay the same to the bank. This brings disrepute to the profession of a CA.

Conclusion: Yash & Co will be held guilty of other misconduct under clause 2 of Part IV of First Schedule of the Chartered Accountants Act, 1949.

Q 97. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: CA Harshil who is contesting Central Council Elections of Institute, engages his Articled Assistant for his election campaigning promising him that he will come in contact with influential people which will help to enhance his career after completion of his training period.

[RTP-May 22]

Ans: Engaging Articled Assistance for personal work:

- As per Part IV of the First Schedule to the Chartered Accountants Act, a member of the Institute. Whether in practice or not, shall be deemed to be guilty of other misconduct, if he
  - (i) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;
  - (ii) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.
- A member may be found guilty of "Other Misconduct", as per clause 2, if he uses the services of articles for personal work.
- In the given case, CA Harshil who is contesting Central Council Elections of Institute, engages his Articled Assistant for his election campaigning promising him that he will come in contact with influential people which will help to enhance his career after completion of his training period.

Conclusion: CA Harshil would be guilty of Other Misconduct under Part IV of First Schedule and liable to disciplinary action under Section 21.

Q 98. CSK and Associates are the statutory auditor of Human Ltd. Audit of the company is pending for F.Y 2021-22 and 2022-23 due to a dispute between auditor and company with respect to certain proposed remarks by the auditor in the audit report for F.Y. 2021-22. The company removed the auditor on 02.05.2023 in shareholders meeting complying with all legal formalities. CSK and Associates after coming to know about the removal, intimated the Registrar of Companies (ROC) through letter highlighting the points of dispute including non-existence of fixed assets, bogus creditors etc. Human Ltd complained to ICAI against CSK and Associates for their above letter to ROC. Comment with reference to the CA Act, 1949 and schedules thereto.

[May 23 (5 Marks)]

Ans: Disclosure of Information to third Party:

- Clause (1) of Part I of the Second Schedule to the CA Act, 1949 states that a chartered accountant in practice shall be deemed to be guilty of professional misconduct if he discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of the client or otherwise than as required by law for the time being in force.

- An accountant in public practice has access to a great deal of information of his client, which is of a highly confidential character. It is important for the work of an accountant and for maintaining the dignity and status of the profession that he should treat such information as having been provided to him, only to facilitate the performance of his professional duties for which his services have been engaged. To divulge such information would be a breach of professional confidence, which may give rise to the most serious consequences, even to an action by the client for the loss suffered by him through such a breach. The accountant's duty not to disclose continues even after the completion of his assignment.
- In the given case, CSK and Associates are the statutory auditor of Human Ltd. and a dispute exist among auditor and company with respect to certain proposed remarks by the auditor in the audit report for F.Y. 2021-22. Company removed the auditor on 02.05.2023 in shareholders meeting complying with all legal formalities. CSK and Associates after coming to know about their removal, intimated the Registrar of Companies (ROC) through letter highlighting the points of dispute including non- existence of fixed assets, bogus creditors etc. human Ltd complained to ICAI against CSK and Associates for their above letter to ROC.

Conclusion: Applying the above provision, CSK & Associates will be liable for professional misconduct under clause 1 of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Q 99. Comment on the following with reference to the with reference to the Chartered Accountants Act, 1949 and Schedules thereto:

CA Deva started practice in Punjab in the year 2019. CA Deva issued "Turnover Certificate' for M/s. ASAUS Traders to be forwarded to the Bank for the purpose of availing cash credit facility and machinery term loan. Brother of CA Deva was proprietor of M/s. ASAUS Traders.

[RTP-Nov. 22]

Ans: Accepting appointment as auditor:

- As per Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty if he expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest.
- Further, it is not permissible for a member to undertake the assignment of certification, wherein the client is relative of the member. The "relative" for this purpose would refer to the definition mentioned in AS 18.
- In the given situation, CA Deva started practice in Punjab in the year 2019. CA Deva issued Turnover certificate for M/s. ASAUS Traders to be forwarded to the Bank for the purpose of obtaining Loan. Brother of CA Deva is proprietor of M/s. ASAUS Traders. Brother is very well covered in the definition of relative mentioned in Accounting Standard AS 18.

Conclusion: CA Deva is guilty of professional misconduct.

Q 100. You were the statutory auditor of Speed Ltd., a PSU, for the year 2023-24. In the course of your audit, you did not observe any fraud having been committed during that year. However, the C & AG audit staffs during their routine inspection found that chief cashier of the Company have committed a fraud in Debtor's ledger and absconded with the amount. Investigation made in the fraud revealed that the Auditor did not exercise proper skill and care and performed his work in an improper way.

Director of the Company, intends to file disciplinary proceeding against the Auditor with the ICAI. Discuss the position of the auditor with regard to the disciplinary proceeding under Chartered Accountants Act, 1949 and Regulations there to.

[May 18 (4 Marks)]

OR

The Cashier of a company committed a fraud and absconded with the proceeds thereof. This happened during the course of the accounting year. The Chief Accountant of the company also did not know about fraud. In the course of the audit, at the end of the year, the auditor failed to discover the fraud. After the audit was completed, however, the fraud was discovered by the Chief Accountant. Investigation made at that time indicate that the auditor did not exercise proper skill and care and performed his work in a desultory and haphazard manner. With this background, the Directors of the company intend to file disciplinary proceedings against the auditor. Discuss the position of the auditor with regard to the disciplinary proceedings.

[Dec. 21 (4 Marks)]

Ans: Failure to Exercise Reasonable Care and Skill:

- As per clause 7 of Part I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he "does not exercise due diligence or is grossly negligent in the conduct of his professional duties".
- In the present case, it appears that the auditor did not exercise proper skill and care and he performed his work in a desultory and haphazard manner. Cash is a very significant item in any situation and the fact that the cashier had left during the year without notice should have placed the auditor on alert as regards the cash book. In fact, the very fact that the cashier was absconding, i.e., left without any notice constituted sufficient circumstances to excite suspicion of the auditor to probe to the bottom.
- Thus, having regard to this and a fraud has actually taken place during the year, committed by the absconding cashier, it is reasonable to think that prima facie there is a case against the auditor for gross negligence. Thus, such instances require reference to Disciplinary Committee of the Council of the Institute.

Q 101. Give your comments with reference to the Chartered Accountants Act, and schedules thereto: Mr. Aman, a Chartered Accountant was the auditor of 'Aman Limited'. During the financial year 2023-24, the investment appeared in the Balance Sheet of the company of ₹ 10 lakhs and was the same amount as in the last year. Later on, it was found that the

company's investments were only ₹ 25,000, but the value of investments was inflated for the purpose of obtaining higher amount of Bank loan.

[MTP-Oct.18, Oct. 20]

Ans: Negligence in performance of duties:

- As per Clause 2 Part I of Second Schedule to the Chartered Accountants Act, 1949, a CA in practice shall be deemed to be guilty of professional misconduct, if he, certifies or submits in his name or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice.
- As per Clause 7 of Part I of Second Schedule to the Chartered Accountants Act, 1949, a CA in practice shall be guilty of professional misconduct if does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.
- As per Clause 8 of Part I of Second Schedule, a CA in practice will be deemed to be guilty of professional misconduct if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.
- The primary duty of physical verification and valuation of investments is of the management. However, the auditor's duty is also to verify the physical existence and valuation of investments placed, at least on the last day of the accounting year.
- In the instant case, it appears that auditors failed to confirm the value of investments from any proper source and he simply relied on the management's representation.

Conclusion: Mr. Aman, will be held liable for professional misconduct under Clauses (2), (7) and (8) of Part I of the second Schedule to the Chartered Accountants Act, 1949.

Q 102. Mr. Sumit, a Chartered Accountant in Practice filed his income tax return for the Assessment Year 2023-24 u/s 44ADA of the Income-tax Act, 1961, declaring his income on presumptive basis. In a disciplinary proceeding alleged against him for an alleged misuse of funds of his clients, it was asked that he should submit his books of account for the financial year ended on 31.3.2023. Mr. Sumit refused to submit books of account on the ground that he had not maintained any books and even for income tax purposes, he submitted his Return of Income on a presumptive basis. Is he right in putting such a defence? Analyse the issue in the lights of Professional Code, if any.

[Nov. 18 (5 Marks)]

Ans: Maintenance of Books of Account:

- As per Clause 1 of Part II of Second Schedule, a member of the Institute will be held guilty of professional misconduct if he Contravenes any of the provisions of this act or the regulations made thereunder or any guidelines issued by the council.
- Chapter V of the Council General Guidelines, 2008 specifies that a member of the Institute in practice or the firm of Chartered Accountants of which he is a partner shall maintain and

keep in respect of his/its professional practice, proper books of account including the following :

(i) a Cash Book

(ii) a Ledger

- In the instant case, Mr. Sumit, a Chartered Accountant in Practice filed his income tax return for the u/s 44ADA of the Income-tax Act, 1961, declaring his income on presumptive basis. In a disciplinary proceeding alleged against him for an alleged misuse of funds of his clients, it was asked that he should submit his books of account for the financial year ended on 31.3.2023. Mr. Sumit refused to submit books of account on the ground that he had not maintained any books and even for income tax purposes, he submitted his Return of Income on a presumptive basis.

Conclusion: Defence of Mr. Sumit is not admissible and he will be held guilty of professional misconduct by virtue of Clause 1 of Part II of Second Schedule, due to contravention of Chapter V of Council General Guidelines, 2008 for non-maintenance of books of account.

Q 103. CA Raguvir, a Chartered Accountant, in practice is specializing in the field of Information Systems Audit. He is considered to be one of the experts of this field because of his command over the subject. HCL Limited; a Company engaged in rendering management consultancy offered him to appoint as its managing director. CA Raguvir accepted the position of managing director without obtaining prior permission from the Institute. One of his friends CA Sumir informed him that now he cannot retain full time certificate of practice, thus cannot do attest function and train articled assistants. Comment with reference to the provisions of the Chartered Accountants Act, 1949 and schedules thereto.

[July 21 (4 Marks)]

Ans: Engaging into other Occupations (MD of Management Consultancy company):

- As per Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice will be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.
- As per Chapter XVII of Council General Guidelines, 2008, a member in practice is allowed to hold the office of Managing Director of a body corporate provided that the body corporate is engaged exclusively in rendering Management Consultancy and Other Services permitted by the Council and complies with the conditions (s) as specified by the Council from time to time in this regard.
- In such cases, members can retain full time Certificate of Practice besides being the Managing Director of such Management Consultancy Company. Such members shall be regarded as being in full-time practice and therefore can continue to do attest function and they are also entitled to train articled assistants.
- In the given case, CA Raguvir accepted the position of managing director of a company engaged in rendering management consultancy without obtaining prior permission from the

Institute. It is not specified whether the conditions as stated in the guidelines as to name, registration etc. of management consultancy company are being complied with or not.

Conclusion: Assuming that conditions as regard to name and registration of management consultancy company, as stated in the guidelines are compiled with, action of CA Raguvir will stands valid.

Q 104. Mr. Faluda, a Chartered Accountant, gave advisory services to SNK Pvt. Ltd. Further, he gave them GST consultancy and helped in ERP set up. Later, the company turned out to be a part of a group of companies involved in money laundering. Mr. Faluda was asked to provide details of the companies. Mr. Faluda refused on the grounds that he gave only consultancy services to the company and wasn't supposed to keep any information about the company. Is Mr. Faluda right as per the guidelines issued by the ICAI?

Ans: KYC Norms:

- The financial services industry globally is required to obtain information of their clients and comply with Know Your Client Norms (KYC norms). Keeping in mind the highest standards of Chartered Accountancy profession in India, the Council of ICAI issued such norms to be observed by the members of the profession who are in practice.
- In the given situation, CA Faluda, gave GST consultancy and helped in ERP set up along with advisory services to PQR Pvt. Ltd. Mr. Faluda was asked to provide details of the companies as the company, turned out to be a part of a group of companies, involved in money laundering.

Conclusion: Contention of Mr. Faluda that he gave only consultancy services to the company and wasn't supposed to keep any information about the company is not valid as Mr. Faluda should have kept following information in compliance with KYC norms which are mandatory in nature and shall apply in all assignments pertaining to attestation functions.

In the given case of SNK Pvt. Ltd., a Corporate Entity, Mr. Faluda should have kept following information:

(A) General Information:

- Name and Address of the Entity
- Business Description
- Name of the Parent Company in case of Subsidiary
- Copy of last Audited Financial Statement

(B) Engagement Information:

Type of Engagement

(C) Regulatory Information:

- Company PAN No.
- Company Identification No.
- Directors' Names & Addresses
- Directors' Identification No.

Q 105. Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto: Mr. Om, a Chartered Accountant in practice entered into a partnership with Mr. Swayam, an advocate for sharing of fees for work sent by one to the other. However, due to some disputes, the partnership was dissolved after 1 month without any fees having been received.

[RTP-Nov. 18]

Ans: Partnership with an Advocate:

As per Clause 4, Part 1 of First Schedule, a CA in Practice is deemed to be guilty of professional Misconduct if he enters into partnership in or outside India with any person other than the following:

- C.A. in practice, or
- Member of any other professional body having prescribed qualifications, or
- a person who but for his residence abroad would be entitled to be registered as member, or
- a person whose qualifications are recognized by CG or Council for the purpose of permitting such partnerships.

As per Regulations 53A and 53B of Chartered Accountants Regulations, 1988, a member is permitted to enter into partnership with an advocate, member of Bar council of India, besides other qualified persons and members of other professional bodies.

Conclusion: Mr. Om will not be deemed to be guilty of professional misconduct as clause (4) permits a CA in practice for entering into partnership with members of any other professional bodies or with such other persons having prescribed qualifications and members of bar council of India and persons having Bachelor of Law are prescribed.

Q 106. During the opening ceremony of a new branch office of CA Krish, his friend CA Harshil introduced to CA Krish, his friend and client Mr. Enrich, the owner of an Export House whose accounts had been audited by CA Harshil for more than 15 years. After few days, Mr. Enrich approached CA Krish and offered a certification work which hitherto had been done by CA. Harshil CA Krish undertook the work for a fee which was not less than fee charged by CA Harshil in earlier period.

Comment whether CA Krish had done any professional misconduct.

[Nov. 18 (5 Marks)]

Ans: Soliciting work directly or indirectly:

- As per Clause 6 of Part 1 of First Schedule to the CA Act, 1949, a member shall be held guilty if a Chartered Accountant in practice solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.
- As per Council Guidelines for Advertisement for the members in practice, acceptance of original professional work emanating from a client introduced by another member is not permitted.

- In the present case, during the opening ceremony of a new branch office of CA Krish, his friend CA Harshil introduced to CA Krish, his friend and client Mr. Enrich, the owner of an Export House whose accounts had been audited by CA Harshil for more than 15 years. After few days, Mr. Enrich approached CA Krish and offered a certification work which hitherto had been done by CA Harshil CA Krish undertook the work for a fee which was not less than fee charged by CA Harshil in earlier period.

Conclusion: Mr. Krish will be deemed guilty of professional misconduct under clause 6, Part I of First Schedule.

Q 107. M/s. SRK & Associates is one of the three firms shortlisted by GT Cooperative Bank for assignment of Statutory Audit for the F.Y 2023-24. Bank mailed the list of branches to the audit firms along with the maximum fee per branch and asked them to submit the quotations. SRK & Associates responded the bank and submitted their quotation. Comment with reference to the provisions of the Chartered Accountants Act, 1949 and schedules thereto.

[July 21 (4 Marks)]

Ans: Roving Enquiries:

- As per Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice will be deemed to be guilty of professional misconduct if he Solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.
- Provided that nothing herein contained shall be construed as preventing or prohibiting:
  - (i) Any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or
  - (ii) A member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence.
- However, as per the guideline issued by the Council of the ICAI, a member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services.
- However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.
- In the given case of GT Cooperative Bank, Bank mailed the list of branches to the audit firms along with maximum fees per branch, in response to which SRK & Associates responded and submitted their quotation.

Conclusion: Keeping in view the facts, clause 6 and guideline issued by the council, it can be concluded that SRK & Associates is guilty of Professional misconduct.

Q 108. Give your comments with reference to Chartered Accountants Act, 1949 and schedules thereto: Mr. BIMAL, a practicing Chartered Accountant as well as a qualified lawyer, was permitted by the bar council to practice as a lawyer also. He printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate.

Ans: Using designation other than Chartered Accountant:

- As per clause 7 of Part 1 of First Schedule, a CA in practice is deemed to be guilty of professional misconduct if he
  - (i) advertises his professional attainments or services or
  - (ii) uses any designation or expressions other than "Chartered Accountant" on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.
- Members of the Institute in practice who are otherwise eligible may practice as advocates subject to the permission of the Bar Council but in such case, they should not use designation "Chartered Accountant" in respect of the matters involving the practice as an advocate.
- In respect of other matters, they should use the designation 'chartered accountant' but they should not use the designation 'chartered accountant' and 'advocate' simultaneously.
- In the present case, Mr. Bimal has printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate which is prohibited under the clause 7.

Conclusion: Mr. Bimal is guilty of professional misconduct due to use of designation of advocate in addition to Chartered Accountant.

Q 109. CA Vansh was appointed as the Auditor of CS Ltd. For the year 2023-24 in the place of retiring auditor CA Taksh. CA Vansh accepted the appointment after obtaining a certificate from the management that the provisions of the Secs 139 & 140 of Companies Act, 2013 have been complied with. Comment with reference to the CA Act, 1949 and schedules thereto.

[Dec. 21 (4 Marks)]

Ans: Non-observance of compliance of Sections 139 & 140 of Companies Act, 2013:

- As per Clause 9 of Part 1 of First Schedule to CA Act, 1949, a CA in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company, without ascertaining whether requirements of Sections 139 & 140 read with Sec. 141 of Companies Act, 2013, in respect of such appointment have been duly complied with.
- For the purpose of ascertaining whether the Company has complied with the provisions of Sec. 140 of the Companies Act, incoming auditor should verify the records of the Company in respect of the following matters:

(i) Whether a member of the Company has given special notice of the resolution as required u/s 140(4) of the Companies Act, 2013. The notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting. A true copy of this notice should be obtained by the incoming auditor.

(ii) Whether this special notice has been sent to all the members, of the Company as required u/s 115 of Companies Act, 2013 at least 7 days before the date of the General Meeting.

(iii) Whether this special notice has been sent to the retiring auditor forthwith as required u/s 140(4).

(iv) Whether the representation received from the retiring auditor has been sent to the members of the Company as required u/s 140(4).

(v) Whether representation received from retiring auditor has been considered at the general meeting and resolution proposed by the special notice has been properly passed at the general meeting.

- In the given case, CA Vansh was appointed as the Auditor of CS Ltd. For the year 2023-24 in the place of retiring auditor CA Taksh. CA Vansh accepted the appointment after obtaining a certificate from the management that the provisions of the Sections 139 and 140 of the Companies Act, 2013 have been complied with.

Conclusion: Misconduct arises on part of CA Taksh as he needs to ascertain compliance of provisions of Secs. 139 and 140 through verification of records. Obtaining a certificate in this regard from management will not be suffice.

Q 110. Comment on the following with reference to the Chartered Accountants Act, 1949, and Schedules thereto: CA. Anurag is practicing since 2008 in the field of company auditing. Due to his good practical knowledge, he was offered editorship of a 'Company Audit' Journal which he accepted. However, he did not take any permission from the council regarding such editorship.

[RTP-Nov. 20, MTP-April 211]

Ans: Engagement in other occupations:

- Clause 11 of Part I of First Schedule to the CA Act, 1949 prohibits a member in practice to engage in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage.
- It does not prohibit a CA from being a director of a company, except MD or a whole-time director But if any of the partners is interested in such company as an auditor then he cannot be director of the said company.
- General permission is granted under Regulation 190A for being appointed as editor of professional journal.

- In the present case CA Anurag has accepted the appointment as editor of a "Company Audit", which is a professional journal.

Conclusion: Clause 11 permits editorship of professional journals, hence no misconduct arises on part of Mr. Anurag.

Q 111. Ms. Preet, a CA, had an account with a bank. The normal balance in this account remained at a level below ₹5,000. The bank inadvertently credited this account with a cheque of ₹2,70,000 belonging to another account holder. When CA Preet came to know about this she withdrew the amount of ₹2,75,000 and closed the bank account. After 1 year the bank noticed the mistake and claimed ₹2,75,000 with interest. CA Preet contested this claim. Can the bank approach the Institute of Chartered Accountants of India for disciplinary action against CA Preet?

[RTP-Nov. 201]

Ans: Bringing disrepute to the Profession:

- As per Clause 2 of Part IV of First Schedule of the CA Act, 1949, a Chartered Accountant will be deemed to be guilty of other misconduct if he in the opinion of the Council brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.
- In the instant case, CA Preet, a CA, had an account with a bank from which she withdrew the amount of ₹2,75,000 and closed the account. This amount of ₹ 2,75,000 was pertaining to ₹ 5,000 minimum balance and ₹ 2,70,000 belonging to other account holder and inadvertently credited to his account by the bank.
- The said act of CA Preet to withdraw the money which does not belongs to her will bring disrepute to the profession.

Conclusion: Bank can file a suitable complaint under Clause 2 of Part IV of First Schedule of the CA Act, 1949 with the ICAI for a case of "Other Misconduct".

Q 112. Mr. Danish, a practicing CA, is appointed as a Director Simplicitor in ZYGON Pvt. Ltd. After one year of appointment, Mr. Danish resigned as the Director and accepted the Statutory Auditor position of the company. Is Mr. Danish right in accepting the auditor position?

Ans: Accepting appointment as auditor:

- As per Clause (4) of Part I of the Second Schedule of the CA Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he expresses his opinion on F.S. of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest.
- Sec. 141 of the Companies Act, 2013 specifically prohibits a member from auditing the accounts of a company in which he is an officer or employee.
- Further, as per clarifications issued by the Council, a member shall not accept the assignment of audit of a company for a period of 2 years from the date of completion of his tenure as Director, or resignation as director of the said Company.

- In the instant case, Mr. Danish, a practicing CA, is appointed as a Director Simplicitor in ZYGON Pvt. Ltd. After one year of appointment, Mr. Danish resigned as the Director and accepted the Statutory Auditor position of the company. In view of above provisions Mr. Danish cannot accept the Directorship of the company until the completion of two years after his resignation.

Conclusion: Mr. Danish would be held guilty of professional misconduct under clause 4 of Part 1 of Second Schedule of the Chartered Accountants Act, 1949.

Q 113. A practicing Chartered Accountant was appointed to represent company before the tax authorities. He submitted certain information and explanations to the authorities on behalf of his clients, which were found to be false and misleading

OR

D, a Chartered Accountant in practice was appointed by Realty Limited to represent its cases before GST Authorities under a duty executed power of representation. In the course of proceedings, he submitted certain statements – written as well as oral which later found to be false and materially misleading. Comment this in the light of Professional Code.

[Nov. 18 (4 Marks)]

Ans: Failure to disclose the material facts:

- As per clause 5 of Part I of Second Schedule, a member in practice will be deemed to be guilty of professional misconduct if he fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading, where he is concerned with that financial statement in a professional capacity.
- As per clause 6 of Part I of Second Schedule, a member in practice will be deemed to be guilty of professional misconduct if he fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity.
- In given case, Mr. D had submitted the statements before the GST authorities, which later found to be false and materially misleading. Although the statements were misleading, the Chartered Accountant had only submitted them acting on the instructions of his client as his authorized representative.

Conclusion: D would not be held liable for professional misconduct.

Q 114. Comment on the following with reference to the with reference to the CA Act, 1949 and Schedules thereto: Aagam Private Limited requested CA Sheetal, a Practicing CA, to digitally sign the form related to resignation of Mr. Rohit, one of the Director of Aagam Private Limited, along with the copy of Resignation Letter to be uploaded on the website of Registrar of Companies. The signature of Mr. Rohit was simply copied and pasted by her Director of Aagam Private Limited. CA Sheetal, without verifying the genuineness of the resignation letter, digitally signed the form and the said form was uploaded on the website of Registrar of Companies.

[RTP-Nov. 22]

Ans: Failure to Exercise Reasonable Care and Skill:

- As per Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty if he does not exercise due diligence or is grossly negligent in the conduct of this professional duties.
- In the given case, Aagam Private Limited requested CA Sheetal, a practicing chartered accountant, to digitally sign the form related to resignation of Mr. Rohit, one of the Director of Aagam Private Limited, along with the copy of Resignation Letter to be uploaded on the website of Registrar of Companies. The signature of Mr. Rohit was simply copied and pasted by another Director of Aagam Private Limited.
- CA Sheetal, without verifying the genuineness of the Resignation Letter, digitally signed the Form and the said form was uploaded on the website of Registrar of Companies. Due to forged resignation letter, the resignation of Mr. Rohit from directorship of the Aagam Private Limited had been occurred. It was noted that CA Sheetal had not taken any step to verify forged signature on resignation letter which anyone would have taken in normal circumstances.

Conclusion: CA Sheetal would be held liable for professional misconduct as per Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Q 115. Namin & Co., conducted Stock Audit of DANION Ltd. As per instructions issued by Hiralal Bank. However instead of visiting the site where the stock was lying, the firm relied on the Management Information Systems report along with inspections reports and photographs of Stock taken by the employees of DANION Ltd. The photographs were also carrying the date and time printed on them. Comment with reference to the CA Act, 1949 and its schedules thereto.

[Jan. 2021 (4 Marks)]

Ans: Negligence in performance of duties:

- As per Clause 7 of Part I of Second Schedule to the Chartered Accountants Act, 1949, a CA in practice shall be guilty of professional misconduct if does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.
- To conduct stock audit, ascertainment of existence and physical condition of stocks, cross tallying the stock with Stock statement submitted by bank borrower, correct classification of stocks for valuation purpose etc. is essential. Further submitting stock audit report without physically verifying the stock amounts to gross negligence.
- As per Clause 8 of Part I of Second Schedule, a CA in practice will be deemed to be guilty of professional misconduct if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.
- In the present case, Namin & Co. , did not exercise due diligence and is grossly negligent in the conduct of his professional duties as instead of visiting the site where the stock was lying, the firm relied on the Management Information Systems report along with inspections reports and photographs of Stock taken by the employees of DANION Ltd.

Conclusion: Namin & Co. is guilty of professional misconduct as per Clauses 7 and 8 of Part I of Second Schedule of CA Act, 1949 due to the reason that stock audit is being done without examination of related records, failure to exercise due diligence and failure to obtain necessary information.

Q 116. CA Kartik qualified as Chartered Accountant and started practice as proprietor in the name of M/s. Kartik & Associates in the year 2015-16. LST Limited, a listed entity, appointed M/s. Kartik & Associates as Statutory Auditor for the year ended on 31st March, 2022. CA Kartik signed the balance sheet of LST Limited for the year ended on 31st March, 2022 on 14th May, 2022. M/s. Kartik & Associates never subjected themselves to the Peer Review process of the Institute since its inception of practice. Comment with reference to the Chartered Accountants Act, 1949 and schedules thereto.

[May 22 (4 Marks)]

Ans: Departure from generally accepted procedures of audit:

- As per Clause 9 of Part I of Second Schedule to the CA Act, 1949, a CA in Practice shall be deemed to be guilty of professional misconduct if he fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances.
- Pursuant to SEBI Notification, Statutory Audit of Listed Companies under the Companies Act, 2013 shall be done by only those auditors who have subjected themselves to the Peer Review process of the Institute, and hold a valid certificate issued by the Peer Review Board of the ICAI.
- In the given case, CA Kartik is practicing as proprietor in the name of M/s. Kartik & Associates from the year 2015-16. LST Limited, a listed entity, appointed M/s. Kartik & Associates as Statutory Auditor for the year ended on 31st March, 2022. CA Kartik signed the balance sheet of LST Limited for the year ended on 31st March, 2022 on 14th May, 2022. M/s. Kartik & Associates never subjected themselves to the Peer Review process of the Institute since its inception of practice.

Conclusion: CA Kartik is guilty of professional misconduct by virtue of Clause 9 of Part 1 of Second Schedule.

Q 117. Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto: Mr. Santosh, a Chartered Accountant published a book and gave his personal details as the author. These details also mentioned his professional experience and his present association as partner with M/s RST, a firm.

Ans: Solicitation of Professional Work:

- As per clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949, a CA in practice will be deemed to be guilty of professional misconduct if he solicits client or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means.

- While elaborating forms of soliciting work, the Council has specified that it is not permissible for a member to mention in a book or an article published by him, or a presentation made by him, any professional attainment(s), whether of the member or the firm of chartered accountants, with which he is associated. However, he may indicate in a book, article or presentation the designation "Chartered Accountant" as well as the name of the firm.
- In present case, Mr. Santosh a Chartered Accountant published the book and mentioned his professional experience and his association as a partner with M/s RST, a firm of chartered accountants.

Conclusion: Mr. Santosh has violated the restriction imposed under Clause 6 of Part I of First Schedule by mentioning the professional experience and hence held to be guilty of professional misconduct.

Q 118. Give your comments with reference to the Chartered Accountants Act, and schedules thereto: An advertisement was published in a Newspaper containing the photograph of Mr. Ahmad, a member of the institute wherein he was congratulated on the occasion of the opening ceremony of his office.

Ans: Solicitation of Client or Professional Work:

- As per Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means.
- In the given case, Mr. Ahmad published an advertisement in a Newspaper containing his photograph on the occasion of the opening ceremony of his office.
- In this context, it may be noted that the advertisement which had been put in by the member is quite prominent. If soliciting of work is allowed, the independence and forthrightness of a CA in discharge of duties cannot be maintained.
- This kind of advertisement will amount to soliciting professional work by advertisement directly or indirectly.

Conclusion: Mr. Ahmad would be guilty under Clause 6 of Part-I of the First Schedule to the Chartered Accountants Act, 1949.

Q 119. CA Pradesh has recently qualified and has obtained COP. In the initial years, it is taking time to set up his clientele base. He is also conducting audit of few entities. Simultaneously, he plans to provide coaching to CA students online taking advantage of his fresh reservoir of knowledge. Therefore, he advertises his classes on various social media platforms. Comment with reference to the Chartered Accountants Act, 1949, and Schedules thereto. [MTP-Oct. 22]

Ans: Solicitation of Client or professional Work:

- Regulation 190A of the Chartered Accountants Regulations, 1988 provides that a chartered accountant in practice shall not engage in any business or occupation other than the profession of accountancy except with the permission granted in accordance with a resolution of the Council.

- The Council has passed a resolution under Regulation 190A granting general permission for private tutorship and part time tutorship under coaching organization of the Institute. Such general permission is subject to the condition that direct teaching hours devoted to such activities taken together should not exceed 25 hours a week in order to be able to perform attest functions.
- Clause 6 of Part 1 of the First Schedule to the Chartered Accountants Act, 1949 states that Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.
- An advertisement of online coaching activities through social media platforms amounts to indirect solicitation as well as solicitation by another means and is, therefore, violative of Clause 6 of Part I of the First Schedule to Chartered Accountants Act, 1949.
- Therefore, although a member in practice can engage in private tutorship subject to Council Guidelines but he cannot advertise by any means for coaching activities as it amounts to indirect solicitation of clients and professional work. In the given case, CA Pradesh is providing coaching to CA students online and also advertising his classes on various social media platforms.

Conclusion: Based on above stated provisions, CA Pradesh is guilty of professional misconduct under Clause (6) of Part I of First Schedule to the Chartered Accountants Act 1949 for advertising his classes on various social media platforms.

Q 120. Comment on the following with reference to the Chartered Accountants Act, 1949, Code of Ethics and Schedules to the Act: Prince, a Chartered Accountant in practice is a partner in 3 firms. While printing his personal letter heads, Prince gave the names of all the firms in which he is a partner.

Ans: Mentioning Firm's Name on Letter Heads:

- Clause 7 of Part I of First Schedule to the CA Act, 1949 provides that a CA in practice is deemed to be guilty of professional misconduct if he
  - (i) advertises his professional attainments or services or
  - (ii) uses any designation or expressions other than "Chartered Accountant" on professional documents, visiting cards, letter heads or sign boards.
- However, a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council is permitted to be mentioned.
- There is no prohibition for printing names of all firms on the personal letter heads in which a member holding certificate of practice is a partner.

Conclusion: Mr. Prince is not guilty of any professional misconduct in the above case.

Q 121. CA Abhiskek, a practicing chartered accountant, is a t, is a promoter director of ABG Pvt. Ltd. And moreover he is also a sleeping partner in his family business of garments manufacturing firm. Is CA Abhiskek liable for professional misconduct as per Chartered Accountants Act, 1949?

[Jan. 21 (4 Marks)]

Ans: Engagement into other occupation:

- As per clause 11 of Part I of First Schedule of CA Act, 1949, a Chartered Accountant is deemed to be guilty of professional misconduct if he "engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage".
- There is no bar for a member to be a promoter/signatory to the Memorandum and Articles of Association of any company. There is also no bar for such a promoter/signatory to be a Director Simplicitor of that company irrespective of whether the object of the company include areas which fall within the scope of the profession of chartered accounts. Therefore, members are not required to obtain specific permission of the Council in such cases.
- However, to acquire interest in family business concerns (including such interest devolving on the members as a result of inheritance/succession/partition of the family business) or concerns in which interest has been acquired as a result of relationships and in the management of which no active part is taken, prior approval from Council is required.
- In the given case, CA Abhishek is a promoter director of ABG Pvt Ltd. And also he is a sleeping partner in his family business of garments manufacturing firm.

Conclusion: Applying the abovementioned provisions, it can be concluded that no misconduct arises on part of CA Abhishek if prior approval from council obtained as to acquiring interest in family business. However, if prior approval from Council is not obtained to be a sleeping partner in family business he will be considered as guilty of professional misconduct.

Q 122. Afroze, a Chartered Accountant availed a loan against his securities held as investments from a nationalised bank. He issued 2 cheques towards repayment of the said loan. Both the cheques were returned unpaid by the bank with the remark "Refer to Drawer". Comment with reference to the CA Act, 1949 and schedules thereto.

[Jan. 21 (4 Marks)]

Ans: Bringing disrepute to the profession:

- As per Clause 2 of Part IV of First Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if in the opinion of the council, that member brings disrepute to the profession or the Institute, as a result of his action, whether or not related to his professional work.
- Accordingly, a CA is also expected to maintain the highest standards and integrity even in his personal affairs and any deviation from these standards calls for disciplinary action.

- Under Negotiable Instruments Act, 1881, where any cheque drawn by a person for the discharge of any liability returned by the bank unpaid, either for insufficiency of funds or the cheque amount exceeds the arrangements made by the drawer of the cheque, the drawer of such cheque shall be deemed to have committed an offence.
- In the present case, Afroze, a Chartered Accountant availed a loan against his securities held as investments from a nationalised bank. He issued 2 cheques towards repayment of the said loan. Both the cheques were returned unpaid by the bank with the remark "Refer to Drawer".

Conclusion: As the cheque was dishonoured with the remark "refer to drawer", such dishonour need not necessarily be only due to insufficiency of funds. If it is proved that the cheques were dishonoured due to insufficiency of funds, the CA would be held guilty of "other misconduct".

Q 123. Comment with reference to the Chartered Accountants Act, 1949 and schedules thereto: CA Nikunj, a practicing Chartered Accountant, was appointed as a simplicitor Director in a Pvt. Ltd. Company on 1.1.2021. After serving 18 months, Mr. Nikunj resigned as the Director. He accepted the appointment as the Statutory Auditor of the company with effect from 1-10-2022.

Is CA Nikunj right in accepting the audit?

[Dec. 21 (4 Marks)]

Ans: Accepting the appointment as auditor:

- As per Clause (4) of Part I of the Second Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest.
- Sec. 141 of the Companies Act, 2013 specifically prohibits a member from auditing the accounts of a company in which he is an officer or employee. Although the provisions of the aforesaid section are not specifically applicable in the context of audits performed under other statutes, e.g., tax audit, yet the underlying principle of independence of mind is equally applicable in those situations also. Therefore, Council clarifications need to be considered in such situations.
- As per the clarifications issued by the Council, a member shall not accept the assignment of audit of a Company for a period of 2 years from the date of completion of his tenure as Director, or resignation as Director of the said Company.
- In the given case, CA Nikunj, a practicing Chartered Accountant, was appointed as a simplicitor Director in a Pvt. Ltd. Company on 1.1.2021. After serving 18 months, Mr. Nikunj resigned as the Director. He accepted the appointment as the Statutory Auditor of the company with effect from 1-10-2022. Mr. Nikunj cannot accept the Directorship of the company as tenure of two years after his resignation is not completed.

Conclusion: Mr. Nikunj will be deemed to be guilty of professional misconduct as he accepts the statutory auditor position of the company before completion of 2 years after his resignation as directorship.

Q 124. Comment with reference to the Chartered Accountants Act, 1949 and schedules thereto: CA David had signed the Balance sheet of QR Ltd. For the year ended on 31st March, 2022 which failed to give disclosure of the charge created for ₹ 4.35 crores against the Corporate Guarantee given in favour of a Group Company. The Balance Sheet size of the company filed with the Registrar of Companies was ₹ 26.12 crores.

[Nov. 20 (4 Marks)]

Ans: Failure to disclose material facts:

- As per Clause (5) of Part I of Second Schedule to the CA Act, 1949, a member in practice will be held liable for misconduct if he fails to disclose a material fact known to him which is not disclosed in a F.S., but disclosure of which is necessary in making such F.S. not misleading where he is concerned with that F.S. in a professional capacity.
- It may be observed that this clause refers to failure to disclose a material fact, which is known to him, in a financial statement reported on by the auditor. It is obvious, that before a member could be held guilty of misconduct, materiality has to be established. The determination of materiality has been provided in SA 320, “Materiality in Planning and Performing an Audit”.
- FRFs often discuss the concept of materiality in the context of the preparation and presentation of F.S. Although FRFs may discuss materiality in different terms, they generally explain, among other points, that Judgments about materiality are made in light of surrounding circumstances, and are affected by the size or nature of a misstatement, or a combination of both.
- In this case, CA David has signed a Balance Sheet which failed to give disclosure of ₹ 4.35 crores (considered material fact applying above SA 320 principle) against the corporate guarantee given in favour of a Group Company. Size of Balance Sheet of QR Ltd. is ₹ 26.12 crore. This material fact has to be disclosed in the financial statements.

Conclusion: Based on above discussion, it may be concluded that Mr. David is attracted by provisions of professional misconduct under Clause (5) of Part 1 of Second Schedule to the CA Act, 1949.

Q 125. Mr. Avi, a newly qualified Chartered Accountant, started his practice and sought clients through telephone calls from his family and friends, almost all of them employed in one or the other retail trade business. One of his friends Mr. Ravi gave him an idea to start online services and give stock certifications to traders with Cash Credit Limits in Banks. Mr. Avinash started a website with colourful catchy designs and shared the website address on his all social media posts and stories and tagged 30 traders of his local community with the caption “Easy Online Stock Certification Services”. Besides, Mr. Avinash entered in an agreement with a Digital Marketer to give him 5% commission on each service procured through him. Discuss if the actions of Mr. Avinash are valid in the light of the Professional Ethics and various pronouncements and guidelines issued by ICAI.

[RTP-May 22]

Ans: Solicitation of Client and Professional Work:

- As per clause (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the rendering such professional services to time in or outside India. Purpose of
- As per Clause (6) of Part I of the First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.
- In the given case, Mr. Avinash entered in an agreement with a Digital Marketer to give him 5% commission on each service procured through him, which is a violation of restriction imposed under Clause 2 as stated above.
- Mr. Avinash is also wrong in seeking clients through family and friends.
- Creating a website is not a non-compliance provided it is in line with the guidelines issued by the Institute in this regard. One of the guidelines is that the website should not be in push mode. Further, mentioning of clients' names is also prohibited as per the guidelines. Mr. Avinash also contravenes guidelines on website issued by the ICAI as he shares the website address on his all social media posts and stories and tagged 30 traders of his local community with the caption "Easy Online Stock Certification Services" mentioning his current clients as well.

Conclusion: CA. Avinash would be held guilty of professional misconduct under clause 6 of Part 1 of First Schedule of the Chartered Accountants Act, 1949.

Q 126. Comment on the following with reference to CA Act, 1949 and schedules thereto: A charitable institution entrusted ₹ 10 lakhs with its auditor's M/s Ramanujan and Co., a Chartered Accountant firm, to invest in a profitable portfolio. The auditors pending investment of the money, deposited it in their Savings bank account and no investment was made in the next three months.

Ans: Deposit of Client's Money in Separate Bank account:

- As per Clause 10 of Part I of Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice will be deemed to be guilty of professional misconduct if he fails to keep moneys of his client other than the fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

- The term reasonable time would depend upon the circumstances of the case. Moneys which are intended to be spent within a reasonably short time need not be put in a separate bank account.
- In the instant case, M/s Ramanajan & Co. should have deposited the amount into a separate bank account. Further, they are not permitted to provide the service of portfolio management to the client.

Conclusion: M/s Ramanujan & Co. will be held guilty of professional misconduct as he deposited the client money in his saving bank account.

Q 127. A film artist who was going abroad for long shooting, deposited a sum of ₹ 20 lakhs with his tax consultant Mr. Gaju, a practicing chartered accountant for payment of GST monthly when they were due. Mr. G duly remitted all but one instalment. He utilized the amount of instalment which he did not pay, to remit his own advance of income tax. However, while filing return of GST of the film artist, he duly remitted on her behalf the tax payable with interest due for late payment of GST out of money lying with him. He also bore for himself the interest due to short fall in remittance of tax of his client. Comment on the above in the light of Code of Conduct.

[May 18 (4 Marks)]

Ans: Deposit of Client's Money in separate Bank account:

- Clause 10 of Part I of Second Schedule to the CA Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if "he fails to keep money of his clients other than fees or remuneration or money meant to be expended in separate banking account or to use such money for the purpose for which they are intended".
- In the present case, a film artist who was going abroad, deposited a sum of ₹ 20 lakhs with Mr. Gaju, a Practicing CA for payment of GST monthly when they were due. Mr. Gaju duly remitted all but one instalment. He utilized the amount of instalment which he did not pay, to remit his own advance of income tax. However, while filing return of GST of the film artist, he duly remitted on her behalf tax payable with interest due for late payment of GST out of money lying with him.

Conclusion: Since Mr. Gaju uses the client money for payment of personal taxes, he will be deemed to be guilty of professional misconduct under clause 10 of part I of Second Schedule.

MULTIPLE CHOICE QUESTIONS

Q 1. Mr. R, (friend of Mr. P) a CA in practice invited Mr. P to set up a 'Network Firm' along with 2 more friends. All the four auditors agreed to the same and decided to start a network firm by the name M/s RP & Co. However, one of the auditors suggested that they cannot use the term '& Co.' and it needs to be changed. But Mr. R informed that there is no such Regulation regarding the firm's name. Which among the name shall be suitable to the newly started 'Network Firm', in accordance with the provisions of Chartered Accountant Act and Regulation?

[MTP-April 21]

(a) RP & Associates.

(b) RP and Co.

(c) RP and Networks.

(d) RP & Affiliates.

Q 2. CA Dev, a chartered accountant in practice, availed of a loan against his personal investments from a bank. He issued 2 cheques towards repayment of the said loan as per the instalments due. However, both the cheques were returned back by the bank with the remarks "Insufficient funds". As per Chartered Accountants Act, 1949, under which clause CA Dev is liable for misconduct?

(a) Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(c) Clause (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(d) Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

Q 3. Mr. Sujal one of the partners of the firm is facing a dilemma as to whether the firm BMY LLP should accept the appointment as Statutory Auditors of M/s Unity Limited wherein Mr. Sujal had sent a communication in writing addressed to the outgoing auditor Mr. Halva under certificate of posting and the outgoing auditor has sent an acknowledgement vide their official email, but this email address of the outgoing auditor is not registered with the Institute of Chartered Accountants of India. Mr. Sujal is of the opinion that this is not positive evidence of delivery and violates the provisions of Code of Ethics if the firm accepts the audit assignment.

With respect to the dilemma being faced by Mr. Sujal, partner of the firm regarding acknowledgment of the communication from the retiring auditor's vide their official email is not positive evidence of delivery?

[RTP Nov. 22]

(a) The dilemma of Mr. Sujal is correct as it is not positive evidence of delivery.

(b) The dilemma of Mr. Sujal is not correct as it is positive evidence of delivery as the same is received from the official email of the outgoing auditor, as per the Code of Ethics.

(c) The dilemma of Mr. Sujal is not correct as statutory auditors are not required to communicate with the retiring or outgoing auditors in this case.

(d) The dilemma of Mr. Sujal is correct as the email address of the outgoing auditor from acknowledgement has come is not registered with the Institute of Chartered Accountants of India.

Q 4. CA Samarth, a Chartered Accountant in practice, provides part-time tutorship under the coaching organization of the Institute. On 30th June, 2023, he was awarded 'Best Faculty of the year' as gratitude from the Institute. Later on, CA Samarth posted his framed photograph on his website wherein he was receiving the said award from the Institute. As per Chartered Accountants Act, 1949, under which clause Samarth is liable for misconduct?

(a) Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) Clause (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(c) Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(d) Clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Q 5. MD & Co LLP is a firm of Chartered Accountants. The firm has 10 Partners. The firm has a good portfolio of clients for statutory audits, but the same clients had some other firms as their tax auditors. In the current year (FY 2023-24), many existing clients for whom MD & Co LLP happens to be the statutory auditor have requested the firm to carry out their tax audits as well. The firm is expecting the number of tax audits to increase significantly this year. One of the partners of the firm has also raised a point that the firm can accepts tax audits up to the maximum limit. However, other partners are of the strong view that limits on audits is applicable in case of statutory audits and not for tax audits. This needs to be decided as soon as possible so that the appointment formalities can also be completed. You are requested to advise the firm in this matter.

[RTP May 19]

(a) There is no limit on number of tax audits in case of LLP.

(b) All the partners of the firm can collectively sign 450 tax audit reports.

(c) All the partners of the firm can collectively sign 600 tax audit reports.

(d) All the partners of the firm can collectively sign 450 tax audit reports. However, one partner can individually sign maximum 60 tax audit reports.

[RTP-May. 19]

Q 6. Letter head of CA Ravi, a Practicing Chartered Accountant, is reproduced below:

PANAJ De RAVI ACS, LLB, FCA
Chartered Accountant & Member of Parliament

As per Chartered Accountants Act, 1949 you are required to choose the appropriate answer.

[MTP Oct. 20]

(a) As per clause 7 of Part I of First Schedule to the Chartered Accountants Act,1949 he shall not use the designation 'Member of the Parliament' in addition to that of a 'Chartered Accountant'.

(b) He shall not use the designation 'LLB' in addition to that of a 'Chartered Accountant' as he has not enrolled as an Advocate as per clause 7 of Part I of First Schedule to the Chartered Accountants Act, 1949.

(c) He can use designations such as Member of Parliament, Member of the Legislative Assembly in addition to that of a 'Chartered Accountant' as these are specifically allowed as per clause 7 of Part I of First Schedule to the Chartered Accountants Act, 1949.

(d) As per clause 7 of Part I of First Schedule to the Chartered Accountants Act, 1949 he can designate himself as 'Chartered Accountant and Company Secretary' as he is a member of the Institute of Company Secretaries of India also.

Q 7. Mr. Vikas Rathi, a Chartered Accountant is a sole proprietor of Rathi & Co. which has been appointed as a statutory auditor of Kraftic Ltd. From F.Y. 2023-24, for a term of 5 years. Mr. Vikas is a director simplicitor of Kalaveer Ltd. which acquired 55% shares of Kraftic Ltd., for the first time, on 25th May, 2023. Mr. Vikas's term as a director of Kalaveer Ltd. got expired on 31st March, 2024 and he was not re-appointed. Kalaveer Ltd. made a proposal to Mr. Vikas for appointing Rathi & Co. as its statutory auditor from F.Y. 2023-24, for a term of 5 years, which was accepted by Mr. Vikas. Is there any violation of the Code of Ethics by Mr. Vikas Rathi?

[MTP Nov. 21]

(a) Yes, as he cannot be continued to be director of a company, the subsidiary of which he is an auditor and also he cannot accept appointment of auditor of a Kalaveer Ltd. Without finishing of the cooling period for the same.

(b) There is no bar in being a director simplicitor of a company, the subsidiary of which the person is an auditor. However, by accepting appointment as an auditor of Kalaveer Ltd. Without finishing of the cooling period for the same, he has violated the Code of Ethics.

(c) Yes, as he cannot be continued to be director of a company, the subsidiary of which he is an auditor. However, there is no bar in becoming an auditor of a company of which a person has been its director.

(d) There is no bar in being a director simplicitor of a company, the subsidiary of which the person is an auditor and also there is no requirement of following the cooling period by a director simplicitor who on expiry of its term, wants to become auditor of such company.

Q 8. CA Shyam is practicing in the field of financial management planning for over 12 years. He has gained expertise in this domain over others. Mr. Pawan, a student of Chartered Accountancy course, is very much impressed with the knowledge of CA Shyam. He

approached CA Shyam to take guidance on some topics of financial management subject related to his course. CA Shyam, on request, decided to spare some time and started providing private tutorship to Mr. Pawan along with some other aspirants for 3 days in a week and for 2 hours in a day. However, he forgot to take specific permission for such private tutorship from the Council. Later on, he came to know that the Council has passed a Resolution under Regulation 190A granting general permission (for private tutorship, and part-time tutorship under Coaching organization of the Institute) and specific permission (for part-time or fulltime tutorship under any educational institution other than Coaching organization of the Institute). Such general and specific permission granted is subject to the condition that the direct teaching hours devoted to such activities taken together should .... in order to be able to undertake attest functions.

[MTP Oct. 19]

(a) not exceed 25 hours a week.

(b) not exceed 21 hours a week.

(c) not exceed 25 hours a month.

(d) not exceed 21 hours a month.

Q 9. KP Associates a chartered accountant firm has been appointed as an auditor of the company for the financial year 2023-24. It consists of two partners CA Kalank & CA Bhuj. CA Kalash is brother of the father of the finance director of the company. CA Bhuj is an old friend of the finance director of the company. What kind of ethical threat is associated with appointment of KP Associates as an auditor of Awesome LTD.?

[MTP April 21]

(a) Self Interest Threat

(b) Advocacy Threat.

(c) Familiarity Threat.

(d) Self-Review Threat.

Q 10. CA Dharma has established another branch in the same city. Branch was inaugurated on 3rd October 2023 and on 4th October 2023, friends of CA Dharma gave an article on the front page of local newspaper congratulating CA Dharma on opening of another branch which also includes half page photograph of CA Dharma with his consent. In your opinion was the news in newspaper a misconduct on the part of CA Dharma and what actions can be taken against him?

[MTP March 21]

(a) Yes, it is a misconduct under clause 8 of Part I of Second Schedule and he can be reprimanded, his name can be removed from the register of members for 3 years and fine upto ₹ 5,00,000.

(b) Yes, it is a misconduct under clause 5 Part I of First Schedule and he can be reprimanded, his name can be removed from the register of members for 3 months and fine upto ₹ 1,00,000.

(c) Yes, it is a misconduct under clause 7 of Part 1 of First Schedule and he can be reprimanded, his name can be removed from the register of members for 3 months and fine upto ₹ 1,00,000.

(d) Yes, it is a misconduct under clause 8 of Part I of Second Schedule and he can be reprimanded, his name can be removed from the register of members permanently and fine upto ₹ 5,00,000.

Q 11. Ramesh Ltd. Is a listed company having business of production of motion pictures. For the year ended 31 March 2024, the company wanted to appoint Tax Auditor. For the purpose, somebody who is familiar with the business of the company/industry was to be preferred for appointment i.e. who would have worked with the company in the past to avoid efforts/duplication in terms of providing the information to get the Tax Audit completed. The company had following options for the same. Select the correct one.

[MTP Oct. 19]

(a) Internal auditors can be appointed for this work.

(b) Both statutory and internal auditors can be jointly appointed for this work.

(c) Internal Auditors along with the tax consultants of the company can be appointed for this work.

(d) Statutory auditors can be appointed for this work.

Q 12. Mr. Babu, an aspiring student of ICAI, approached Mr. Kitty, a practicing Chartered Accountant, for the purpose of articleship. Mr. Kitty, the principal, offered him stipend at the rate of ₹ 2,000 per month to be paid every sixth month along with interest at the rate of 10% per annum compounded monthly to compensate such late payment on the plea that cycle of professional receipts from clients is six months. Mr. Babu agreed for such late payment in the hope of getting extra stipend in the form of interest. Mr. Witty, however, used to disburse salary to all of his employees on time. As per Chartered Accountants Act, 1949, under which clause Mr. Kitty is liable for misconduct.

(a) Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(b) Clause (4) of Part 1 of the Second Schedule to the Chartered Accountants Act, 1949.

(c) Mr. Witty is paying interest thus he is not liable for misconduct.

(d) Clause (10) of Part 1 of the Second Schedule to the Chartered Accountants Act, 1949.

Q 13. Nakul Sehdev & Co LLP is a firm of Chartered Accountants. The firm has 12 Partners. The firm has a good portfolio of clients for statutory audits but the same clients had some other firms as their tax auditors. In the current year (Financial Year 2023-24), many existing clients for whom Nakul Sehdev & Co LLP happens to be the statutory auditor have requested the firm to carry out their tax audits as well. The firm is expecting the number of

tax audits to increase significantly this year. One of the partners of the firm has also raised a point that the firm can accepts tax audits upto a maximum limit. However, other partners are of the strong view that limits on audits is applicable in case of statutory audits and not for tax audits. This needs to be decided as soon as possible so that the appointment formalities can also be completed. You are requested to advise the firm in this matter.

[MTP May 20]

(a) There is no limit on number of tax audits in case of LLP.

(b) All the partners of the firm can collectively sign 540 tax audit reports.

(c) All the partners of the firm can collectively sign 720 tax audit reports.

(d) All the partners of the firm can collectively sign 540 tax audit reports. However, one partner can individually sign maximum 60 tax audit reports.

ANSWER KEY

Q. No.		Answer
1	(d)	RP & Affiliates.
2	(d)	Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.
3	(b)	The dilemma of Mr. Sujal is not correct as it is positive evidence of delivery as the same is received from the official email of the outgoing auditor, as per the Code of Ethics.
4	(a)	Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
5	(c)	All the partners of the firm can collectively sign 600 tax audit reports.
6	(a)	As per clause 7 of Part I of First Schedule to the Chartered Accountants Act, 1949 he shall not use the designation ‘Member of the Parliament’ in addition to that of a ‘Chartered Accountant’.
7	(a)	Yes, as he cannot be continued to be director of a company, the subsidiary of which he is an auditor and also he cannot accept appointment of auditor of a Kalaveer Ltd. without finishing of the cooling period for the same.
8	(a)	not exceed 25 hours a week.
9	(c)	Familiarity Threat.
10	(c)	Yes, it is a misconduct under clause 7 of Part I of First Schedule and he can be reprimanded, his name can be removed from the register of members for 3 months and fine upto ₹ 1,00,000.
11	(d)	Statutory auditors can be appointed for this work.
12	(a)	Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.
13	(c)	All the partners of the firm can collectively sign 720 tax audit reports.

INTEGRATED CASE SCENARIO

M/s. IM & Co. is a newly started CA firm. Their first assignment was to conduct statutory audit of M/s. CD Crackers Ltd. (a cracker manufacturing company). Since it was their first audit, the partners immediately accepted the work, without paying attention to the relevant procedures. They started their audit work from 25th May 2023 for the financial year (say previous year) ended on 31st March 2023. During the course of the audit,

(A) The auditors requested for the financials of the preceding previous year, along with the details of transactions till 25th May of the current year. The management however argued that both the details are out of the scope of audit and hence told that they can't provide the details. However, after repeated request from the auditors, they finally provided in September 2023.

(B) It was suspected that the senior accountant could have indulged in a fraud amounting to ₹ 117 lakh. However, on further investigation by management it was found that there was a gross mistake on part of the accountant, who had wrongly debited and credited certain accounts by mistake, which amounted to ₹ 18 lakh. The company provided proper and correct evidence for the balance amount; hence the auditors were strongly convinced that no fraud had taken place. Due to the absence of an audit committee, the auditors suggested to the Director (Finance) to replace the existing accountant as he was poor in basic accounting skills.

Initially, the company thought of handing over the tax audit work to the previous auditor. However, since they had a bad expience last year, in form of an argument regarding the contents to be included in the tax audit report, especially with respect to the disclosure of key ratios, it was decided that the IM & Co. shall also act as tax auditors.

After the conclusion of the audit, Mr. I, one of the partners of the firm was confused as to whether the firm could be held guilty of professional miscount for a plausible violation of any of the provisions of the Chartered Accountants Act. He contacted Mr. M, his partner, to get clarified about the doubt.

M/s. Hire (P) Ltd., a recruitment agency contacted Mr. I regarding a vacancy in one of the leading manufacturing company. Eventually Mr. I resigned as the partner of IM & Co. and joined the company. The agency raised an invoice for the service rendered by them, which amounted to 0.2% of the CTC offered. Mr. I agreed to pay the amount. However, since his friend was a manager at the agency, he received full discount on the invoice.

Angered by the act of resignation, Mr. M filed a complaint with the Institute of Chartered Accountants of India (ICAI) stating that Mr. I had violated the provisions of the Chartered Accountants Act and is guilty of professional misconduct. Having come to know that Mr. M was the one who had filed a complaint against him, Mr. I decided to take revenge. While thinking for a suitable reason to file a complaint, he recalled the fact that Mr. M was engaged as a Registration Authority for obtaining digital signatures for his clients. Quoting the same, he filed a complaint against Mr. M stating that he was guilty of misconduct for violating the provisions of the Chartered Accountant Act.

Based on the above facts, answer the following:

Q 1. Is Mr. I guilty of professional misconduct, if so, under what clause?

(a) Clause 1 of Part I of First Schedule.

(b) Clause 2 of Part II of Second Schedule.

(c) No. Mr. I is not guilty of professional misconduct.

(d) Clause 1 of Part II of First Schedule.

Q 2. What can you infer from the situation given in Point I?

(a) Management was right. Both the details asked by the auditors were out of the scope of audit.

(b) The auditors have the right to ask only the details of preceding previous year and not the details of transactions till 15th May of current year.

(c) Both the auditors and the management have the right to ask both the details and the right to not provide both the details.

(d) The auditors have the right to ask both the details. The management's contention that it is out of the scope of audit is wrong.

Q 3. Is Mr. M guilty of professional misconduct, if so, under what clause?

(a) No. Mr. M is not guilty of professional misconduct.

(b) Clause 11 of Part I of First Schedule.

(c) Part III of Second Schedule.

(d) Clause 1 of Part II of Second Schedule.

Q 4. Is M/s. IM & Co. guilty of professional misconduct for violating any of the provisions of Chartered Accountants Act? If so, as per which clause?

(a) Clause 1 of Part 1 of Second Schedule.

(b) Clause 8 of Part I of First Schedule.

(c) Clause 2 of Part II of Second Schedule.

(d) No. The firm has not violated any of the provisions and hence not guilty of professional misconduct.

ANSWER KEY	
Q. No.	**Answer**
1.	(d) Clause 1 of Part II of First Schedule.
2.	(d) The auditors have the right to ask both the details. The management's contention that it is out of the scope of audit is wrong.
3.	(a) No. Mr. M is not guilty of professional misconduct.
4.	(b) Clause 8 of Part I of First Schedule.