Intermediate Examination
Dec 25
Paper 5 - BUSINESS LAWS AND ETHICS (Syllabus 2022)
Super 70 Questions
"Questions No. 1, 1C, 25A, 27A, 40, 45, 63, and 63A have been recently added."
June 25 Questions and Answers also added

Commercial Laws [30 Marks]

Indian Contracts Act, 1872

Question 1:

Mr. Grey, who is so badly drunk that he cannot sit properly on his chair, enters into an agreement with Mr. Leo on 15th July, 2025 in the evening to sell his office space to him within 15th August, 2025. Next day Mr. Grey declares that he was over drunk last night and now he is not willing to transfer the office space to Mr. Leo. Now, Mr.Grey is arguing that as Mr. Leo has already signed the agreement, he will have to transfer the property in his name. Discuss whether the contract is valid and present your expert comment. **[MQP Dec 25 Set 2 - 7 Marks] [Dec 22 - 5 Marks] [June 24 - 7 Marks]**

Answer:

According to **Section 11** of the Indian Contract Act, 1872, "Every person is competent to contract who is of the **age of majority** according to the law to which he is subject, and who is of **sound mind**, and is **not disqualified** from contracting by any law to which he is subject."

Section 12 of the Indian Contract Act, 1872 provides that a person is said to be of sound mind for the purposes of making contract if, **at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.**

Thus, if a person is not capable of both, he is said to have suffered from unsoundness **(unconscious)** of mind

In this case Mr. Grey when he made the contract in the evening of 15th July 2025, he was not capable of understanding the agreement and of forming rational judgment as to effect upon his interest.

As per the provision of the Indian Contract Act, 1872 Mr. Grey cannot contract whilst such drunkenness lasts. Therefore, the **contract between Mr. Grey and Mr. Leo is not a valid contract.**

Question 1A:

“Two or more persons are said to be consent when they agree upon the same thing in the same sense” – Discuss with reason the consequences of the absent of consent and free consent. **[Model Question Paper Set 1 – Dec 24 – 7 Marks] [Model Question Paper Set 2 – June 25 – 7 Marks]**

Answer:
"Two or more persons are said to consent when they agree upon the same thing in the same sense." - [Sec 13].

There will be flaw in consent if it is not free consent. If the parties have not agreed upon the same thing in the same sense, there is no real consent and hence no contract is formed.

As per section 14 of the Indian Contract Act, 1872 consent is said to be free when it is not caused by:

I) Coercion (Sec 15): The term "Coercion" has been defined in Section 15 of the Act as the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

II) Undue influence (Sec 16): Section 16 of the Indian Contract Act defines undue influence as under:
i) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
ii) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

- Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

III) Fraud (Sec 17): As per section 17 of the Indian Contract Act:
"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:
i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
ii) The active concealment of a fact by one having knowledge or belief of the fact;
iii) A promise made without any intention of performing it;
iv) Any other act fitted to deceive;
v) Any such act or omission as the law specially declares to be fraudulent.

IV) Misrepresentation (Sec 18):

A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally, it is misrepresentation and when made intentionally or wilfully it is fraud.

V) Mistake, subject to the provisions of Sec 20, 21 and 22:

Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act. Mistake can be –

A) Mistake of law, or (Section 21)

1. mistake of law of the country
2. mistake of law of a foreign country

B) Mistake of fact (Section 20)

1. Bilateral mistake, or
2. Unilateral mistake

Effect of absence of free consent

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

Question 1B:

Outline the points which shall be considered for acceptance of a Contract. **[June 25 - 7 Marks]**

Answer:

The following points shall be taken into account in the case of acceptance-

1. Acceptance may be oral or in writing;
2. It may be expressed or implied;
3. If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner;
4. It must be unqualified and absolute and must correspond with all terms of the offer;
5. The conditional acceptance will amount to rejection of offer;
6. A counter offer for acceptance will also amount to reject of offer but the counter offer may be accepted or rejected by the other party;
7. It must be communicated to the offeror, since acceptance is completed the moment, it is communicated;
8. Mere silence on the part of the offeree does not amount to acceptance;

9. The acceptance should be given if there is a time limit is fixed or otherwise at a reasonable time and before the offer lapses or is revoked.

Question 1C:

Discuss the rule of "No Consideration – No Contract" as per Section 25 of the Indian Contract Act, 1872. Are there any exceptions to this rule? Support your answer with examples. **[MQP Set 2 Dec 25 - 7 Marks] [5 Marks – Dec 17] [June 23 Syllabus 16 – 5 Marks]**

Answer:

1. **According to Section 25 of the Indian Contract Act, 1872**, the general rule is *ex nudo pacto non oritur actio*, i.e., an agreement made without consideration is void.
2. For instance, **if A promises to pay B ₹1,000 without any obligation from B**, such an agreement is void for want of consideration.
3. However, **Section 25 itself provides exceptions** to this general rule, whereby an agreement made without consideration shall not be void in the following circumstances:
    - (a) **Promise made on account of natural love and affection**.
    - (b) **Promise to compensate for voluntary services**.
    - (c) **Promise made to pay a time-barred debt**.
4. Additionally, **an agreement without consideration is not void in the following cases**:
    - (a) **Gift actually made**.
    - (b) **Creation of agency**.
    - (c) **Charitable subscription**.
5. **Example:** Ram told Shyam that he will sell his office space to him if Shyam killed a Union Minister. The consideration in lieu of the office space is an **unlawful consideration**, and hence, such an agreement **shall not constitute a valid contract**.

Question 2:

Discuss the position of minor's agreement and effect thereof under the Indian Contracts Act, 1872. **[June 23 – 22 Syllabus – 10 Marks] [MTP June 23 – Syllabus 16 – 10 Marks] [Dec 17 - 10 Marks (16)] [MQP Set 1 Dec 25 - 7 Marks]**

Answer:

As per section 3 of the Indian Majority Act of 1875, every person in India is a minor if he has not attained the age of 18 years of age. However, in case of a minor of whose person or property or both a guardian has been appointed under the Guardian and Wards Act, 1890 or whose property is under the superintendence of any court of wards before he attains 18 years of age is 21 years.

The position of Minor's agreement and effect thereof is as under:

1. An agreement with a minor is void ab-initio.

2. The law of estoppel does not apply against a minor. It means a minor can always plead his minority despite earlier misrepresenting to be a major. In other words, he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.

3. Doctrine of Restitution does not apply against a minor. In India, the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void ab-initio. Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.

4. No Ratification on Attaining Majority - Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.

5. Contract beneficial to Minor - A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.

6. Minor as an agent - A minor can be appointed an agent, but he is not personally liable for any of his acts

7. Minor's liability for necessities - If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable.

8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.

9. Where a minor and an adult jointly enter into an agreement with another person, the minor is not liable and the contract can be enforced against the major person.

Question 3:
Discuss the different modes of terminating contractual relationship between the parties.
[10 Marks – Dec 19] [MQP Dec 23 Set 1 – 7 Marks]

Answer:

When the rights and obligations created by a contract comes to an end, the contract is said to be discharged or terminated. Discharge of contract means termination of contractual relationship between the parties. The following are the various modes or methods by which a contract is discharged:

i. Discharge by performance: Performance is the usual way of discharging a contract. Performance may be

a. Actual performance – It is the fulfillment of the obligations arising from a contract by the parties to it in accordance with the terms of the contract.

b. Attempted performance – it is offer of performance. A valid tender of performance is equivalent to performance

ii. Discharge by agreement: Parties may agree to terminate the existence of the contract by different ways viz. novation, alteration, rescission, remission and waiver.

a. Novation: Substitution of a new contract in place of the existing contract is known as "Novation of Contract". It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties. Example: A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.

b. Alteration: Alteration means change in one or more of the terms of the contract. In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.

c. Rescission: Rescission means "cancellation". All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.

Example: A promises to deliver certain goods to B at a certain date. Before the date of performance A and B mutually agree that the contract need not be performed. The contract stands discharged by rescission.

d. Remission: Remission means acceptance of a lesser performance that what is actually due under the contract. There is no need of any consideration for remission. Example: A has borrowed ` 500 from B. A agrees to accept Rs. 250 from B in satisfaction of the whole debt. The whole debt is discharged.

e. Waiver: Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged. Example: A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

iii. Discharge by lapse of time: Every contract must be performed within a fixed period. Lapse of time discharges the contract

iv. Discharge by operation of law: A contract may be discharged by operation of law in the cases of death, insolvency, unauthorized material alteration and merger. In contract involving personal skill or ability, death terminates the contract and in other cases the rights and liabilities of the deceased person will pass on to his legal representatives. The insolvency of the promisor discharges the contract. Material alteration in the terms of the contract without the consent of the other party discharges the contract. When inferior rights of a person under a contract merge with the superior rights under a new contract, the contract with inferior rights will come to an end.

v. Discharge by impossibility of performance: when performance of contract becomes impossible it results in discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible.

vi. Discharge by breach: when a party fails to perform his obligations under a contract it is known as breach. It brings an end to the obligations created by a contract. (In case if students mention only heading (name of point) then half mark each point is to be awarded.

Question 4:

Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi-contracts by the Indian Contract Act, 1872. **[10 Marks – Dec 18] [8 Marks – Dec 17] [RTP Dec 2018] [June 23 Syllabus 16 – 10 Marks]**

Answer:

Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. **These are known as – quasi contracts** as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: **Firstly,** such a right is always a right to money and generally, though not always, to a liquidated sum of money; **Secondly**, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; **Thirdly**, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

Quasi contracts are so called because the obligations associated with such transactions could neither be referred as tortuous nor contractual but still recognized by law as enforceable like other contracts.

A quasi contract is a fictitious contract created under legal obligations, similar to a valid contract. These contracts are also known as implied-in-law contracts. What makes this different is that the parties involved do not intend to create a contract. A quasi contract is created by the Court. For the same reason, there is no actual offer or acceptance or an agreement between the parties.

Types of Quasi Contracts:

Sections 68 to 72 of The Indian Contract Act, 1872 deals with five kinds of quasi contracts. These are as under:

1) Section 68 - Claim for necessaries supplied to person incapable of contracting, or on his account – This section provides that if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person;

2) Section 69 - Reimbursement of person paying money due by another in payment of which he is interested- This section provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

3) Section 70 – Obligation of person enjoying benefit of non-gratuitous act - This section provides that where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the later is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered – it is otherwise called as quantum meruit;

4) Section 71 – Responsibility of finder of goods - This section provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee;

5) Section 72 - Liability of person to whom money is paid or thing delivered by mistake or under coercion - This section provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Question 5:

Examine the rules regarding enforcement of contingent contracts. **[7 Marks]**

Answer:

These rules are explained below

Contingency	Enforcement	Example
Happening of an Uncertain Future Event [Sec.32]	• Cannot be enforced by law unless and until such an event has happened. • Where the event becomes impossible, such contracts become void.	• A makes a contract with B to buy B's horse if A survives C. This cannot be enforced by law unless and until C dies in A's life-time. • A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse had been earlier offered, refuses to buy. Contract cannot be enforced by law, unless & until C refuses to buy the horse.

		• A contracts to pay B a sum of money when B marries C. C dies without being married to B. Contract becomes void.
Non-Happening of an Uncertain Future Event [Sec.33]	Can be enforced when the happening of that event becomes impossible, and not before.	A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. Contract can be enforced when the ship sinks.
Happening of a Specified Uncertain Event within a fixed time [Sec.35]	Becomes void if - • at the expiry of time fixed, such event has not happened, or • before the time fixed, such event becomes impossible.	A promises to pay B a sum of money if a certain ship returns within a year. The Contract may be enforced if the ship returns within the year, and becomes void, if the ship is burnt within the year.
Non-happening of a Specified Uncertain Event within a fixed time [Sec.35]	Can be enforced by law - • when time fixed has expired and such event has not happened, or • before expiry of the time fixed, it becomes certain that such event will not happen.	A promises to pay B a sum of money if a certain ship does not return within a year. The Contract may be enforced if the ship does not return within the year, or is burnt within the year.
Behaviour of a person at an unspecified time of future [Sec.34]	Event shall be considered to become impossible when such person does anything, which renders it impossible that he should so act within any definite time, or otherwise than	A agrees to pay B a sum of money if B marries C. But C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

	under further contingencies.	
Impossible Event [Sec.36]	Void, irrespective of whether or not the parties know of the impossibility of the event, at the time of entering into the agreement.	• A agrees to pay B ₹ 1,000 if two parallel straight lines should enclose a space. Agreement is void. • A agrees to pay B ₹ 1,000 if B will marry A's daughter C and C was dead at the time of the agreement. Agreement is void.

Question 6:

Discuss the contract of indemnity and the right of indemnity holder when it sued. **[Model Question Paper Set 1 – Dec 24 /June 25 – 7 Marks] [June 25 – 7 Marks]**

Answer:

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

Example: A contracts to indemnify B against the consequences of the proceedings which C may take against B in respect of a certain sum of ₹2 lakhs. This is a contract of indemnity.

This contract includes indemnifier and indemnity holder. A person who promises to indemnify from losses is called as indemnifier and the person whose loss is made good is called as indemnity holder. To indemnify does not merely means to reimburse in respect of moneys paid, but to save from loss in respect of the liability for which the indemnity has been given.

Rights of indemnity holder when sued: -

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

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

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

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

Question 7:

Distinction between Indemnity and Guarantee **[MTP Dec 23 Set 1 Syllabus 16 – 5 Marks] [Dec 23 - 7 Marks (22)] PTP 16 Set 1 [MQP Dec 25 Set 2 - 7 Marks]**

Answer:

Contract of Indemnity	Contract of Guarantee
In this contract there are two parties – the indemnifies and the indemnified	In this contract three parties are involved – principal debtors, surety and creditor
The primary liability is on the indemnifier	The principal liability is on the principal debtors. Secondary liability is on the surety
The indemnifier is not acting at the request of the debtor.	The surety gives contract at the request of the principal debtor.
The possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.
The indemnifier cannot sue the third party in his own, unless there is an assignment.	The surety is entitled to proceed against the principal debtor when he is obliged to perform the guarantee
The contract is between the indemnifier and indemnified.	The contract is between the principal debtor creditor; surety creditor; principal debtor- surety
Defined under section 124 of the Indian Contract Act, 1872	Defined under section 126 of the Indian Contract Act, 1872

Question 8:

What do you mean by bailment? Mention the duties of a bailor in this respect. [6 Marks – Dec 21]

OR

State the essential elements of a contract of bailment. Distinguish between the contract of bailment and contract of pledge. [6 Marks – June 19]

OR

Short Note on 'Bailment'. [5 Marks – MTP June 20]

OR

Enumerate the duties of bailor and care to be taken by bailee in context of bailment. **[June 24 - 7 Marks (22)] [MQP Set 1 Dec 25 - 7 Marks]**

Answer:

Section 148 of the Indian Contract Act A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor's duty in context of Bailment:

Section 150 lays down three duties, namely-

1 It is the duty of the bailor to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks;

2 If the bailor does not make such disclosure and some loss or damage results, he is responsible for so much of it as arises to the bailee directly from such faults;

3 If the goods are bailed for hire, the bailor is responsible for damage arising to the bailee directly from such faults, whether he was or was not aware of the existence of such faults in the goods bailed.

Examples:

I. A lends a horse, which he knows vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damages sustained.

II. A hires a carriage of B. the carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by Bailee:

Section 151 provides that in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

In 'Nagalinga Chettiyar V. Kayarohana Chettiyar' - it was held that where the standard of care prescribed by Section 151 is not observed the bailee cannot be exonerated from his liability simply because the bailee's goods were also lost along with the goods bailed.

In 'Sirmour Truck Operations Union V. National Insurance Co. Limited' it was held that the carrier cannot be exempted from its own negligence or negligence by his agent where goods carried at 'owner's risk' and cannot escape from the liability to make good loss.

Essential elements of a contract of bailment:

1. CONTRACT – The first condition is that there must be a contract between the two parties for the delivery of goods. Such contract may be express or implied written or oral.
2. DELIVERY OF GOODS – This contract is for the delivery of some movable goods from one person (bailor) to another person (bailee) or to his authorized agent. If the goods are immovable the contract will not be a contract of bailment.
3. CHANGE OF POSSESSION – The possession of goods must be affected by such contract. Mere custody without possession is not a contract of bailment.
4. PURPOSE OF DELIVERY – The delivery of the goods is for temporary purposes. It may be for safe-custody, repair, carriage or for gratuitous use by the bailee.
5. NUMBER OF PARTIES – There is two parties tender such contract e.g., the bailor and bailee. The person delivering the goods is called the bailor and the person to whom the goods are bailed is called the bailee.
6. RIGHT OF OWNERSHIP – In a contract of bailment, the right of ownership remains with an owner (bailor) and is not changed. If the ownership is transferred, the contract will be a contract of sale and is not of bailment.
7. CHANGE OF FORM – If the goods bailed are altered in form by the bailee, such as cloth is converted into a shirt still, the contract is one of bailment.
8. GOODS IN POSSESSION OF BAILEE – The delivery of the goods is not essential if the goods are already in the possession of the person who enters into the contract as bailee.
9. REDELIVERY OF GOODS – Under such contract, the goods are redelivered to the bailor or according to his directions upon the fulfillment of the purpose by the bailee.
10. RIGHT OF REWARD – In a contract of bailment, both the parties bailor and the bailee can get a reward but it depends on the nature of the transaction.

(b) Difference between contract of bailment and contract of pledge: -

1. Right of sale - In case of pledge, the pawnee (pledgee) can sell the goods and recover his debt, if pawnor (pledger) does not pay while in bailment the bailee can retain the goods and sue for damages, but he has no authority to sell the goods.
2. Purpose - Pledge is specifically for securing a debt, while bailment may be for any purpose e.g. for repairs, safe custody etc.,

3. Right to use the goods - In case of pledge, pawnee cannot use the goods pledged but bailee can use the bailed goods if contract so provides.

Question 8A:

Mr. A bails 1000 bottles of energy drinks marked with five star to Mr. B. After receiving the energy drinks, Mr. B, without Mr. A's consent, mixes the 1000 bottles with other bottles of energy drinks of his own, bearing a different mark.

Two days later, Mr. A requests to Mr. B to return at least 500 bottles of energy drinks marked with five star, on urgent basis. But, Mr. B refuses to do so and informes Mr. A that he has mixed all bottles of energy drinks with the stocks of other energy drinks kept in the warehouse. So, Mr. B will have to separate the bottles of energy drinks received from Mr. A by deploying additional labourers and then only it will possible to send back the 500 bottles of energy drinks for which Mr. A will have to pay the labour charges. **[June 25 - 7 Marks] [MQP Dec 25 Set 1 - 7 Marks]**

Answer:

Section 156 of the Indian Contract Act, 1872 provides that if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the property in the goods remains in the parties, respectively, but the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture.

In the present case it is observed that Mr. B, bailee, mixed all 1,000 bottles of energy drinks marked with five star with other bottles of energy drinks of his own, bearing a different mark. Now, the bailor, Mr. A, demands for the return of at least 500 bottles of energy drinks supplied by him. But Mr. B demands labour charges from Mr. A for separating the bottles of energy drinks which were mixed in the warehouse with his own stocks.

As per the provision of the Indian Contract Act, 1872, Mr. A is entitled to have all his 1,000 bottles of energy drinks returned, and Mr. B is bound to bear all the expenses incurred in the separation of the same and also any other incidental damage.

Therefore, Mr. B will have to return 500 bottles of energy drinks at his own cost i.e. labour charges for separating the bottles of energy drinks.

Question 9:

What are the rights of the finder of goods? **[5] MTP 2016 Dec 2023 Set1**

Answer:

Section 168 provides that the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Section 169 provides that when a thing which is commonly the subject of sale is lost, if the owner cannot, with reasonable diligence, be found or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it- • when the thing is in danger of perishing by or of losing the greater part of its value; or • when the lawful charges of the finder, in respect of the thing found, amount to two thirds of its value. In 'MJR Steels (P) Limited V. Chrisomar Corporation' – it was held that it is not always necessary that sale should be by owner himself; sale by agent or anyone with the consent of owner is valid. Finder of asset can also sale and give good title. There can also sale by estoppels.

Right to recover expenses (Sec. 168): The finder of goods has the right to recover the expenses voluntarily incurred by him for -	
(a) finding the true owner; and (b) preserving the goods.	(a) Right of particular lien. (b) No right to sue the true owner.
Right to recover the reward (Sec. 168): He has a right to recover the reward declared by true owner for finding the goods.	
(a) Right of particular lien. (b) Right to sue the true owner.	
Right of sale of goods (Sec. 169): (a) The true owner cannot, with reasonable diligence, be found; OR (b) If the true owner is found, but he refuses to pay the lawful expenses incurred by the finder of goods. AND (a) The goods are in danger of- - perishing; or - losing a greater part of their value; OR (b) The lawful charges of the finder, in respect of the goods found, amounts to 2/3rd of value of goods.	

Question 10:

State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal? **[Dec 23 - 10 Marks (16)] [June 18 - 5 Marks (16)] [Model Question Paper Set 1 – Dec 23 – 7 Marks] MTP 2016 Jun 2020 Set2 – 10M MTP 2016 Jun2023 Set1 – 5M**

Answer:

Circumstances when an agent is personally liable

The general rule of the Indian Contracts Act, 1872 states that:

(i) Only the principal can enforce and can be held liable on a contract entered into by an agent.

(ii) The agent is not personally liable on a contract entered into by him on behalf of the principal.

1. Foreign Principal: When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.

2. Personal liability by agreement: Where it is expressly provided in the contract that the agent shall be personally liable.

3. Undisclosed principal: Where agent does not disclose the name/identity of the principal.

4. Principal cannot be sued: Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.

5. Non-existence of Principal: When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.

6. Agent's liability: When the agent exceeds his authority or commits a breach of warranty of authority.

7. Pretended Agent: When he acts as a pretended agent.

8. Mistake or Fraud: When he receives or pays money by mistake or fraud.

9. Agent sign an agreement without mentioning that he is an agent: Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.

10. Trade or customs: Where the usage of trade or custom makes an agent personally liable.

Question 11:

How would you differentiate between contract of sale and agreement to sell? **[Dec 23 - 7 Marks (22)] [MQP Set 1 Dec 25 - 7 Marks]**

Answer:

Basis	Contract of sale	Agreement to sell
Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time subject to certain conditions to be fulfilled.
Type of contract	It is an executed contract.	It is an executory contract.
Type of goods	Sales takes place only for existing and specific goods.	Future and contingent goods.
Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in thepossession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in thepossession of the buyer.
Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer.	The seller can sue for damages only in case of breach by the buyer.
General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller.	It gives a right to the buyer against the seller to sue for damages.
Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with thegoods until the price is paid to him.
Insolvency of the seller	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee.	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

Question 11A:

How condition is different from warranty under Sales of Goods Act, 1930? Under what circumstances condition can be treated as warranty? **[June 25 - 7 Marks]**

Answer:

1. **Under Section 12(3)**, a warranty is a stipulation **collateral to the main purpose of the contract**, the breach of which gives rise to a **claim for damages**, but **not to a right to reject the goods and treat the contract as repudiated**.

Condition	Warranty
A condition is a stipulation which is **essential to the main purpose of the contract**.	A warranty is a stipulation which is **collateral to the main purpose of the contract**.
The aggrieved party can **repudiate the contract of sale** in case there is a breach of a condition.	The aggrieved party can **claim damages only** in case of breach of warranty.
A breach of condition may be **treated as a breach of warranty**. This would happen where the aggrieved party is contented with damages only.	A breach of a warranty **cannot be treated as a breach of condition**.

Section 13 provides where a contract of sale is:

2. **Subject to any condition to be fulfilled by the seller**, the buyer may **waive the condition** or elect to treat the breach of the condition as a **breach of warranty**, and not as a ground for treating the contract as repudiated.
3. Where the contract is **not severable**, and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a **breach of warranty**, and not as a ground for rejecting the goods and treating the contract as repudiated, **unless there is a term of the contract (express or implied) to the contrary**.
4. **Nothing in this section shall affect the case of any condition or warranty fulfilment**, if such fulfilment is excused by law by reason of impossibility or otherwise.

Question 12:

Explain the different type of Implied conditions. **[June 23 - 8 Marks (22)]**

Answer:

Implied conditions are of the following types.

i) Condition as to title [Section 14(a)]: In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

ii) Sale by description [Section 15]: Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description, and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. Goods are sold by description when they are described in the contract, and the buyer contracted relying on such description of goods by the seller.

iii) Condition as to quality or fitness [Section 16]: As per Sec 16 of the Sale of Goods Act, the buyer is supposed to satisfy himself about the quality of goods he purchased and is also charged with the responsibility of seeing that the goods suit the purpose for which they were purchased by him. Later on if the goods does not turn out to be as per his purpose, the seller cannot be asked to compensate him. This is based on the famous doctrine of Caveat Emptor which means „let the buyer beware‟

iv) Sale by sample [Section 17]: A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

In the case of a contract for sale by sample there is an implied condition –

o That the bulk shall correspond with the sample in quality.

o That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

o That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

In case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Question 13:
What do you understand by "Caveat-Emptor" under the sale of Goods Act, 1930? What are the exceptions to this rule? **[Dec 17 - 8 Marks (16)]** **[Model Question Paper Set 1 – Dec 23 – 7 Marks]**

Answer:

Doctrine of Caveat Emptor:

The term "caveat emptor" is a Latin word which means "let the buyer beware." This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires.

If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose.

The doctrine of caveat emptor is embodied in Section 16 of the Act which states that "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

It is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose.

The principle was applied in the case of Ward v. Hobbs, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs.

However, there are some exceptions to Section 16 which are as under:

a) Where the buyer, expressly or by implication,

- makes it known to the seller the particular purpose for which the goods are required,
- so as to show that the buyer relies on the seller's skill or judgment, and
- the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not),
- there is an implied condition that the goods shall be reasonably be fit for such purpose.
- However, in the case of a contract for the sale of a specified article under its patent or other trade name, there are no implied conditions as to its fitness for any particular purpose.

b) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not),

- there is an implied condition that the goods shall be of merchantable quality.
- However, if the buyer has examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed.
- In order to apply the implied condition as to merchantability the following requirements must be satisfied:
  i) the seller should be dealer in goods of that description;
  ii) the buyer must have not opportunity to examine the goods or there must be some latent defect in the goods which would not be apparent on reasonable examination of the same.

c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In some cases, the purpose for which the goods are required may be ascertained from the acts and conducts of the parties to the sale or from the nature of the description of the article purchased.
For example, if a hot water bottle is purchased, the purpose for which it is purchased is implied in the thing itself. In such a case the buyer need not tell the seller the purpose for which the bottle is purchased. Similarly, if a thermometer is purchased in common usage, the purpose of thermometer is well known, the buyer need not tell the seller.

d) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Question 14:
"Nemo Dat Quod Non Habet" – "None can give or transfer goods what he does not himself own." Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.

Answer:
Transfer of Title by Non-Owners of Goods
As per section 27 of the Sale of Goods Act, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded from denying the seller's authority to sell.

A buyer cannot get good title to the goods unless he purchased the goods from a person who is the owner thereof and sell them under the authority or with the consent of real owner.

"Nemo dat quod non habet" means that no one can give what he himself does not have. It means a non-owner cannot make valid transfer of property in goods. If the title of the seller is defective, the buyer's title will also be subject to same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods. Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce, there must be some safeguard available to a person who acquired such goods in good faith for value.

Accordingly, the Act provides the following exceptions to this doctrine which seek to protect the interest of bona fide buyers:

1. Sale by a mercantile agent: If a mercantile agent is authorized by the owner of the goods to sell on his behalf, then such sale shall be valid. In such cases, the buyer can acquire a good title of the goods. This exception will be implemented subject to fulfilment of the following conditions:-

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

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

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

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

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

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

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

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

8. Exception under other Acts: According to some Acts, a person although he is not the owner of the goods may sell the goods and pass a better title than he himself has. As for example-
i. Under Section 169 of the Indian Contract Act, a finder of the goods has the right to sell.
ii. Under Section 176 of the Indian Contract Act, a pawnee of goods has the right to sell the
iii.Goods pawned subject to satisfying some conditions.
iv. In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate, custom officers for dues and duties remaining unpaid etc.
v. A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.

Question 15:

Discuss the remedies available to buyer against seller for breach of contract. **[June 23 - 9 Marks (16)] [Dec 21 - 6 Marks (16)]**

Answer:

A buyer also has certain remedies against the seller who commits a breach. These are as under:

1. Suit for Damages for Non-Delivery [Section 57]- When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. This is in addition to the buyer's right to recover the price, if already paid, in case of non-delivery.

2. Suit for price- Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.

3. Suit for specific performance [Section 58]- When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods. The court orders for specific performance only when the goods are specific or ascertained and an order for damages would not be an adequate remedy. Specific performance is generally allowed where the goods are of special significance or value e.g. a rare paining, a unique piece of jewellery, etc.

4. Suit for Breach of Warranty [Section 59]- Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may, a) Set up the breach of warranty in extinction or diminution of the price payable by him, or b) Sue the seller for damages for breach of warranty.

5. Repudiation of contract before the due date [Section 60] -- Section 60 provides that where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

6. Suit for interest-- The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed. In the absence of a contract to the contrary, the court may award interest, to the buyer, in a suit by him for the refund of the price in a case of a breach on the part of the seller, at such rate as it thinks fit on the amount of the price from the date on which the payment was made.

Question 16:

Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the "Sale by Auction."

Answer:

Auction Sale

Section 64 provides that in the case of a sale by auction-

• where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;

• the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract his bid;

• a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bit at the auction;

- where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;
- the sale may be notified to be subject to a reserved or set up price;
- if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer. In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.

Question 17:

Demonstrate the procedure to form a partnership under "The Partnership Act. 1932". **[Model Question Paper Set 2 – Dec 23 – 7 Marks] [June 25 – 7 Marks]**

Answer:

Partnership is one of the modes of business. It is governed under the Indian Partnership Act, 1932. For constituting a partnership, the following ingredients are necessary-

- There should be an agreement between the parties;
- The agreement must be to share the profits of the business and the business must be carried on by all or any of them acting for all;
- The existing of an agency between the concerned persons inter-se.
- All the above ingredients must exist before a partnership come into existence. Actual starting of business to registration is not a condition precedent.

Procedure to form a partnership

The first step is to decide the number of partners of a firm. The law provides for minimum 2 number of partners. The upper limit is 10 in case of banking business and 20 in respect of other business.

- First decide to who are the partners of the firm, considering the limit envisaged in the Act;
- The name of the partnership firm is selected subject to the provisions of the partnership Act;
- Select the business to be done by the partnership and object of the business;
- Decide the capital to be brought by each and every partner;
- Prepare the agreement deed of the firm – the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This document prescribes the ‘a to z’ of the partnership firm to be formed;
- The agreement should invariably in writing and signed by all partners;
- The provisions contained in the agreement are binding all partners;
- The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred.
- Open bank account in the name of the partnership firm;
- In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority;
- Acquire all mandatory licenses from the respective authorities for the conduct of the business;
- Registration with required tax authorities i.e., direct tax as well as indirect tax such as central excise, service tax, VAT etc.,

- The Registration certificate is the conclusive evidence of the formation of the partnership firm.

Question 18:

Prepare the list of mutual rights and liabilities of partners as per the Indian Partnership Act, 1932. **[June 23 - 7 Marks (22)]**

Answer:

Followings are the Mutual rights and liabilities of partners:

Section 13 of the Indian Partnership Act, 1932 provides that subject to the contract between the partners-

I. a partner is not entitled to receive remuneration for taking part in the conduct of the business;

II. the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm;

III. where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;

IV. a partner, making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at 6% per annum;

V. the firm shall indemnify a partner in respect of payments made, and liabilities incurred, by him-

a. in the ordinary and proper conduct of the business, and

b. in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

VI. a partner shall indemnify the firm or any loss caused to it by his willful neglect in the conduct of the business of the firm.

VII. When the profits are not shared equally, the losses are, in the absence of the agreement, to be borne in the same proportion as the profits are shares, regardless, whether one partner has put up more capital than other.

Question 19:

Demonstrate the concept of implied authority of a partner. **[MQP_Set2_Dec24 – 7 Marks]**

Answer:

Section 22 provides that in order to bind a firm, an act or instrument, done or executed by a partner or other person on behalf of the firm, shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Section 19 provides that subject to the provisions of Section 22, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by firm, binds the firm.

The authority of a partner to bind the firm, conferred by this section, is called his 'implied authority'. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- submit a dispute relating to the business of the firm to arbitration;
- open a banking account on behalf of the firm in his own name;
- compromise or relinquish any claim or portion of a claim by the firm;
- withdraw a suit or proceeding filed on behalf of the firm;
- admit any liability in a suit or proceeding against the firm;
- acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; or
- enter into partnership on behalf of the firm. Extension and restriction of implied authority

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

Question 20:

Discuss the right and liability of partners after dissolution as per Indian Partnership Act, 1932. **[Dec 23 - 7 Marks (22)] [MQP Set 1 Dec 25 - 7 Marks]**

Answer:

Right of partners after dissolution

Section 46 provides that on the dissolution of a firm, every partner or his representative is entitled as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights.

Liability of partners after dissolution

Section 45 provides that the liability of the partners will continue for the acts done before the dissolution, even after the dissolution, until public notice is given of the dissolution. The following partner is not liable for the acts after the date on which he ceases to be a partner-

- a deceased partner;
- a partner who is adjudicated as an insolvent;
- a partner, who not having been known to the person, dealing with the firm, to be a person, retires from the firm

In 'Rajagopala Pillai v. Krishnaswai Chetti' –it was held that the legal representatives of a deceased partner cannot be validly bound by an acknowledgement made by the surviving partner after dissolution caused by death. Once the partnership is dissolved, even the theory of implied agency disappears. After the jural relationship of partners having been put an end, there can be no question of any partner, acting in any representative capacity, so as to bind the firm.

Question 21:

"Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief?

Effect of non-registration

Section 69 of the Act place an unregistered firm under some disadvantages as a result of which firms go for compulsory registration. The consequences of non-registration of a firm are as under;

1. No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

2. No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

3. The provisions of sub-sections (1) and (2) shall apply also to claim of set- off or other proceeding to enforce a right arising from contract, but shall not affect-

a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

b) the powers of an official assignee, receiver or Court under the Presidency- towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920. to realise the property of an insolvent partner.

Question 22:

Distinguish between holder and holder in due course. **[June 23 - 5 Marks (22)]**

Answer:

S No.	Holder	Holder-in-due course
1	Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	Holder-in-due course possesses the instrument for consideration before maturity and in good faith.
2	Title of the holder is subject to title of the transfer.	Holder-in-due course gets a better title than transfer.
3	Holder may receive the instrument without consideration.	Holder-in-due course always receives the instrument for consideration.
4	Holder does not get certain privileges available to the Holder-in-due course.	Holder-in-due course always gets privileges not available to holder.

Question 23:

Ram purchased a second-hand car from his friend Rohan for ₹5 lakhs on 10th November, 2022. He paid ₹4 lakh immediately and promised to pay ₹1 lakh within a year. But, he could not pay the remaining amount till December 2023. On 5th January, 2024 Ram received an invitation for Rohan's wedding which he could not attend but sent a cheque of ₹51,000 as gift by post.

When Rohan deposited the cheque, it was returned unpaid due to insufficient balance in the account of Ram. Rohan considered it as an offence under Section 138 of The Negotiable Instruments Act, 1881.

Advise:

(i) Whether Ram would be held liable for dishonour of cheque?

(ii) Whether Rohan was justified in considering this as an offence under Section 138 of the Negotiable Instruments Act, 1881? **[7M]** **[MQP_Set2_Dec24 – 7 Marks]**

Answer:

DISHONOR OF CHEQUE FOR INSUFFICIENCY, ETC., OF FUNDS IN THE ACCOUNTS [SECTION 138]

Where any cheque drawn by a person on an account maintained by him with a banker-

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, **[A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]**
- is returned by the bank unpaid,

- either because of the-
  - amount of money standing to the credit of that account is insufficient to honor the cheque, or
  - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

(i) Whether Ram would be held liable for dishonour of cheque?

As per the facts, Ram sent a cheque of ₹51,000 to Rohan as a **wedding gift**, not towards repayment of the balance purchase price of the car. Since the cheque was issued **without any legal obligation or debt**, but as a voluntary gift, **no liability arises under Section 138**.

(ii) Whether Rohan was justified in considering this as an offence under Section 138 of the Negotiable Instruments Act, 1881?

No, **Rohan was not justified** in considering this as an offence under Section 138.

In this case, the cheque was not issued to settle any **legal debt** but sent as a **voluntary gift**. Therefore, even if the cheque bounced, **Section 138 is not attracted**, as the first and essential condition — legally enforceable debt — is missing.

The penal provision in this cheque shall not apply unless-

• the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheques as unpaid; and

• the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.

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

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

Question 24:

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

(i) First endorsement Ram

(ii) Second endorsement Ganesh.

(iii)Third endorsement Naresh and

(iv) Fourth endorsement Bakul

Raju strikes out, without Bakul's consent, the endorsements by Ganesh and Naresh. Describe with reasons whether Raju is entitled to recover anything from Bakul under the provisions of Negotiable Instruments Act, 1881. **[MQP_Set2_Dec24 – 7 Marks]**

Answer:

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

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

First endorsement = Ram
Second endorsement = Ganesh
Third endorsement = Naresh
Fourth endorsement - Bakul

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

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

Question 25:

Explain assignment of negotiation instruments. How would you differentiate between negotiation and assignment? **[June 24 - 7 Marks] [Dec 21 - 6 Marks (16)]**

Answer:

Assignment of Negotiation Instruments

- Assignment takes place where the holder of an instrument transfers it to another so as to confer a right on the transferee to receive the payment of the instrument.
- All negotiable instruments are transferable by assignment without endorsement under sections 130-132 of the Transfer of property act.
- Assignment of a negotiable instrument is effected by writing without endorsement.
- The main feature of assignment is that the assignee obtains the right of the assignor.
- Therefore, if the assignor's title is defective assignee title will also be defective.

S. No.	Negotiation	Assignment
1	Consideration is presumed until contrary is proved.	Consideration must be proved
2	If transferee is a holder in due course, he takes the instrument free from any defects.	Assignee's title is always subject to defences and equities between the original debtor and assignor.
3	Notice of transfer is not necessary.	Notice of assignment must be given
4	Negotiation is effected by delivery in case of instruments payable to bearer and by delivery and endorsement in case of instrument payable to order.	Assignment is effected only by writing
5	Transferee can sue the third party in his own name.	Assignee cannot sue the third party in his own name.
6	There are a number of presumptions in favour of holder in due courses	There are no such presumptions.

Question 25A:

Discuss various types of instruments recognized under the Negotiable Instruments Act. **[MQP Dec 25 Set 2 - 7 Marks]**

Answer:

There are various types of instruments mentioned in this Act as follows:

- **Inland instrument –** a promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in, India shall be deemed to be an inland instrument.

- **Foreign instrument –** a promissory note, bill of exchange or cheque not drawn, made or made payable, in India, shall be deemed to be a foreign instrument.

- **Ambiguous instrument –** where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election, treat it as either and the instrument shall be thenceforward treated accordingly.

- **Instruments payable on demand –** A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

- **Inchoate stamped instruments –** Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments for the time being in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the mount intended by him to be paid there under.

Question 26:

Demonstrate the procedure relating to winding up of an LLP by the tribunal. **[Model Question Paper Set 1 – Dec 24 – 7 Marks]**

OR

Discuss, in brief, rules for winding up and dissolution of a LLP. **[Dec 17 - 10 Marks (12)]**

OR

Demonstrate the circumstances in which Limited Liability Partnership may be wound up by Tribunal? **[Model Question Paper Set 1 – Dec 23 – 7 Marks]**

Answer:

Winding up of a Limited Liability Partnership (LLP) by a Tribunal can be initiated for several reasons:

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

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

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

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

Step 1: Petition for Winding Up

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

Step 2: Tribunal's Decision to Wind Up

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

Step 3: Appointment of Liquidator

Once the winding-up order is passed, the Tribunal will appoint a Liquidator. The role of the Liquidator is crucial, as they are responsible for managing the entire winding-up process, including the liquidation of assets. Step 4. Public Announcement: The Liquidator must publicly announce the winding up, inviting claims from creditors and instructing debtors to settle their dues.
Step 5. Settlement of Claims: The Liquidator will then proceed to settle the claims of creditors as prescribed by the law. This includes verifying the claims and deciding the order for the debts to be paid. Step 6. Liquidation of Assets: The Liquidator will liquidate the LLP's assets to generate funds to pay off the LLP's debts. This could involve selling off property, machinery, intellectual property, etc. Step 7. Distribution of Assets: After paying off the debts. If there are any remaining assets, they are distributed among the partners of the LLP according to the agreement in the LLP deed or the LLP Act if the deed does not specify the distribution. Step 8. Dissolution of LLP: Once all debts have been paid, and the remaining assets have been distributed, the Liquidator will apply to the Tribunal for the dissolution of LLP firm. After ensuring that all procedures have been correctly followed, the Tribunal will pass an order to dissolve the LLP. Step 9. Filing of Order with Registrar: The order of dissolution issued by the Tribunal must be filed with the Registrar by the Liquidator within a specified period. The Registrar will then publish a notice declaring the LLP to be dissolved.

Question 27: Discuss the procedure of conversion from unlisted public company into limited liability partnership. **[Dec 22 - 10 Marks (16)]**	
Answer:	
Definitions (Fourth Schedule)	**Convert**: Transfer of property, assets, interests, rights, privileges, liabilities, obligations, and undertaking of the company to the LLP as per the Fourth Schedule. **Listed Company**: As defined in SEBI (Disclosure and Investor Protection) Guidelines, 2000, issued under Section 11 of the SEBI Act, 1992. Refers to companies with securities listed on a recognized stock exchange, including Public Sector Undertakings with listed securities. **Unlisted Company**: A company that is not a listed company.
Conditions for Conversion	**Eligibility Criteria**: • No **security interest** should subsist or be in force on the company's assets at the time of application. All **shareholders** of the company must become partners of the LLP, and no one else.
Application Process	Documents to be filed with the Registrar:

	• **Form No. 18** (statement by all shareholders) with fees, containing: • Name and registration number of the company. • Date of incorporation of the company. **Incorporation document and statement**.
Post-Submission Procedure	**Registrar's Action**: • Registers the documents as per the Act and rules. • May require verification of documents. • Issues a certificate of registration in **Form No. 19**, specifying the date of registration under the Act. LLP must inform the **Registrar of Companies** within **15 days** of registration about the conversion and provide particulars of the LLP in the prescribed form.
Rejection and Appeal	Registrar may **refuse registration** if not satisfied with the particulars or information provided. **Appeal**: Can be made before the Tribunal against the Registrar's refusal.

Question 27A:

Demonstrate the procedure of appointment of auditor as per the Limited Liability Partnership Act, 2008. **[MQP Dec 25 Set 2 - 7 Marks]**

Answer:

1. **A Chartered Accountant in practice is qualified for appointment as an auditor of an LLP**, and the auditor(s) shall be appointed for each financial year of the LLP to audit its accounts.
2. **The designated partners may appoint an auditor(s)**:
   - (a) **At any time for the first financial year**, but before the end of the first financial year;
   - (b) **At least 30 days prior to the end of each financial year** (other than the first financial year);
   - (c) **To fill a casual vacancy in the office of auditor**, including in the case when the turnover or contribution of the LLP exceeds the prescribed limits; or
   - (d) **To fill up the vacancy caused by the removal of an auditor**.
3. **If the designated partners fail to appoint auditor(s)**, the partners may appoint an auditor or auditors.
4. **An auditor appointed shall hold office in accordance with the terms of his appointment** and shall continue to hold such office until:
   - (a) **New auditors are appointed**, or
   - (b) **They are re-appointed**.
5. **Rule 24(14) provides that where no auditor has been appointed**, any auditor in office shall be deemed to be re-appointed unless:
   - (a) **The LLP agreement requires actual reappointment**, or
   - (b) **The majority of partners have determined that he should not be re-appointed and have given notice to this effect to the LLP**.
6. **A notice may be in hardcopy or electronic form** and must be authenticated by the person or persons giving it. The above provisions shall be applicable to **removal and resignation of auditors**.
7. **The remuneration of an auditor may be fixed by the designated partners**, or **in accordance with the procedure laid down in the LLP agreement**.

Factories Act, 1948

Question 28:

Discuss the welfare measures to be taken in a factory for the workmen employed therein as per the Factories Act, 1948. [8 Marks – Dec 19] [7 Marks – MTP June 24] [MQP June 25]

Answer:

Welfare - Chapter V

The welfare measures to be taken in a factory for the workmen employed in the factory. The following are the welfare measures prescribed in the Act to be provided by the factory to their workmen

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

Washing Facilities [Section 42]

Provision of Washing Facilities	In every factory, **adequate and suitable facilities** for washing shall be provided and maintained for the use of the workers.
Separate Facilities for Male and Female Workers	Separate and adequately screened facilities shall be provided for the use of **male** and **female** workers.
Accessibility and Cleanliness	The washing facility shall be **conveniently accessible** and shall be **kept clean**.

Facilities for storing and drying clothing [Section 43]

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

Facilities for sitting [Section 44]

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

First Aid Appliances [Section 45]

Provision of First Aid Appliances	• First aid appliances shall be provided and maintained so as to be readily accessible during all working hours. • Cupboards equipped with the prescribed contents must be provided and maintained.

Number of First Aid Boxes or Cupboards	The number of first aid boxes or cupboards shall not be less than for every **150 workers** at any one time in the factory.
Responsibility for First Aid Boxes or Cupboards	Each first aid box or cupboard shall be kept in charge of a separate, responsible person who: • Holds a certificate in first aid treatment recognized by the **State Government**. • Is always readily available during the working hours of the factory.
Provision of Ambulance	In a factory where more than **500 workers** are employed, an **ambulance** of the prescribed size, containing the prescribed equipment and nursing staff, shall be provided and made readily available at all times.

Canteens [Section 46]

- If more than **250 workers** are employed in a factory, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.
- The employer shall bear the expenditure in the running of the canteen that is not to be accounted for in fixing the cost of foodstuffs.
- **Ferro Alloys Corporation Limited v. Government of Andhra Pradesh (2003)** held that there is no specific mode prescribed in Section 46 for setting up a canteen, leaving it to the establishment's discretion to either set up a canteen directly or through a contractor. In the latter case, the workers in the canteen would not be considered employees of the establishment.

Shelters, Rest Rooms, and Lunch Rooms [Section 47]

- If more than **150 workers** are employed, adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water shall be provided and maintained.
- These rooms shall be:
  - Sufficiently lighted and ventilated.
  - Maintained in a cool and clean condition.

Crèches [Section 48]

- If more than **30 women workers** are employed, a suitable room shall be provided and maintained for the use of children under the age of **6 years** of such women.
- The room shall be:
  - Adequately ventilated.
  - Maintained in clean and sanitary conditions.
  - Under the charge of women trained in the care of children and infants.

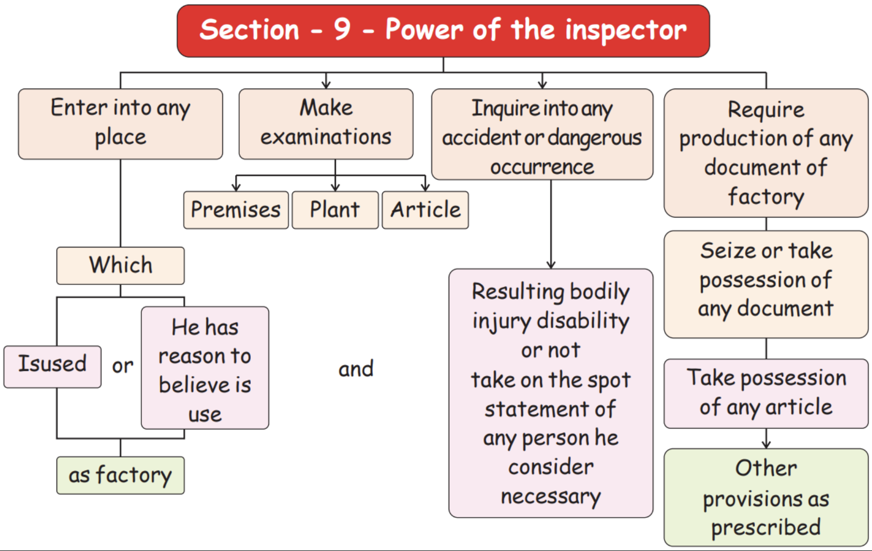
Welfare Officers [Section 49]

- If **500 or more** workers are employed in a factory, the occupier shall employ in the factory such number of welfare officers as may be prescribed.
- **Shyam Vinyals Limited v. T. Prasad (1993)** held that an Assistant Personnel Officer cannot be considered a Labor Welfare Officer simply because he is handling labor issues.

Question 29:

Discuss the different powers that can be exercised by an inspector under the Factories Act. [7 Marks – Dec 21] [9 Marks – Dec 22] [June 24]

Answer:



Question 30:

Discuss the procedures to be adopted on the safety of working place in a factory under Chapter IV of the factories act 1948. **[MQP_Set2_Dec24 – 7 Marks]**

Answer:

Chapter IV of the Factories Act, 1948 (sections 21 to 41) prescribes the procedures to be adopted on the safety of the working place in a factory. The factory is to take safety measures in respect of the following-

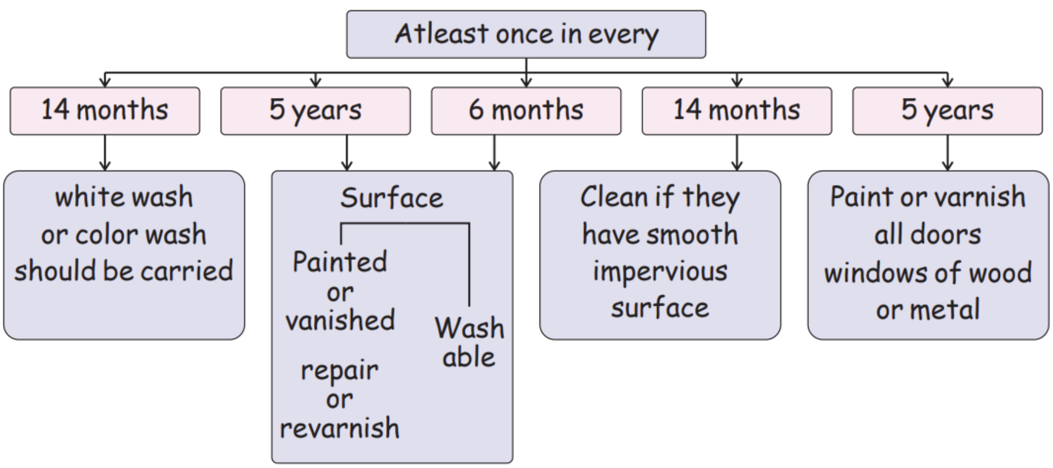
- Fencing of machinery-
- Work on or near machinery in motion -
- Employment of young persons on dangerous machines;
- Striking gear and devices for cutting off power;
- Self-acting machines;
- Casing of a new machinery;
- Prohibition of employment of women and children near cotton openers;
- Lifting machines, chains, ropes and lifting tackles;
- Revolving machinery;
- Floors, stairs and means of access;
- Pits, sumps openings in floors etc.,
- Excessive weights;
- Protection of eyes;
- Precaution against dangerous fumes, gases, etc.,
- Precautions regarding the use of portable electric light;
- Explosive or inflammable dust, gas etc.,
- Precaution in case of fire;
- Safety on buildings and machinery;
- Maintenance of buildings;
- Appointment of safety officers.

Question 31:

Cleanliness of factory [Dec 17 – 5 Marks] [MTP June 23 – 5 Marks]

Answer:

<table>
<tr><th colspan="3">Cleanliness of Factories [Section 11]</th></tr>
<tr><td>General Provision</td><td colspan="2">Every factory shall be kept clean and free from effluvia arising from any drain, privy, or other nuisance.</td></tr>
<tr><td>Removal of Accumulated Dirt and Refuse</td><td colspan="2">• Removal of accumulated dirt and refuse on floors, benches of workrooms, staircases, and passages.
• Effective disposal of the same.</td></tr>
<tr><td>Cleaning of Floors in Workrooms</td><td colspan="2">Floors of every workroom must be cleaned once every week by washing with disinfectant or by some other effective method.</td></tr>
<tr><td>Effective Drainage</td><td colspan="2">Provision of effective drainage for removing water to the extent possible.</td></tr>
<tr><td rowspan="3">Maintenance of Interior Walls and Roofs</td><td>Whitewash or Color Wash</td><td>Must be carried out at least once every period of 14 months.</td></tr>
<tr><td>Painted or Varnished Surfaces</td><td>• Repair or revarnish to be carried out once in every five years.
• If washable, then cleaning must be done once every six months.</td></tr>
<tr><td>Smooth Impervious Surfaces</td><td>Surfaces painted or varnished, or having smooth impervious finishes, should be cleaned once every 14 months by prescribed methods.</td></tr>
<tr><td>Doors, Windows, and Other Framework</td><td colspan="2">Wooden or metallic doors, windows, and frameworks must be painted or varnished at least once in every five years.</td></tr>
</table>



Question 32:

Mention any seven purposes for which the ESI fund may be expended. [7 Marks – Dec 19] [MTP June 23 – 5 Marks]

What is employees' state insurance fund and for what purposes the fund may be expanded? [8 Marks Dec 23 Syllabus 16 – MTP]

Answer:

Purposes for Which the Fund May Be Expended [Section 28]	
The Central Government may utilize the State Insurance Fund for the following purposes:	
Payment of Benefits and Medical Treatment	• Payment of benefits and provision of medical treatment and attendance to insured persons. • Provision of medical benefits to families of insured persons (where applicable) in accordance with the Act. • Defraying the charges and costs in connection with the above.
Payment of Fees and Allowances	Fees and allowances to members of: • The Corporation. • The Standing Committee. • The Medical Benefit Council. • Regional Boards, Local Committees, and Regional and Local Medical Benefit Councils.

Salaries and Allowances	• Payment of:
	  • Salaries, leave, and joining time allowances.
	  • Travelling and compensatory allowances.
	  • Gratuities and compassionate allowances.
	  • Pensions.
	  • Contributions to provident or other benefit funds of officers and servants of the Corporation.
	• Meeting expenditure for offices and other services established under the Act.

Hospitals and Medical Services	• Establishment and maintenance of hospitals, dispensaries, and other institutions. • Provision of medical and ancillary services for insured persons and their families (where applicable).

Contributions Towards Medical Costs	• Payment of contributions to:
	  • State Governments.
	  • Local authorities.
	  • Private bodies or individuals.
	• For the cost of medical treatment and attendance provided to insured persons and their families (where applicable), including the cost of buildings and equipment, as per agreements with the Corporation.

Audit and Valuation Costs	Defraying the costs (including all expenses) of: • Auditing the Corporation's accounts. • Valuation of its assets and liabilities.

Employees' Insurance Courts	Defraying the costs (including all expenses) of the Employees' Insurance Courts established under the Act.
Contractual Payments	Payment of sums under contracts entered into by: • The Corporation. • The Standing Committee. • Authorized officers of the Corporation or Standing Committee.
Legal and Court-Ordered Payments	Payment of sums under: • Decrees, orders, or awards by Courts or Tribunals against the Corporation or its officers/servants for acts done in execution of their duties. • Compromises or settlements of suits or legal proceedings against the Corporation.
Legal Proceedings Costs	Defraying costs and other charges for: • Instituting or defending civil or criminal proceedings arising under the Act.
Health, Welfare, and Rehabilitation Measures	Expenditure (within prescribed limits) on: • Measures for health and welfare of insured persons. • Rehabilitation and re-employment of insured persons disabled or injured.
Other Purposes	Such other purposes as authorized by the Corporation with the prior approval of the Central Government.

Examples:

Mr. Kumar, an insured person covered under the Employees' State Insurance Scheme, undergoes surgery for a work-related injury. The medical expenses are paid for from the State Insurance Fund, ensuring he receives necessary treatment without financial burden.

Members of the Medical Benefit Council receive allowances for attending meetings and providing recommendations on healthcare services under the scheme.

The ESIC reimburses a state government for the medical expenses incurred in treating insured persons in government hospitals.

Question 33:
Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948. [6 Marks – Dec 18] [5 Marks – June 23 – Syllabus 22] [**June 25 – 7 Marks] [MQP Set 1 Dec 25 - 7 Marks]**

Answer:

Benefits [Section 46]	
The insured persons and their dependents shall be entitled to the following benefits:	
Periodical Payments for Sickness	To any insured person in case of **sickness**.
Periodical Payments for Maternity and Related Conditions	To an insured woman in case of: • **Confinement** • **Miscarriage** • Sickness arising out of **pregnancy**, **confinement**, **premature birth of child**, or **miscarriage**.
Periodical Payments for Disability Due to Employment Injury	To an insured person suffering from **disablement** as a result of an **employment injury** sustained as an employee.
Periodical Payments to Dependents in Case of Death Due to Employment Injury	To the dependents of an insured person who **dies** as a result of an **employment injury** sustained as an employee.
Medical Treatment and Attendance	To provide **medical treatment** for and **attendance** on insured persons.
Funeral Payment	• Payment to the **eldest surviving member** of the family of an insured person who has **died**, towards the expenditure on the **funeral** of the deceased insured person. • If the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.
Amount of Payment	The amount of the funeral payment shall not exceed the amount as may be prescribed by the **Central Government**.
Time for Claim	The claim for such payments must be made within **3 months** of the death of the insured person, or within such extended period as the Corporation may allow.

Question 34:

What is the procedure of determining the amount of gratuity as per the Payment of Gratuity Act, 1972? [Dec 22 – 5 Marks] [MQP June 23] [MQP Set 1 Syllabus 22] **[MQP Dec 25 Set 2 - 7 Marks]**

Examine the provisions of the Payment of Gratuity Act related to determination of eligible employees and mode of payments with relevant examples. [5 Marks - MQP Set 1]

Answer:

Determination of the Amount of Gratuity [Section 7]	
Employer's Obligation	As soon as gratuity becomes payable, the employer shall determine the amount of gratuity, whether the employee has made an application or not.

Notice of Gratuity Determination	• The employer must issue a notice in **Form L** to:
	  ◦ The person to whom gratuity is payable.
	  ◦ The Controlling Authority.
	• The notice shall specify the amount of gratuity determined.

Payment of Gratuity	The employer must arrange to pay the amount of gratuity within **30 days** from the date it becomes payable to the person entitled to receive it.

Interest on Delayed Payment	• If gratuity is not paid within the stipulated period, the employer is liable to pay **interest at the rate of 10% per annum**.
	• **Exception:** No interest is payable if:
	  ◦ The delay in payment is due to the fault of the employee.
	  ◦ The employer has obtained written permission from the Controlling Authority for delayed payment on this ground.

Rejection of Gratuity Claim	• If the claim for gratuity is not found admissible, the employer shall issue a notice in **Form M** to:
	  ◦ The applicant employee.
	  ◦ The nominee or legal heir, as applicable.
	• The notice shall specify the reasons for the claim being inadmissible.

Communication to the Controlling Authority	<u>In both cases (payment or rejection of gratuity):</u> A copy of the respective notice (Form L or Form M) shall be endorsed to the Controlling Authority.

Question 35:
Analyze the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity under Gratuity Act 1972. [MTP June 24 – 7 Marks]

Answer:

Exemption of Employer from Liability in Certain Cases [Section 10]	
Right of the Employer	The employer, upon being charged with an offence, may: • File a **complaint** to the court. • Give the complainant at least **three clear days' notice in writing** of their intention to charge another person as the actual offender.
Hearing of the Charge	At the appointed hearing, if the employer proves to the satisfaction of the court: • **Due diligence** was used to enforce the execution of the Act. • The offence was committed by the **other person** without the employer's **knowledge, consent, or connivance**.
Outcome	If the above conditions are met: • The other person shall be **convicted** of the offence and liable to punishment as if they were the employer. • The employer shall be **discharged** from liability under this Act in respect of the offence.
Evidence by the Employer	The employer may: • Be examined on oath. • Provide evidence and call witnesses in their support. • Be subject to **cross-examination** by the actual offender and the prosecutor.
Absence of the Actual Offender	If the person charged as the actual offender: • Cannot be brought before the court at the appointed time, the court shall **adjourn the hearing** for a period not exceeding **three months**. • If, by the end of this period, the person is still unavailable, the court shall proceed to hear the charge against the employer.
Conviction of Employer	If the offence is proven and the actual offender is not present, the **employer shall be convicted**.

Question 36:
Discuss in detail about Application and Belated Application for payment of gratuity. **[June 24]**

Answer:

Application for Gratuity [Rule 7]	
Application by Employee **[Rule 7(1)]**	An employee who is eligible for payment of gratuity under the Act, or any person authorized in writing to act on his behalf, shall apply: • Ordinarily **within thirty days** from the date the gratuity became payable, using **Form 'I'** to the employer. • If the **date of superannuation or retirement** is known, the employee may apply to the employer before **thirty days** of the date of superannuation or retirement.

Application by Nominee **[Rule 7(2)]**	A nominee of an employee eligible for gratuity under the second proviso to sub-section (1) of Section 4 shall apply: • Ordinarily **within thirty days** from the date gratuity became payable to him, using **Form 'J'** to the employer. • **Plain paper** applications with relevant particulars are also accepted. • The employer may obtain other necessary particulars as deemed necessary.
Application by Legal Heir **[Rule 7(3)]**	A legal heir of an employee eligible for gratuity under the second proviso to sub-section (1) of Section 4 shall apply: • Ordinarily **within one year** from the date gratuity became payable to him, using **Form 'K'** to the employer.
Gratuity Becoming Payable Before Commencement of Rules **[Rule 7(4)]**	Where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2), and (3) shall be deemed to be operative from the date of such commencement.
Mode of Application **[Rule 7(6)]**	An application under this rule shall be presented to the employer: • Either by **personal service** or by **registered post acknowledgment due**.
Belated Application **[Rule 7(5)]**	• An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained if the applicant adduces sufficient cause for the delay in filing the claim. • No claim for gratuity shall be invalid merely because the claimant failed to present the application within the specified period. • Any dispute regarding the belated application shall be referred to the **Controlling Authority** for a decision.

Question 37:

Analyze the different points to be noted for filing nomination for receiving the gratuity under the Payment of Gratuity Act, 1972.

Answer:

Nomination [Section 6]	
Requirement of Nomination	Each employee, who has completed one year of service, shall make a nomination in **Form F** for receiving gratuity after their death.
Distribution of Gratuity	An employee may distribute the amount of gratuity payable amongst more than one nominee.
Nomination for Employees with a Family	If the employee has a family at the time of making a nomination: • The nomination shall be in favor of one or more members of the family. • Any nomination in favor of a person not a member of the family shall be void.
Nomination for Employees Without a Family	If the employee has no family at the time of making the nomination: • The nomination may be made in favor of any person(s). • If the employee later acquires a family, the earlier nomination becomes invalid, and a fresh nomination must be made in

<table>
<tr><td></td><td colspan="2">favor of one or more family members within the prescribed time.</td></tr>
<tr><td>Modification of Nomination</td><td colspan="2">A nomination may be modified at any time by the employee by giving written notice to the employer in the prescribed form.</td></tr>
<tr><td>If a Nominee Predeceases the Employee</td><td colspan="2">The nominee's interest reverts to the employee, who must make a fresh nomination in the prescribed form for that interest.</td></tr>
<tr><td>Employer's Responsibility for Nomination</td><td colspan="2">Every nomination, fresh nomination, or modification must be submitted to the employer, who shall keep it in safe custody.</td></tr>
<tr><td colspan="3">Provisions Regarding Nomination [Rule 6]</td></tr>
<tr><td>Submission of Nomination [Rule 6(1)]</td><td>Nomination must be submitted in duplicate</td><td>• By personal service with a receipt.
• Or by registered post with acknowledgment.</td></tr>
<tr><td></td><td>Timeframes for submission</td><td>• For employees with one year of service on the date of commencement of rules: within 90 days.
• For employees completing one year of service after the rules commence: within 30 days.
• Late nominations with reasonable grounds for delay shall be accepted and not deemed invalid merely due to lateness.</td></tr>
<tr><td>Verification and Recording

[Rule 6(2)]</td><td colspan="2">Within 30 days of receiving the nomination in Form F, the employer must:
• Verify service particulars with reference to records.
• Return the duplicate copy of Form F, duly attested, to the employee as a token of recording the nomination.
• Retain one copy of the nomination for recordkeeping.</td></tr>
<tr><td>Fresh Nomination After Acquiring Family

[Rule 6(3)]</td><td colspan="2">• An employee without a family at the time of making a nomination must submit a fresh nomination in Form G within 90 days of acquiring a family.
• Provisions of Rule 6(2) apply mutatis mutandis to this fresh nomination.</td></tr>
<tr><td>Modification of Nomination

[Rule 6(4)]</td><td colspan="2">• Notice of modification, including cases where a nominee predeceases the employee, must be submitted in Form H in duplicate.
• Provisions of Rule 6(2) apply mutatis mutandis to modifications.</td></tr>
<tr><td>Witness Requirement

[Rule 6(5)]</td><td colspan="2">Nomination, fresh nomination, or notice of modification must:
• Be signed by the employee.
• If illiterate, bear the employee's thumb impression.
• Be signed by two witnesses, who shall declare their presence and sign the document.</td></tr>
<tr><td>Effective Date of Nomination</td><td colspan="2">Nomination, fresh nomination, or modification takes effect from the date of receipt by the employer.</td></tr>
</table>

[Rule 6(6)]	

Question 38:

Analyze the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity under Gratuity Act 1972. **[MTP June 24 – 7 Marks]**

Answer:

Exemption of Employer from Liability in Certain Cases [Section 10]	
Right of the Employer	The employer, upon being charged with an offence, may: • File a **complaint** to the court. • Give the complainant at least **three clear days' notice in writing** of their intention to charge another person as the actual offender.
Hearing of the Charge	At the appointed hearing, if the employer proves to the satisfaction of the court: • **Due diligence** was used to enforce the execution of the Act. • The offence was committed by the **other person** without the employer's **knowledge, consent, or connivance**.
Outcome	If the above conditions are met: • The other person shall be **convicted** of the offence and liable to punishment as if they were the employer. • The employer shall be **discharged** from liability under this Act in respect of the offence.
Evidence by the Employer	The employer may: • Be examined on oath. • Provide evidence and call witnesses in their support. • Be subject to **cross-examination** by the actual offender and the prosecutor.
Absence of the Actual Offender	If the person charged as the actual offender: • Cannot be brought before the court at the appointed time, the court shall **adjourn the hearing** for a period not exceeding **three months**. • If, by the end of this period, the person is still unavailable, the court shall proceed to hear the charge against the employer.
Conviction of Employer	If the offence is proven and the actual offender is not present, the **employer shall be convicted**.

Question 39:
Enumerate the determination of moneys due from employers (Employees Provident Fund and Miscellaneous Act, 1952). **[7 Marks – June 23 – Syllabus 16] [MQP June 25 - Set 2]**

Answer:

Determination of Moneys Due from Employers [Section 7A]	
Authority to Conduct Inquiry	In case of disputes regarding the applicability of the Act to an establishment, the concerned Authority may: • Conduct an **inquiry** as deemed necessary. • **Decide the dispute** and determine the amount due from the employer under the Act, Scheme, Pension Scheme, or Insurance Scheme.
Opportunity to Represent	The employer shall be given a **reasonable opportunity** to present their case before an order is passed.
Powers of the Authority	For the purpose of inquiry, the Authority has powers similar to a court under the **Civil Procedure Code (CPC)**, including: • **Enforcing attendance** of any person or examining them on oath. • **Requiring discovery and production of documents.** • **Receiving evidence** on affidavit. • **Issuing commissions** for the examination of witnesses.
Ex-Parte Orders	If the employer, employee, or any other required person fails to attend the inquiry, the Authority may: • **Decide the case ex-parte**. • Pass orders based on available documents.

Setting Aside Ex-Parte Orders	• The employer may, within **three months** of the communication of the ex-parte order, apply to set it aside by showing sufficient cause for absence.
	• If the Authority is satisfied, it may:
	  • **Set aside the ex-parte order**.
	  • Appoint a date for continuing the inquiry.

S.K. Nasiruddin Beedi Merchant Limited v. Central Provident Fund Commissioner	• The applicability of the Act to employees is determined under the **provisions of the Act itself**, not under Section 7A. • Section 7A is for the **quantification of liability**, not for deciding the applicability of the Act.

Question 40:
Discuss the components of minimum wages as laid down under Section 7 of the Code on Wages, 2019. **[MQP Dec 25 Set 2 - 7 Marks]**

Answer:
Section 7 – Components of Minimum Wage

1. Minimum wage fixed or revised under section 8 may consist of:
    - **Basic rate of wages + cost of living allowance (linked to cost of living index)**; or

Example:
State X fixes minimum wage for unskilled workers as:
- Basic wage: ₹8,000 per month
- Cost of living allowance (DA): linked to CPI (consumer price index)

At the time of fixation:
- DA = ₹2,000
- So total minimum wage = ₹8,000 + ₹2,000 = **₹10,000 per month**

After 1 year, cost of living index rises. Government revises DA to ₹2,500. Now, minimum wage = ₹8,000 + ₹2,500 = **₹10,500 per month**

- **Basic rate of wages with or without cost of living allowance + cash value of concessions** for **essential commodities supplied at concession rates**; or

Example:
Minimum wage structure notified:
- Basic wage: ₹9,000
- No DA (for simplicity)
- Employer runs a fair price shop for workers and gives:
    - Food grains worth ₹1,500 in market, but supplies to workers at ₹500.
    - Benefit to worker = ₹1,000 (this is the **concession**).

Government may treat this **₹1,000** as **cash value of concession**.
So, minimum wage (for compliance calculation) =
- Basic wage ₹9,000
- Cash value of concessions ₹1,000
  = **₹10,000 per month**

Logic: Even though wage in cash is less, worker is compensated through **subsidised essentials**, so law allows such benefits to be counted.

- **All-inclusive rate** covering **basic wage, cost of living allowance and cash value of concessions**.

Example:
Instead of saying:
- Basic: ₹8,000
- DA: ₹2,000

- Concessions: ₹500

Government simply fixes:

Minimum wage (all-inclusive) = **₹10,500 per month**

This one figure already **factors in**:

- Basic + DA + concessions.

Logic: Reduces complexity and disputes – employer just has to ensure worker gets at least ₹10,500 (whether entirely in cash or partly via eligible concessions as authorised).

2. **Cost of living allowance** and **cash value of concessions** shall be **computed by an authority** appointed by the appropriate Government,
    - **at specified intervals**, and
    - **as per directions issued by the appropriate Government** from time to time.

Question 40A:

Elaborate the procedure for fixing and revising minimum wages under the Code on Wages, 2019. **[June 23 - 10 Marks (22)]**

Answer:

Procedure for Fixing and Revising Minimum Wages [Section 8]	
Methods of Fixing or Revising Minimum Wages **[Section 8 (1)]**	When fixing minimum wages for the first time or revising them under this Code, the appropriate Government shall: **(a)** Appoint as many committees as necessary to hold enquiries and recommend in respect of the fixation or revision; or **(b)** Publish its proposals by notification for the information of persons likely to be affected, specifying a date (not less than two months from the date of notification) for consideration of such proposals.
Composition of Committees **[Section 8 (2)]**	Committees appointed under clause (a) of sub-section (1) shall consist of: • Persons representing **employers**. • Persons representing **employees**, in a number equal to employer representatives. • **Independent persons**, not exceeding one-third of the total members of the committee.
Notification of Minimum Wages **[Section 8 (3)]**	After considering: • The recommendations of the committee (appointed under clause (a)), or • All representations received before the specified date (under clause (b)), the appropriate Government shall fix or revise the minimum rates of wages by notification. Unless otherwise provided in the notification, **it shall come into force three months after the date of its issue.**
Consultation with Advisory Board	If the Government proposes to revise minimum wages under clause (b) of sub-section (1), it shall also consult the **Advisory Board** constituted under Section 42.
Review or Revision Interval	Minimum rates of wages shall be reviewed or revised by the appropriate Government at an interval not exceeding **five years**.

[Section 8 (4)]	

Question 41:
Demonstrate the time limit for payment of wages under the Code on Wages, 2019. **[Dec 23 - 7 Marks (22)] [Model Question Paper Set 1 – Dec 23 – 7 Marks] [MQP Set 1 Dec 25 - 7 Marks]**

Answer:

Time Limit for Payment of Wages [Section 17]	
Payment Based on Wage Period **[Section 17(1)]**	Wages must be paid as follows: • **Daily basis**: At the end of the **shift**. • **Weekly basis**: On the **last working day** of the week, before the **weekly holiday**. • **Fortnightly basis**: Before the end of the **second day** after the end of the fortnight. • **Monthly basis**: Before the expiry of the **seventh day** of the succeeding month.
Payment upon Termination of Employment [Section 17(2)]	Wages must be paid within **two working days** if an employee is: • **Removed or dismissed** from service, • **Retrenched**, • **Resigned**, or • **Became unemployed** due to closure of the establishment.
Power of Appropriate Government [Section 17(3)]	The appropriate Government may prescribe **any other time limit** for payment of wages, considering the circumstances under which wages are to be paid.
Other Legal Provisions [Section 17(4)]	Sub-section (1) and (2) do not affect any **time limit for payment of wages** provided in other laws in force.

Question 42:
Analyse the deductions, which are might be made from wages as per section 18 of the Code of Wages Act ,2019. **[Model Question Paper Set 1 – Dec 24 – 7 Marks] MTP 2016 Dec 2023 Set1 MTP 2016 Jun2023 Set1 – 10M**

Answer:

Deductions from Wages [Section 18]	
General Rule on Deductions **[Section 18(1)]**	No deductions from wages except those authorized under this Code. **Explanation:** (a) Payments made by an employee to the employer or agent are deemed deductions. (b) Loss of wages due to withholding increment, demotion, or suspension (for valid reasons) is **not deemed deductions** if provisions meet government-specified requirements.
Authorized Deductions	Deductions can only be made for the following purposes: (a) **Fines** imposed on the employee. (b) **Absence from duty**.

[Section 18(2)]	(c) **Damage or loss** caused due to employee's neglect or default (e.g., goods or money entrusted for custody or accounting). (d) **House-accommodation** provided by employer, government, or housing board. (e) **Amenities and services** provided by the employer, authorized by the government (excluding tools/raw materials). (f) **Recovery of advances** (e.g., travel allowance, overpayment, welfare fund loans). (g) **House-building loans** and similar approved loans. (h) **Statutory deductions**: Income tax, court-ordered payments, or other statutory levies. (i) **Social security contributions**: Provident fund, pension fund, health insurance, etc. (j) **Payments to cooperative societies**, subject to government-imposed conditions. (k) **Trade Union fees** with written authorization of the employee. (l)-(n) **Railway administration losses**, e.g., counterfeit currency, incorrect rebates, or uncollected charges due to employee negligence. (o) **Prime Minister's National Relief Fund** or other government-notified funds (with written authorization of employee).
Limit on Deductions [Section 18(3)(4)]	• Total deductions cannot exceed **50% of wages** in any wage period. • Excess deductions (beyond 50%) may be recovered in a prescribed manner.
Employer Default in Depositing Deductions **[Section 18(5)]**	If the employer fails to deposit deducted amounts into a trust, government fund, or other account as required, the **employee is not held responsible**.

Question 43:

Elaborate the provisions relating to the fines under Section 19 of The Code on Wages, 2019 Act. **[June 25 - 7 Marks]**

Answer:

Section 19 of The Code on Wages, 2019 Act talks about fines. It lays down the following:

1. No fine shall be imposed on any employee save in respect of those acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice under sub-section (2).
2. A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.
3. No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

4. The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three per cent. of the wages payable to him in respect of that wage-period.
5. No fine shall be imposed on any employee who is under the age of fifteen years.
6. No fine imposed on any employee shall be recovered from him by instalments or after the expiry of ninety days from the day on which it was imposed.
7. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
8. All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

Question 43A:

State the procedure of payment of undisbursed wage in case of death of employed person under Payment of Wages Act, 1936. **[Dec 23 - 6 Marks (16)]**

Answer:

Payment of Various Undisbursed Dues in Case of Death of Employee [Section 44]	
Payment of Dues in Case of Death or Unknown Whereabouts	• If amounts payable to an employee under this Code could not or cannot be paid due to: (a) The **death** of the employee before payment. (b) The **whereabouts** of the employee being unknown. • Such amounts shall: (a) Be paid to the person **nominated** by the employee in accordance with the rules made under this Code. (b) **If no nomination** has been made or the amounts cannot be paid to the nominee for any reason, the amounts shall be **deposited** with the **authority prescribed under this Code.** • The prescribed authority shall deal with the deposited amounts as per the rules prescribed.
Employer's Discharge of Liability	When the employer takes the following actions, they are discharged of their liability to pay the amounts: (a) **Payment** to the person nominated by the employee under the Code. (b) **Deposit** of the amounts with the prescribed authority as per clause (b) of sub-section (1).

Question 44:

Inspect the provisions of the Code regarding the appointment of Inspector cum - Facilitators and explain their powers. **[MQP - June 25 Set 1]**

Answer:

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

• The appropriate Government may, by notification, appoint Inspector-cum- Facilitators for the purposes of this Code who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.

- The appropriate Government may, by notification, lay down an inspection scheme which may also provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically.
- Without prejudice to the provisions of sub-section (2), the appropriate Government may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of this Code to the Inspector-cum-Facilitator as may be specified in such notification.
- Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.
- The Inspector-cum-Facilitator may: a) advice to employers and workers relating to compliance with the provisions of this code; b) inspect the establishments as assigned to him by the appropriate Government, subject to the instruction or guidelines issued by the appropriate Government from time to time.
- Subject to the provisions of sub-section (4), the Inspector-cum-Facilitator may,:

a) examine any person who is found in any premises of the establishment, whom the Inspector-cumFacilitator has reasonable cause to believe, is a worker of the establishment;
b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;
c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;
d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and.
e) exercise such other powers as may be prescribed.

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

The present code talks about provisions relating to offences and their corresponding penalties. The Code specifies penalties for offences committed by an employer, such as:
a) paying less than the due wages, or
b) for contravening any provision of the Code.

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

Question 45:
Describe the key characteristics of a company as per the Companies Act. **[MQP Dec 25 Set 2 - 7 Marks]**

Answer:
Characteristics of a Company

1. **Separate Legal Entity**
   - A company is a **separate legal person and artificial person**, distinct from its shareholders.
   - It has its own **independent corporate existence**.
2. **Limited Liability**
   - The liability of members of a **limited company having share capital** is limited to the **nominal value of the shares held** by them.
   - Shareholders cannot be called upon to pay more than the **unpaid value of their shares**, irrespective of the **indebtedness of the company**.
3. **Perpetual Succession**
   - The company exists **from incorporation to winding up**.
   - **Members may come and go**, but the company continues until duly wound up.
4. **Separate Property:** The company has the **right to acquire and transfer properties in its own name**.
5. **Common Seal**
   - The common seal is used by the company for **affixing it on documents** such as contracts, since it is an **artificial person** and cannot sign on its own.
   - **Optional as per Companies (Amendment) Act, 2015**.
   - Documents requiring a common seal may now instead be **signed by two directors or one director and a company secretary**.
6. **Transferability of Shares:** Shares of the members, except in a **private company**, may be **freely transferable**.
7. **Capacity to Sue and Be Sued:** Being a **separate legal entity**, the company has the **capacity to sue others and can be sued by others**.

Question 45A:
Describe the provisions relating to registration of an Association not for profit under Sec.8 of the Companies Act 2013. **[MQP June 25 - Set 2]**

Answer:
Section 8 of the Companies Act, 2013 lays down provisions relating to companies that do not have a share capital. the section talks about the formulation of companies with charitable objects, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company

a. has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

b. intends to apply its profits, if any, or other income in promoting its objects; and

c. intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

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

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

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

Question 46:
Describe about One Person Company (OPC) under sec. 2(62) of the Companies Act .2013. **[7 Marks – June 24 MQP]**

Answer:

- One Person Company is defined under Section 2(62) of the Act which has only one person as a member.
- Section 3 of the Act indicates that OPC is a private limited company.

Eligibility

Only a natural person who is an Indian citizen WHETHER RESIDENT IN INDIA (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) OR OTHERWISE

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

Rules regarding its membership

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in INC-3 and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar in INC-4.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 180 days
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases

Section 7 Incorporation of Company

Steps for Incorporation of Companies

Question 47:

Describe the procedure to be followed for the incorporations of a company. [MTP June 20 – 10 Marks] [June 23 Syllabus 2022 – 9 Marks]

Answer:

Section 7 of the Companies Act, 2013 provides for the procedure to be followed for the incorporations of a company. The promotor of the company shall submit the following documents to the Registrar of companies within whose jurisdiction the registered office of the company is proposed to be situated for registration.

(a) Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) A declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of the Act and rules made thereunder in respect of registration;

(c) A declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that -(Form No. INC-9)

(1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or

(2) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years and

(3) that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) The address for correspondence till registered office is established;

(e) All particulars of every subscriber to the memorandum along with the proof of identity;

(f) The particulars of the persons mentioned in the articles as the first directors of the company;

(g) The consent to act as directors of company in such form as may be prescribed. The memorandum of association and articles of association are the basic essential documents of the company.

A new section (10A) has been introduced with the introduction of Companies Amendment Ordinance. It provides that every company, incorporated after the notification of the ordinance, shall not commence business, unless the directors file a declaration within 180 days of incorporation that every subscriber has paid for the shares as agreed and the registered office has been verified by filing necessary returns.

Under 12A (new in section) the name of the company may be striked off if no office is found on physical verification.

Step 1- Selection of type of Company

Step 2- The promoter has to select a name for the company. [Fill in the blanks – Dec 22]

Step 3- Filing of Forms INC 32 (Spice +) with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated within Next 20 Days after Reservation of name

INC -22 -A company may furnish verification of its registered office:

- In form INC 32 (Spice +) at the time of Incorporation
- In form INC 22 within 30 days of Incorporation [June 17 – FIB]

Step 4- Issue of Certificate of Incorporation by Registrar in Form No. INC-11 [Dec 19 | June 18 – MTB]

Question 48:

Examine the provisions of the Companies Act, 2013 with reference to the publication and change of company's name. **[June 25 - 7 Marks]**

Answer:

Section 12 (3) of the Companies Act, 2013 provides that every company shall publish its name in the following manner:

1. The company shall paint or affix its name and the address of the Registered Office and keep the same painted or affixed on the outside of every office of the company or place in which the company carries on its business, in a conspicuous position and in legible letters
2. The language of the words shall be of any language, but one language shall be of the local language of that place
3. The company shall have its name engraved in legible characters on its seal, if any (company seal is made optional now)
4. The company shall get its name, address of its registered office, Corporate Identity Number, telephone number, fax number, email id and website address printed etc., in all its business letters, invoices, notice etc, and in other official communications
5. The company shall have its name printed on hundis, promissory notes, bills of exchange and such other documents as may be prescribed.
6. The words 'One Person Company' shall be mentioned in brackets below the name of such company, wherever the name is printed or affixed or engraved.
7. The first proviso to Section 12 provides that where a company has changed its name or names during the last two years, it shall paint or affix or print along with the name, the former name or names so changed during the last two years.

Question 48A:

Discuss the procedure of alteration of memorandum of association as per the companies Act, 2013. [June 17 – 10 Marks] [7 Marks – MQP Set 1 Syllabus 2022] [10 Marks – MQP]

Answer:

Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. These provisions are: -

1. Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

2. Name Change of the company: Any change in the name of a company shall be effected only with the approval of Central Government in writing.

However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word "Private", consequent on the conversion of any one class of companies to another class.

3. Entry in register of companies: On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

4. Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

5. Disposal of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of the registered office within a period of sixty days. Before passing of order, the Central Government may satisfy itself that-

• The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or

• That the sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or adequate security has been provided for such discharge.

6. Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar–

- the special resolution passed by the company under sub-section (1) of Section 13;
- the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

7. Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.

8. Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

9. Change in the object of the company: A company, that has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and—

- the details, regarding such a resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such a change;

- The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

10. Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the Company and certify the registration within a period of thirty days from the date of filing of the special resolution.

11. Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

12. Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Question 49:
Sweat equity shares are issued to directors or employees at a discount or for consideration other than cash. Discuss under the provisions of the Companies Act, 2013. [8 Marks – Dec 19]

Answer:
Section 2(88) defines the expression 'sweat equity shares' as

- such equity shares as are issued by a company
- to its directors or employees at a discount or for consideration, other than cash,
- for providing their know-how or making available rights in the nature of intellectual property rights or value additions,
- by whatever name called.

For this purpose the term 'employee' means-

- a permanent employee of the company who has been working in India or outside India; or
- a director of the company, whether a whole time director or not; or
- an employee or a director as defined above of a subsidiary, in India or outside India, or of holding company of the company.

Section 54 provides that a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled:

- the issue is authorized by a special resolution passed by the company;
- the resolution specifies
  - the number of shares,
  - the current market price,
  - consideration, if any, and

- the class or classes of directors or employees to whom such equity shares are to be issued;
- where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by SEBI in this behalf.
- If they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

Time limit for making allotment: SR authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than 12 months from the date of passing SR.

Lock in period: The sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of 3 years from the date of allotment, and the fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate. [June 18 MCQ]

Limits on sweat equity shares:

(a) The company shall not issue sweat equity shares for more than 15% of the existing paid up equity share capital in one FY or shares of the issue value of Rs. 5 crore, whichever is higher:

(b) At any time, the sweat equity shares shall not exceed 25% of the paid up equity capital of the company.

(c) A startup company, may issue sweat equity shares not exceeding 50% of its paid up capital upto 10 years from the date of its incorporation or registration.

The Board of Directors shall disclose in the Director's Report for the year in which such shares are issued. The company shall maintain a Register of Sweat Equity Shares in Form No. SH-3 which will be maintained at the registered office of the company or such other place as the Board may be decided. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the Board for this purpose.

Section 54(2) provides that the rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued and the holders of such shares shall rank pari passu with other equity shareholders.

Question 50:

Discuss the provisions of the Companies Act, 2013 regarding issue of bonus shares. [8 Marks – Dec 18] [9 Marks – Dec 22]

Answer:

Issue Of Bonus Shares - Legal Requirements (Sec. 63)

1. Power in articles	Authorisation in the articles is required to issue the bonus shares.
2. Recommendation of the Board	• Bonus shares can be issued only if the Board recommends such an issue. • A company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same (Rule 7 of the Companies (Share Capital and Debentures) Rules, 2014).
3. Ordinary resolution	Issue of bonus shares is possible only if the authorisation to issue the bonus shares is obtained by passing an OR in the GM.
4. Sources of issue	• Bonus shares may be issued out of- (a) the free reserves; or (b) the Securities Premium Account; or (c) the Capital Redemption Reserve Account. • Bonus shares shall not be issued by capitalising the reserves created by the revaluation of assets.
5. No default in debts	Bonus shares can be issued only if the company has not defaulted in payment of principal sum or interest on the fixed deposits or debt securities issued by it.
6. No default in statutory dues	Bonus shares can be issued only if the company has not defaulted in payment of statutory dues of the employees, such as contribution to provident fund, gratuity and bonus.
7. Compliance with prescribed conditions	Conditions prescribed by CG in respect of issue of bonus shares must be complied with.
8. Issued to existing members	Bonus shares can be issued only to the existing members of the company.
9. Fully paid shares	Bonus shares must be fully paid up.
10. Existing shares to be fully paid up	If there are any partly paid shares, they must be made fully paid up before the issue of bonus shares.
11. Not to be in lieu of dividend	Bonus shares shall not be issued in lieu of dividend.

Question 51:
Further issue of shares

Answer:

Section 62 provides for the further issue of share capital. Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered-

- to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid up share capital on those shares by sending a letter of offer subject to the following condition-
    - the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than 15 days and not exceeding 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
    - unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favor of any other person and the notice shall contain a statement of this right;
    - after the expiry of the time or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company
- to employees under a scheme of Employees' stock option, subject to special resolution passed by the company and subject to such conditions as may be prescribed; or
- to any persons, if it is authorized by a special resolution, whether or not those persons include the persons referred above either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

The notice is to be dispatched through registered post or speed post or through electronic mode to all the existing shareholders at least 3 days before the opening of the issue.

Section 68 - Power of Company to Purchase its Own Securities

Question 52:
Critically assess the conditions for Buy back of Shares by listed company in India with an example. [7 Marks MQP June 23] [Dec 23 – 7 Marks New Syllabus]

Critically assess the conditions for Buy back of Shares by listed company in India with an example. [MQP 7 Marks]

Answer:

1.Source: Company may purchase its own shares or other specified securities out of;

(i)Its free reserves;

(ii)The securities premium account; or

(iii)The proceeds of an earlier issue of shares or other specified securities.

Restriction: However, no buy-back can be done out of proceeds of an earlier issue of same kind of shares/securities.

2.Conditions for Buy Back – Before Buy Back

(i) Buy-back is authorized by the articles of association of the Company.
(ii) A company may buy – back by

Board Resolution	Special Resolution
✓ up to 10% of the aggregate of paid-up equity capital and free reserves (includes securities premium account only for the purpose of this section). ✓ This Board resolution must be passed at a Board Meeting only and not by circulation.	✓ more than 10% of the aggregate of paid-up equity capital and free reserves but up to 25% of the aggregate of the paid-up capital (equity & preference) and free reserves.

Buy- back of equity shares: The buy-back in any financial year shall not exceed 25% of its total paid-up equity capital in that financial year.

(iii) All the shares for buy-back are fully paid-up.

(iv) Offer Period: The buy-back offer shall remain open for min 15 days & max 30 days from the date of dispatch of Letter of Offer.

Provided that where all members of a Company agree, the offer for buy back may remain open for a period less than 15 days.

(v) The Companies will have to make full and complete disclosure of all material facts in the notice of the meeting at which special resolution is proposed to be passed. These disclosures will include the necessity for buy-back; the time limit for completion of the buy-back; class of securities intended to be purchased; and amount to be invested for buy - back.

(vi) The buy-back may be from the

- ✓ existing holders on a proportionate basis;
- ✓ open market; or
- ✓ employees of the company to whom shares/securities have been issued under a scheme of stock option or as sweat equity.

(vii) After passing the special resolution or board resolution and before making buy - back, the company is required to file 'a declaration of solvency' signed by at least two directors of the company, one of whom shall be the managing director, if any in Form No. SH.9 with the ROC and also with SEBI, if listed, to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of

<table>
<tr><td colspan="4">meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board.
(viii) After buy-back, the debt equity ratio shall 2:1 i.e., the debt should not be more than twice the equity after buy-back. Here 'debt' means secured as well as unsecured debts; and 'equity' means paid-up share capital and free reserves.
Govt company engaged in NBFC or housing finance business, the debt equity ration can be 6: 1</td></tr>
<tr><td colspan="4">3.Conditions for Buy Back – After Buy Back</td></tr>
<tr><td colspan="4">Company shall</td></tr>
<tr><td>extinguish and physically destroy the shares/securities bought- back within 7 days of buy-back.</td><td>not make any issue of same kind of shares/securities (including rights shares) within a period of 6 months from the date of completion of buy-back. Exceptions are:
(i)Bonus issue;
(ii)Conversion of warrants;
(iii)Stock option scheme;
(iv)Sweat equity; and
(v)Conversion of preference shares/debentures into equity shares.</td><td>shall not make any buy back offer within a period of one year from the date of the closure of the preceding offer of buy-back, if any.</td><td>Complete Buy Back within one year from the date of passing the Special-Resolution or Board Resolution, as the case may be.</td></tr>
<tr><td colspan="2">Maintain a register of shares bought back in Form No. SH – 10 giving the following details: —
(i)The consideration paid;
(ii)The date of cancellation;
(iii)The date of extinguishment and physical destruction; and
(iv)Such other particulars as may be prescribed.</td><td colspan="2">File with the ROC and also with SEBI, if listed, a return in Form No. SH. 11 certified in Form No. SH.15 signed by two directors of the company including the managing director, if any within 30 days of such completion.</td></tr>
<tr><td colspan="4">Penal Provision</td></tr>
<tr><td colspan="2">Company</td><td colspan="2">Officer in default</td></tr>
<tr><td colspan="2">Fine = Min = 1 lakh, Max = 3 lakh</td><td colspan="2">Fine = Min = 1 lakh, Max = 3 lakh</td></tr>
<tr><td colspan="4">Example: Both the Companies Act and SEBI guidelines made provisions for companies to buy back their own shares. Indian regulations require companies to cancel the shares that it buys back unlike in some other countries where it's allowed to keep those shares alive on its own</td></tr>
</table>

balance sheet. The concept of share buybacks is also common in India. Several companies announce buybacks in order to improve shareholder value. For example, in Oct-2022, Bajaj Auto announced a share buyback of about 64 lakh number shares from the public.

Let's say company ABC has Rs. 20,00,000 in cash and 1,00,000 shares in issue, trading at a price of Rs. 10 per share. If ABC buys back 150,000 shares, using Rs. 1,50,000 in cash, it's left with Rs.18,50,000 shares in circulation and Rs. 18,50,000 in cash.

Question 53:

Elucidate the circumstances in which a company cannot buy-back its own shares as per the provisions of the Companies Act, 2013. [Dec 17 – 6 Marks] [June 23 Syllabus 2016 – 5 Marks]

Answer:

Prohibition in case of defaults in payments: No company shall directly or indirectly buy-back its own shares or other specified securities, if default is made by the company in - -

(a) repayment of deposits or interest payable thereon

(b) redemption of debentures

(c) redemption of preference shares

(d) payment of dividend to any shareholder

(e) repayment of any term loan or interest payable thereon to any financial institution or bank.

However, the buy-back is not prohibited, if the default is remedied and a period of 3 years has lapsed after such default ceased to subsist.

Other prohibitions: No company shall directly or indirectly buy-back its own shares or other specified securities -

(a) through any subsidiary company including its own subsidiary companies; or

(b) through any investment company or group of investment companies.

Prohibition in case of non-compliances: No company shall, directly or indirectly, buy-back its own shares or other specified securities if it has not complied with the provisions of-

(a) Sec. 92 (Filing of annual return);

(b) Sec. 123 (Provisions relating to declaration of dividend); or

(c) Sec. 127 (Payment of dividend within 30 days); or

(d) Sec. 129 (Provisions relating to financial statement).

Question 54:
Critically assess the different conditions laid down in the Companies Act, 2013 for issuing secured debentures. **[June 24 – 7 Marks]**

Answer:
Section 71(3) provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014 provides the conditions for the issue of secured debentures. The conditions are as follows:

1. The date of redemption of secured debentures **shall not exceed 10 years**;
2. The following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years:
   - Companies engaged in infrastructure projects;
   - Infrastructure Finance Companies
   - Infrastructure Debt Fund Non-Banking Financial Companies;
3. The issue shall be secured by the creation of charge, on the properties or assets of the company,
   having avalue which is sufficient for the due repayment of the amount of debentures and interest thereon;
4. The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of debentures;
5. A debenture deed shall be executed to protect the interest of debenture holders; and
6. The security for the debentures by way of a charge or mortgage shall be created in favor of the debenture trustee ono any specific movable property of the company; and any specific immovable property wherever situate, or any interest therein.
7. In case of a non-banking financial company, the charge or mortgage may be created on any movable property.

In case any issue of debentures by a Government company which is fully secured by the guarantee given by the
Central Government or one or more State Government or by both, the requirement of creation of charge shall
not apply.

Annual Return (Sec. 92)

Question 55:

Indicate what are the particulars to be incorporated in the Annual Return? [MTP June 20 - 10 June 20]

What are the different information to be contained in an annual return required to be filed by a company? [Dec 23 – 9 Marks – Old Syllabus] **[MQP Set 1 Dec 25 - 7 Marks]**

Answer:

1. Every company shall prepare an annual return in Form No. MGT-7. However, every OPC and every Small Company shall file the annual return in Form No. MGT-7A. [MCQ June 29]
2. Contents of annual return:

   (a) The address of registered office of the company, its principal business activities, and the particulars of its holding, subsidiary and associate companies

   (b) Its shares, debentures and other securities and shareholding pattern

   ~~(c) Its indebtness~~ [Omitted]

   (d) Its members and debenture-holders, and changes in the members and debenture-holders since the close of the previous FY

   (e) Its promoters, directors and key managerial personnel, and changes in directors and key managerial personnel since the close of the previous FY

   (f) Meetings of members or a class thereof, and of the Board and its various committees, and attendance details

   (g) Remuneration of directors and key managerial personnel (In case of private companies, which are small companies, aggregate amount of remuneration drawn by directors is to be disclosed)

   (h) Penalty or punishment imposed on the company, directors or officers and details of compounding of offences and appeals made

   (i) Matters relating to certification of compliances and disclosures

   (j) Details with respect to shares held by the Foreign Institutional Investors

   (k) Such other matters as may be prescribed.
3. Signing of annual return:

(a) The annual return shall be signed by -

(i) the company secretary (if there is no company secretary, then, by a company secretary in practice); and

(ii) a director.

(b) In the case of OPC, Small Company and private company, if such private company is a start-up, the annual return shall be signed by – [Dec 21 MCQ] [Dec 19 MCQ]

(i) the company secretary; or

(ii) a director (if there is no company secretary).

3. Certification of annual return:

(a) The annual return shall be certified by a company secretary in practice, in case of-

(i) a listed company; or

(ii) a company having a paid-up share capital of Rs. 10 crore or more; or

(iii) a company having turnover of Rs. 50 crore or more.

(b) It shall be stated by way of certification that -

(i) the annual return discloses the facts correctly and adequately; and

(ii) the company has complied with all the provisions of this Act.

(c) The company secretary in practice shall issue a certificate in Form No. MGT-8.

4. Time limit for filing:

(a) The annual return shall be filed with the Registrar within 60 days of the date on which AGM is held.

(b) If the AGM for any year is not held, the annual return shall be filed within 60 days of the last date AGM ought to have been held, together with a statement specifying the reasons for not holding the AGM.

Question 56

XYZ Ltd. issued Notice for holding of its Annual General Meeting on 30th September 2019. The notice was posted to the members on 7th September 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act. Referring to the provisions of the Act, decide.

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

(iii) Can the delay in giving notice be condoned? [7 Marks – Dec 19] [MQP Set 2 Syllabus 2022]

Answer:

According to the Section 101(1) of the Companies Act, 2013, annual general Meeting of a company may be called by giving not less than clear twenty-one days notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that clear 21 days notice mean that date of which notice is served and the date of meeting are excluded for sending the notice.

Shorter notice: Any GM may be called by giving shorter notice, if consent, in writing or by electronic mode, is given – [Dec 21 MCQ]

(i) in the case of an AGM, by not less than 95% of the members entitled to vote thereat; and

(ii) in the case of EGM, by -

(a) majority in number of members holding not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting, in case of a company having a share capital; or

(b) members having not less than 95% of the total voting power, if the company has no share capital.

Further, Rule 35(6) of the Company (incorporation Rules,2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of the notice of meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

(i) A 21 days clear notice must be given. In the given question, only 20 days notice is served (after excluding 48 hours from the time of its posting and day of sending and date of meeting). Therefore, the meeting was not validly called.

(ii) As explained in (i) above, notice falls short by 1 day.

(iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence the delay in giving the notice calling the meeting cannot be condoned.

Quorum For meeting (Sec. 103)

Question 57:

Discuss the provisions relating to Quorum for meetings of a company. [MTP June 23 Syllabus – 8 Marks]

1. Public company – Quorum: Number of members as on the date of meeting;
   Upto 1000 – 5 members personally present
   More than 1,000 but upto 5,000 - 15 members personally present
   More than 5,000 - 30 members personally present
2. Private company – Quorum: [MCQ June 19]
   2 members personally present shall be the quorum.
   Articles may provide for a larger number as the quorum.
3. Lack of quorum - Legal effect:
   If the quorum is not present within half-an-hour from the time fixed for holding the GM, then –

EGM was called by requisitionists - Meeting shall stand cancelled.

Any other case –

(i) The meeting shall adjourn to such day, time and place as may be determined by the Board.

(ii) However, if the Board has not so determined the day, time and place, the meeting shall adjourn to same day, time and place in the next week.

(iii) At least 3 days' notice of adjourned meeting shall be given to the members either individually or by publishing an advertisement in 2 newspapers (one in English and one in vernacular language).

(iv) If at the adjourned meeting also, quorum is not present within half-an-hour from the time fixed for holding the GM, the members present shall be the quorum.

4. Special Note:

- Quorum needs to be present only at the commencement of GM.
- Thus, quorum is not required at the time of passing each and every resolution.

Qualifications & Disqualifications

Question 58:

What are the disqualifications of a person for the appointment as a director under the Companies Act, 2013? [8 Marks – Dec 19] [10 Marks – June 18] [8 Marks – MTP Dec 23 Syllabus 2016] [7 Marks MQP Set 1 Syllabus 2022] **[June 24 - 7 Marks]**

Answer:

The Companies Act does not prescribe any academic or professional qualifications for directors. There is also **no mandatory share qualification** as per the Act, unless the Articles of Association of the company prescribes for the same. Therefore, a director neither needs any minimum professional qualification nor any share qualification unless the articles of a company suggest for the same.

Grounds of disqualification [Sec. 164(1)]

A person shall not be eligible for appointment as a director of a company if:

(a) he is of **unsound mind** and stands so declared by a competent court

(b) he is an **undischarged** insolvent;

(c) he has applied to be **adjudicated** as an **insolvent** and his application is pending;

(d) he has been **convicted by a court** of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to **imprisonment for not less than six months** and a **period of five years has not elapsed** from the date of expiry of the sentence.

Provided that if a person has been **convicted** of any offence and sentenced in respect thereof to imprisonment for a period of **seven years or more**, he shall not be eligible to be appointed as a director in any company;

Convicted by a Court for any offence (whether involving moral turpitude or otherwise)	Convicted by a Court for any offence (whether involving moral turpitude or otherwise)
• Imprisonment (6 months or more) • Disqualified for 5 years (from the expiry of sentence)	• Imprisonment (7 years or more) • Disqualified for lifetime.

(e) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force.

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call.

(g) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years.

(h) he has not obtained DIN.

(i) Not complied with Sec. 165(1) [i.e. his directorships exceed the limit specified u/s 165(1)]

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Grounds of disqualification [Sec. 164(2)]

(2) No person who is or has been a director of a company which—

(a) has not filed

- financial statements

  or

- annual returns
- for any continuous period of three financial years; or

(b) has failed to

- repay the deposits accepted by it

  or

- pay interest thereon

  or

- to redeem any debentures on the due date

  or

  pay interest due thereon

  or

- pay any dividend declared

  and

such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

Test Yourself

Question 59:

State with reference to the relevant provisions of the Companies Act, 2013 whether the following persons can be appointed as a director of a public company:

(i) Mr. A, who has huge personal liabilities far in excess of his assets and properties, has applied to the Court for adjudicating him as an insolvent and such application is pending.

(ii) Mr. B, who was caught red-handed in a shop lifting case 2 years ago, was convicted by a Court and sentenced to imprisonment for a period of 8 weeks.

(iii) Mr. C, former bank executive, was convicted by a Court 8 years ago for embezzlement of funds and sentenced to imprisonment for a period of 1 year.

(iv) Mr. D is a director of DLT Ltd., which has not filed its annual returns pertaining to the annual general meetings held in the calendar years 2014, 2015 and 2016.

Answer:

(i) As per Section 164(1), Since, Mr. A has himself applied to the Court for adjudicating himself as an insolvent, he is disqualified to be appointed as director, even if his application is pending.

(ii) As per Section 164(1), In the present case Mr. B was caught red-handed in a shop lifting case and was sentenced to imprisonment for a period of 8 weeks i.e. less than 6 months, he is not disqualified and can be appointed as director.

(iii) As per Section 164(1), if any person has been convicted by a Court of any offence, whether involving moral turpitude or otherwise, and sentenced to imprisonment for 6 months or more, he is disqualified to be appointed as director for next 5 years from the date of expiry of the sentence. Since, more than 5 years has been elapsed form the date of expiry of the sentence, Mr. C can be appointed as a director.

(iv) As per Section 164(2); a person who is or has been a director of a company shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years which has not filed financial statements or annual returns for any continuous period of 3 financial years. Since, Mr. D has not filed annual returns for continuous period of 3 financial years; he is disqualified to be appointed as director for next 5 years.

Appointment

Question 60:

Discuss the procedure for Appointment, Rotation of Directors and re-appointment of directors. [8 Marks – MTP June 20] [5 Marks – June 23 Syllabus 2022] [MQP Set 2 Syllabus 22] [10 Marks – MQP] [Dec 23 - 5 Marks (16)] **[Model Question Paper Set 2 – Dec 23 – 7 Marks]**

Answer:

Maximum and Minimum Number of Directors (Section 149(1))	• Every company must have a Board of Directors consisting of **individuals** as directors.
	• Minimum number of directors:
	  • **Public company: 3 directors.**
	  • **Private company: 2 directors.**
	  • **One Person Company (OPC): 1 director.**
	• **Maximum** number of directors: **15 directors.**
	• A company may appoint more than 15 directors after passing a special resolution.

Requirement for Woman Director	Certain classes of companies may be prescribed to have at least one-woman director.
Modes of Appointment of Directors	• **First Directors**: Appointed at the time of incorporation of the company. • **Appointment at General Meeting**: Directors elected or appointed by the shareholders during a general meeting. • **Appointment by Board of Directors**: The Board may appoint directors in specific cases. • **Resident Director**: A director who fulfills the residency requirement as prescribed by the Act. • **Independent Directors**: Appointed to ensure objectivity and compliance with governance norms.
Types of Directors Appointed by the Board	• **Additional Directors**: Appointed by the Board, subject to conditions under the Act. • **Alternate Directors**: Appointed in the absence of a director who is out of the country for more than three months. • **Nominee Directors**: Appointed to represent the interests of specific stakeholders, such as lenders or investors. • **Casual Vacancies**: The Board can fill up casual vacancies arising due to resignation, death, or other reasons.

Retirement and Rotation of Directors

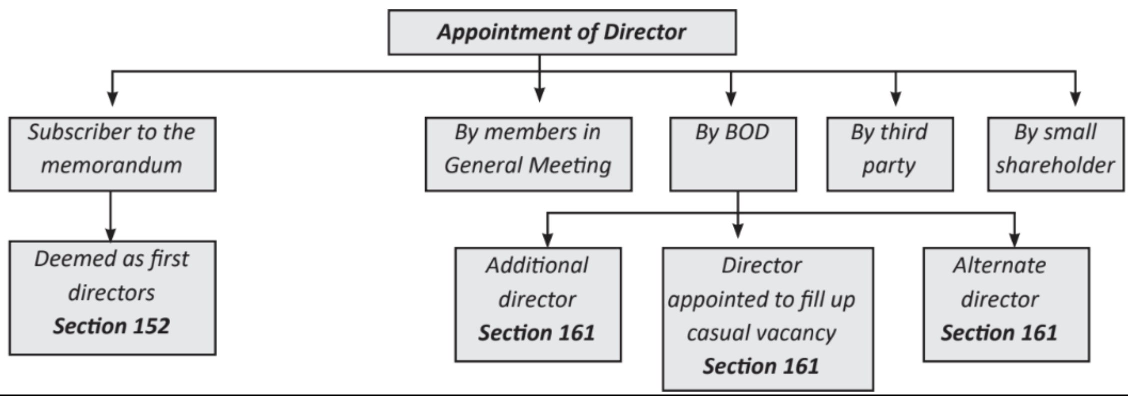
Provision in Articles of Association	If the Articles of Association provide for retirement of all directors in the Annual General Meeting (AGM), then all directors are liable to retire.

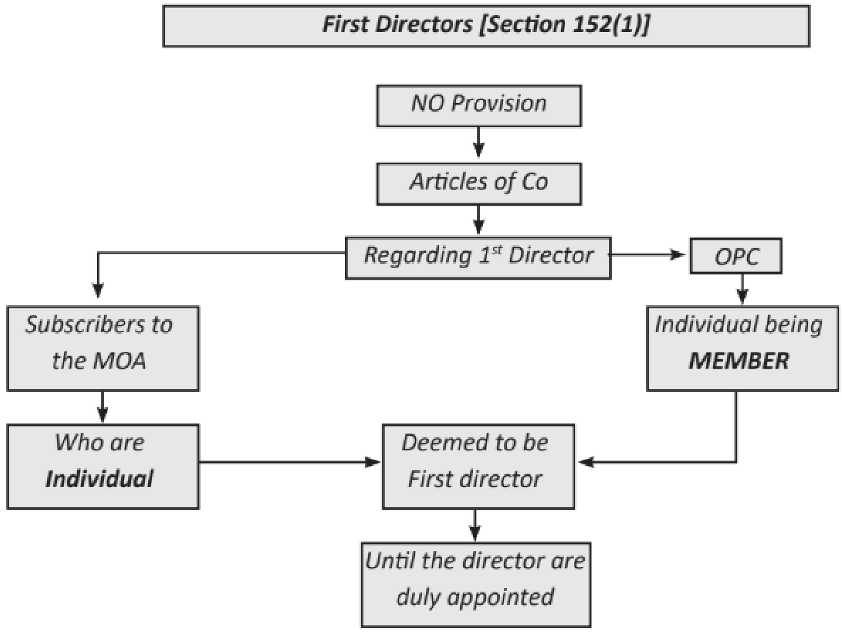
Section 152(6) of the Companies Act, 2013	
Liability for Retirement by Rotation	• Two-thirds (2/3rd) of the total number of directors are liable to retire by rotation. • These directors are referred to as "retiring directors."
Vacating Office	One-third (1/3rd) of the retiring directors (2/3rd of total directors) are liable to vacate office at the AGM.

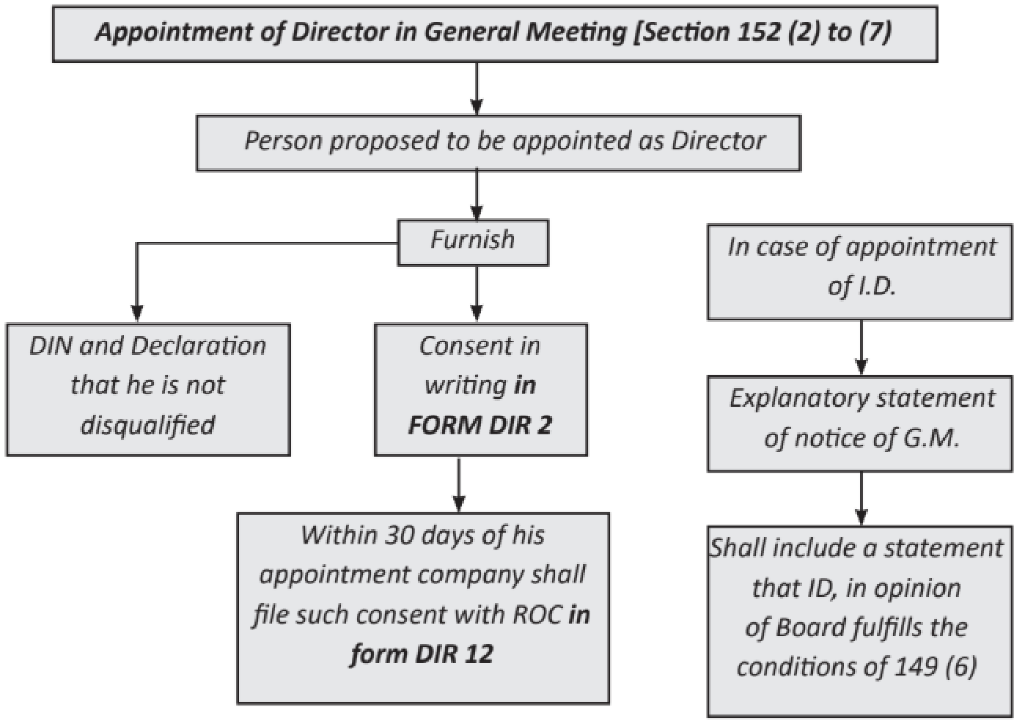
Order of Retirement	• Directors who have been in office for the longest period are liable to retire first.
	• If two or more directors were appointed on the same day:
	  ◦ They may retire based on mutual understanding.
	  ◦ If mutual understanding is not possible, they retire by drawing lots.

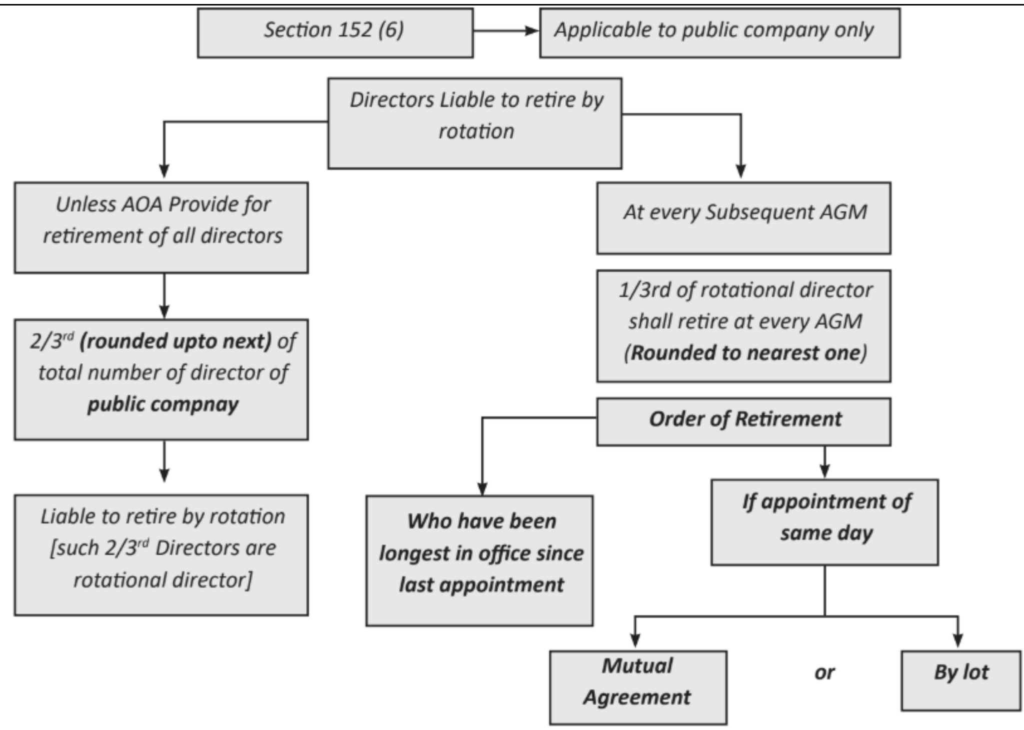
Applicability of Section 152(6)	Unless otherwise provided in the Articles:
	• At least two-thirds (2/3rd) of the total number of directors (excluding independent directors) of a public company shall:
	  1. Be persons liable to retirement by rotation.
	  2. Be appointed by the company in a general meeting (unless expressly provided otherwise in the Act).

Non-Rotational Directors	Remaining directors (non-rotational, non-retiring, or permanent directors) in a public company are to be appointed as per the provisions in the Articles of the company.
Appointment at AGM Following Retirement	Where a director retires by rotation at the AGM, the company may appoint at the same meeting: i. The retiring director; or ii. Some other person to fill the vacancy.




First Directors [Section 152(1)]
NO Provision
Articles of Co
Regarding 1st Director
OPC
Subscribers to the MOA
Individual being MEMBER
Who are Individual
Deemed to be First director
Until the director are duly appointed


Appointment of Director in General Meeting [Section 152 (2) to (7)
Person proposed to be appointed as Director
Furnish
In case of appointment of I.D.
DIN and Declaration that he is not disqualified
Consent in writing in FORM DIR 2
Explanatory statement of notice of G.M.
Within 30 days of his appointment company shall file such consent with ROC in form DIR 12
Shall include a statement that ID, in opinion of Board fulfills the conditions of 149 (6)



Total Directors	3	4	5	6	7	8	9	10	11
Rotational Directors Total Director x 2/3 *(rounded up to next)*	2	3	4	4	5	6	6	7	8
Non-Rotational Directors Total Director - Rotational directors	1	1	1	2	2,	2	3	3	3
Director that retire at AGM Rotational Directors * 1/3 *(rounded to nearest)*	1	1	1	1	2	2	2	2	3

Resignation

Question 61:

Describe the procedure for the resignation of Director under the Companies Act, 2013. [10 Marks – June 19] [9 Marks – June 17] [10 Marks – June 23 Syllabus 2016] **[MQP Dec 25 Set 2 - 7 Marks]**

Answer:

Section 168

(1) A director may resign from his office

- by giving a notice in writing to the company

  and

- the Board shall on receipt of such notice take note of the same

  and

- the company shall within thirty days from the date of receipt of notice of resignation from a director intimate the Registrar in Form DIR-12 and

- post the information on its website, if any.

and

- shall also place the fact of such resignation in the report of Directors laid in the immediately following general meeting by the company:

Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in Form DIR-11

Provided that in case a company has already filed Form DIR-12 with the Registrar, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation

(2) The resignation of a director shall take effect from the date

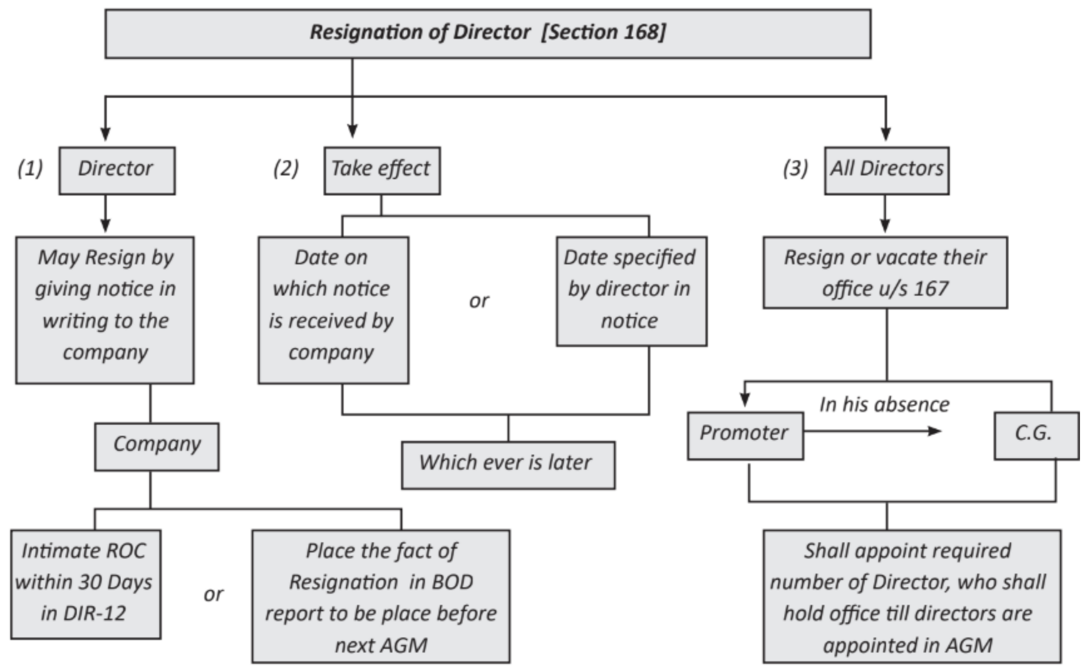
- on which the notice is received by the company

or

- the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the Directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of Directors who shall hold office till the Directors are appointed by the company in general meeting.



- *Director within a period of 30 days, forward a copy of Resignation in DIR-II.*
- *Foreign Director can authorise PCS, PCA PCMA to file the some on his behalf.*

Question 62:

Mr. Dilip Kumar, a director of ABC Co., resigns from his office on and with effect from 15.04.2023 by tendering his resignation letter addressed to the Chairman of the ABC Co. The letter reaches to the desk of the Chairman on 25.04.2023. Mr. Dilip Kumar did not forward a copy of his resignation along with detailed reasons for the resignation to the Registrar. The Board did not accept the resignation on the ground that the same letter has not been forwarded to the Registrar. Mr. Dilip Kumar argues that he need not to send the letter to the Registrar, hence, his resignation be accepted with effect from 15.04.2023. Analyze the situation and discuss. **[Dec 23 - 7 Marks (22)] [June 25 – 7 Marks]**

Answer:

A director may resign from his office by giving a notice in writing to the company as per Section 168 (1) of the Companies Act, 2013. On receipt of such notice, the Board shall take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, resignation of Mr. Dilip Kumar, a director of ABC Co, may be accepted and it cannot be rejected on mere the ground that the copy of the letter has not been forwarded to the Registrar, It was held in Saumil Dilip Mehta vs. State of Maharashtra [2002], that a director can resign just by sending in writing a letter informing either chairman or secretary of company, his intention to resign from post of director of said company. He can tender his resignation unilaterally and without sending a notice to Registrar of Companies.

Therefore, the resignation letter of Mr. Dilip Kumar may be accepted with effect from 25.04.2023 i.e. the date of receiving the intimation of the resignation of the director by the Chairman and not with effect from the date of sending the resignation letter.

Removal

Question 63:

Can a director be removed? If so give the procedure in detail. [10 Marks – MTP June 20] [Dec 22 – 10 Marks]

OR

The members of MNO Ltd., a public company, are dissatisfied with the conduct of one of the directors, Mr. A. They decide to remove him before the expiry of his term. Mr. A was appointed by the Board and not by the shareholders. The company has 12 directors in total, including 2 appointed under Section161 (Additional Directors). The Board is hesitant to remove Mr. A without Board approval. Can the shareholders proceed to remove Mr. A? What is the correct legal process, and what are Mr. A's rights under the Companies Act. **[MQP Set 1 Dec 25 - 7 Marks]**

Answer:

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

Procedure

- A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.
- The vacancy is created under this section after the removal of the director then in the same meeting of the removal another director is being appointed for time being, and a special notice of the intended appointment is provided.
- A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.
- When a director is removed as aforementioned, his office vacates automatically u/s 167.
- The removed director is liable for the damages and compensation which is required to be payable to him in lieu of his removal or termination according to the prescribed terms and conditions of the appointment.

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

Order of tribunal for the termination or setting aside of an agreement

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

years from the date of Tribunal's order terminating or setting aside his contract with the company.

OR

Answer:

1. **As per Section 169 of the Companies Act, 2013**, the shareholders possess the statutory right to remove a director before the expiry of his term by passing an ordinary resolution in a general meeting, subject to the condition that a special notice of the intended resolution is given.
2. **This right may be exercised irrespective of the mode of appointment**, i.e., whether the director was appointed by the Board or by the shareholders, except where the director has been appointed by the Tribunal.
3. **In the present case, Mr. A was appointed by the Board**, and therefore does not fall within the exception of directors appointed by the Tribunal.
4. Accordingly, **Mr. A may be removed by the shareholders**, provided that the procedure prescribed under Section 169 is duly complied with.
5. The **special notice for removal must be issued** by such number of members as hold not less than 1% of the total voting power, or shares on which an aggregate sum of not less than ₹5,00,000 has been paid up.
6. Upon receipt of the special notice, **the company is required to forward a copy thereof to Mr. A**, who is entitled to make a written representation and is further entitled to be heard at the meeting wherein the resolution is proposed to be considered.
7. **The approval of the Board is not required for such removal**, since the power to remove a director is exclusively vested in the shareholders.
8. Therefore, **the shareholders may lawfully proceed to remove Mr. A**, provided that the statutory procedure under Section 169 is complied with and that Mr. A is afforded an opportunity to present his case before the general meeting.

Question 63A:

Mr. A is a director of PQR Ltd. appointed by its shareholders by passing an ordinary resolution. Only after six months of his appointment, a news was published in a local daily mentioning his name. As per the news, Mr. A asked for a bribe of huge amount from a supplier of the company. Following this, a month later, shareholders of the company removed Mr. A from the office of the director and appointed Mr. B in his place for the time being at the said meeting. Now, Mr. A is arguing that his removal before completion of his tenure on the basis of media reports is not only unfortunate but also illegal as the allegation has not yet been proved. Examine the validity of removal of Mr. A and also discuss whether the temporary appointment of Mr. B is valid or not. **[MQP Set 2 Dec 25 - 7 Marks]**

Answer:

As per Section 169 of Companies Act, 2013, shareholders have been given the inherent right to remove the directors appointed by them. Directors can be either removed by shareholders or by Tribunal. It is not necessary that there should be proof of mismanagement, breach of trust, misfeasance or other misconduct on the part of the directors. Special notice shall be required of any resolution to remove a director under this

section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed. Where the shareholders feel the policies pursued by the directors or any of them are not to their liking, they have the option to remove the directors by passing an ordinary resolution in the same way as they have the right to appoint directors by passing an ordinary resolution. Therefore, the removal of Mr. A is legally permissible and valid. The vacancy is created under this situation after the removal of Mr. Aand in the same meeting Mr. B is being appointed for the time being. The newly appointed director, Mr. B, has to hold the post until the duration up to the new formal appointment of the director is made. Thus, appointment of Mr. B is also valid and as per law.
Examples of Oppressive Acts: • Exclusion of minority shareholders from decision-making. • Unfair allocation of dividends. • Misuse of company funds for personal gain by the majority shareholders. • Siphoning off the company's assets. **Examples of Mismanagement**: • Poor financial handling leading to financial distress. • Decisions that benefit specific individuals rather than the company as a whole. • Lack of proper accounting records. • Failure to act in the company's best interest, leading to loss or bankruptcy.

Powers	
Question 64: Discuss the powers of the Board of Directors of a company as per the Companies Act, 2013. [10 Marks – Dec 18] [MQP Set 2 Syllabus 2022] **[MQP Set 1 Dec 25 - 7 Marks] [June 25 - 7 Marks]**	
Answer: Powers of the Board: Section 179	
Authority of the Board of Directors	The Board of Directors is entitled to exercise all powers and perform all acts and things that the company is authorized to do.
Conditions for Exercising Powers	The Board must comply with the following provisions while exercising powers or performing acts: • Provisions in the Companies Act, 2013. • Provisions in the Memorandum of Association (MOA). • Provisions in the Articles of Association (AOA). • Any regulations made under the Act, memorandum, or articles. • Regulations made by the company in a general meeting, provided they are consistent with the above.

Restriction on Board's Powers	The Board shall not exercise any power or perform any act or thing which: • Is directed or required under the Act, memorandum, or articles. • Is to be exercised or performed by the company in a general meeting.
Validity of Prior Acts of the Board	No regulation made by the company in a general meeting shall invalidate any prior act of the Board that would have been valid if the regulation had not been made.
The following (section 179(3) read with Rule 8 of Companies (Management & Administration) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely:- (1) to make calls on shareholders in respect of money unpaid on their shares; (2) to authorise buy-back of securities under section 68; (3) to issue securities, including debentures, whether in or outside India; (4) to borrow monies; (5) to invest the funds of the company; (6) to grant loans or give guarantee or provide security in respect of loans; (7) to approve financial statement and the Board's report; (8) to diversify the business of the company; (9) to approve amalgamation, merger or reconstruction; (10) to take over a company or acquire a controlling or substantial stake in another company; (11) to make political contributions; (12) to appoint or remove key managerial personnel (KMP); (13) to appoint internal auditors and secretarial auditor; The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.	

Responsibilities
Question 65: What are the different duties of a director in a company as per the Companies Act, 2013? [7 Marks – Dec 19] [RTP-Dec 2018] [RTP-Dec 2018] [6 Marks – Dec 21] [8 Marks – Dec 17] **[Dec 23 - 7 Marks (22)] [June 25 – 7 Marks]**

Answer:

Duties and Responsibilities of Directors (Section 166, Companies Act, 2013)

The following duties and liabilities have been imposed on the directors of companies, by the Indian Companies Act of 2013, under its Section 166: -

- A director of a company shall **act in accordance with the Articles of Association** of the company.
- A director of the company shall **act in good faith**, in order to promote the objects of the company, for the **benefits of the company** as a whole, and **in the best interests** of the stakeholders of the company.
- A director of a company shall **exercise his duties with due and reasonable care**, skill and diligence and shall exercise independent judgment.
- A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- A director of a company **shall not achieve or attempt to achieve any undue gain or advantage** either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- A director of a company **shall not assign his office and any assignment** so made shall be void.
- Contravention: Min Fine: 1 Lakh | Max Fine: 5 Lakhs.

Prohibition of assignment of office (Section 166)

- No director shall assign his office to any other person. Any assignment of office made by a director shall be void.
- If a director of the company contravenes the provisions of section 166, he shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh.

Question 66:

X, was appointed as a Director by the Articles of Association of a public company incorporated on 1st June, 1970. The Managing Director Empowered X to appoint a successor. X appointed Y as his successor after his death. Inspect whether Y succeed X as the director of the company? **[Model Question Paper Set 1 – June 24 – 7 Marks]**

Ans. No director shall assign his office to any other person. If he does, the assignment shall be void. The articles of a company empowered X by the Managing Director to appoint a successor. Y was appointed as successor of X after his death.

The Court observed that a director is prohibited from assigning his office. The word 'his' used indicates that the prohibition applies only when an office held by a director is assigned to any other person. Where a director dies, the office held by him becomes vacant and therefore such office cannot be assigned to any other person.

Therefore, appointment of a new person in such office does not amount to an assignment [Oriental Metal Pressing Pvt. Ltd. v B.K. Thakoor]. The facts of the given case are identical to the facts discussed in the above case. Accordingly, it can be said that appointment of 'Y' is valid and it does not amount to an assignment of office by 'X'.

Question 67:

Manish, a director of PQR Limited, defaulted in filing annual accounts and annual return with ROC for a continuous period of three financial year ended 31st March 2016. Based on the provisions of the Companies Act, 2013, answer the following:

(i) Whether the Manish can continue to be director of PQR Ltd. when he is also director in UV Ltd?

(ii) Whether Manish can be reappointed in PQR Ltd. as well as UV Ltd.?

(iii) If the defaulting company is a private limited company, what would be your answer? **[7M]**

Answer:

Disqualification by reason of default made by a company [Section 164(2)]: No person who is or has been a director of a company which -

(A) has not filed financial statements or annual returns for any continuous period of 3 financial years; **or**

(B) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be **re-appointed** as a director of that company or **appointed** in other company for a period of 5 years from the date on which the said company fails to do so.

However, where a person is appointed as a director of a company which is in default of clause (A) or clause (B), he shall not incur the disqualification for a period of 6 months from the date of his appointment.

Vacation of office if director incurs disqualifications [Section 167(1)]: The office of a director shall become vacant if he incurs any of the disqualifications specified in section 164(1).

However, where he incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default.

Considering above provisions, answer to given case is as follows:

(i) Manish incurs disqualification under section 164(2) and hence the office of the Manish as a director shall become vacant in UV Ltd. However, Manish can continue to be director of PQR Ltd. till his term is over.

(ii) Manish cannot be reappointed in PQR Ltd. and UV Ltd. as director for 5 years.

(iii) Provisions of Section 164(2) are applicable to all companies whether it is public company or private company. Hence, if defaulting company-is a private limited company answer is still same.

Audit Committee (Section 177)

Question 68:

Write briefly about Audit Committee according to Section 177 of Companies Act. 2013? [MQP Set 1 Syllabus 22]

Demonstrate the functions of audit committee are contained in Sec. 177 of the Companies Act 2013. [MQP Set 2 Syllabus 22] **[MQP Dec 25 Set 2 - 7 Marks]**

1. The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
2. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:
   Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
3. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
4. Every Audit Committee shall act in accordance to a written set of guidelines provided by the Board. which shall, inter alia, include, –
   i) the recommendation for appointment, remuneration and terms of appointment of auditors of thecompany;
   ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
   Example:
      - **Personal Relationships**: Close relationships between audit team members and company employees, especially in key financial positions, could bias the audit. Suppose a member of the audit team is found to have a close personal relationship with a company executive. The Committee would see this as a potential risk to independence.
      - **Past Business Relationships**: If the auditor's firm has been previously employed for other services (e.g., consultancy, tax planning), it may influence their independence. In response to a long-standing audit firm relationship, the Committee could require that the audit partner changes every few years to ensure a fresh perspective.
      - **Length of Engagement**: A long-standing audit relationship might compromise independence due to familiarity, or the auditor may become lenient over time.

   iii) examination of the financial statement and the auditors' report thereon;
   iv) approval or any subsequent modification of transactions of the company with related parties;
   Related Party Transactions

The Audit Committee approves or modifies transactions between the company and related parties, with the option for "omnibus approval" (bulk approval for future transactions) under certain conditions.

Example: If a company director has a relative with a business interest, any transactions between the company and that business must receive Committee approval.

Provided further that in case of transaction,

- other than transactions referred to in section 188, and
- where Audit Committee does not approve the transaction,
- it shall make its recommendations to the Board:

Provided also that in case

- any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it isnot ratified by the Audit Committee within three months from the date of the transaction, such transactionshall be voidable at the option of the Audit Committee and
- if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

v) scrutiny of inter-corporate loans and investments;

vi) valuation of undertakings or assets of the company, wherever it is necessary;

Example: Before acquiring new machinery, the Committee may review a third-party valuation to ensure fair pricing.

vii) evaluation of internal financial controls and risk management systems;

Example: If the company lacks cybersecurity measures, the Committee may recommend implementing security protocols.

viii) monitoring the end use of funds raised through public offers and related matters.

Example: If funds are raised to expand production, the Committee verifies that the funds are indeed used for that purpose.

5. Consultation with Auditors

The Committee can ask the auditors to comment on the company's internal controls, audit scope, and any other observations. They may also discuss issues with auditors and management.

Example: Before finalizing the annual report, the Committee might meet with the auditors to discuss any flagged discrepancies.

6. **Investigative Powers**

   The Audit Committee can investigate matters within its mandate or as directed by the Board. It may also seek expert advice and access all company records for thorough investigation.

   Example: If there's a suspicion of financial irregularity, the Committee can hire forensic experts to investigate.

7. The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

8. The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

9. Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

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

    Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

Question 69:

Rights of Shareholders [June 23 Syllabus 22 – 10 Marks]

[MQP Set 1 Dec 25 - 7 Marks]

As per Section 2(55) of the Companies Act,2013 'Member,' in relation to a company, means -

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;	**(Subscriber to memorandum)**

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;	**(Person named in the register of members)**
(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.	**(Beneficial owner of shares)**

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

Explanation of the Ruling

The court clarified that the legal title to shares is established the moment these procedural steps are completed:

1. **Allotment of Shares**: The company decides to issue specific shares to an allottee.
2. **Issuance of Share Certificate**: The share certificate is prepared and signed by the company.
3. **Entry in the Register of Members**: The name of the allottee is recorded in the official Register of Members, which is a conclusive record of shareholders.

Once these steps are complete, the allottee gains the legal rights of a shareholder, such as voting rights, the right to receive dividends, and the ability to participate in general meetings, regardless of whether they have physically received the share certificate. The share certificate is merely documentary evidence of ownership, not the source of the ownership itself.

Sant Chemicals (P) Ltd. v. Aviat Chemicals (P.) Ltd.

A person whose name is not entered into register of members of company cannot be treated as member or deemed member

Thus, a person can agree to take shares of a company either as the subscriber to the memorandum at the initial stage of its formation or in any of the following manner:

a) by subscribing to its further or new shares;

b) on transfer of its shares from an existing member;

c) on acquisition or purchase of its share (for example, take-over bid, renunciation of rights by an existing members);

d) on acquisition of its shares by devolution (for example, transmission of shares to legal heir of a deceased member, on insolvency, upon merger/amalgamation through the Tribunal's order); and

e) on conversion of convertible debentures or loans pursuant to the terms of issue of such debentures or loan agreement respectively.

The fundamental difference between the subscribers who agree to take shares at the time of formation of the company and persons who agree to take shares later is that the former become members immediately on incorporation of the company, that is, they automatically become members.

The latter, through having agreed to take shares, become members only after their names are entered in the register of members of the company.

A member by virtue of the contract with the company and any other members via the Memorandum and Articles is entitled

- to have his name on the Register of members,
- to vote at the meeting of members,
- to receive dividends when declared,
- to exercise the right of pre-emption, return of capital on winding-up or on reduction ofshare capital of the company.

As a member he also has certain other rights which may or may not arise out of a contract. In exercise of such rights, he is entitled

- to bring action to restrain the company from doing an *ultra vires*act,
- to attend and take part in the proceeding of meetings of the company and to move amendments.

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

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

ii) The right to requisition an extraordinary general meeting of the compay [Sec.100];

iii) The right to receive notice of a general meeting [Sec.101];

iv) The right to appoint proxy and inspect proxy register [Sec.105]

v) In the case of a body corporate which he is a member, the right to appoint a representative to attend a general meeting on its behalf [Sec.113]; and

vi) The right to require the company to circulate resolution [Sec.111].

vii) To have certificate of share held ready for delivery to him within two months from the date of allotment [Sec.56]

viii) To Transfer shares subject to the provisions of the Act and Article of Association [Sec.44].

ix) To inspect the Register of members and Register of debenture-holders and get extracts therefrom [Sec.94].

x) To obtain, on request, minutes of proceedings at general meetings as also to inspect the minutes [Sec.119].

xi) To apply to the Tribunal to have any variation of shareholders rights set aside [Sec.48].

xii) To participate in the removal of directors by passing an ordinary resolution [Sec.169]

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

i) To elect directors and thus to participate in the management through them;

ii) To enjoy the profits of the company in the shape of dividends;

iii) To apply to the court (now Tribunal) for

- relief in case of oppression;
- relief in case of mismanagement;
- winding-up of the company; and

iv) To share in the surplus on winding-up

Question 70:

Define Key Managerial Personnel as per the Companies Act. **[MQP Set 1 Dec 25 - 7 Marks]**

OR

What do you infer from the term 'Key Managerial Personnel'? **[MQP_Set2_Dec24 - 7 Marks]**

Answer:

Section 2(51) of the Companies Act, 2013, key managerial personnel, in relation to a company has been defined as:

- the Chief Executive Officer or the managing director or the manager;
- the company secretary;
- the whole-time director;
- the Chief Financial Officer
- such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- such other officer as may be prescribed.

OR

Answer: Key Managerial Personnel (KMP) under the Companies Act, 2013

Mandate for Appointment of KMP	• **Section 203** of the Companies Act, 2013 mandates certain classes of companies to appoint Key Managerial Personnel (KMP).
	• KMP includes:
	  • Managing Director (MD), manager, or Chief Executive Officer (CEO).
	  • Company Secretary (CS).
	  • Chief Financial Officer (CFO).

Requirement for Whole-Time Director	If a company does not have a CEO, manager, or MD, it must appoint a whole-time director.

Class of Companies Required to Appoint KMP (as per Rule 8 & 8A of the Companies Rules, 2014)	• Every listed company. • Public companies with a paid-up share capital of ₹10 crore or more. • Private companies with a paid-up share capital of ₹10 crore or more must appoint a whole-time company secretary.
Appointment Process	• Whole-time KMP is appointed through a resolution of the board specifying terms, conditions, and remuneration. • A whole-time KMP cannot simultaneously hold office in more than one company except its subsidiary. • Vacancies in KMP positions must be filled by the board within six months.

Tenure and Restrictions	• A person may be appointed or re-appointed as MD, whole-time director, or manager for a maximum term of five years.
	• A company cannot appoint or continue employment of KMP if the person:
	  ◦ Is below 21 years or above 70 years of age.
	  ◦ Is an uncharged insolvent or convicted as an insolvent.
	  ◦ Has suspended payments to creditors.
	  ◦ Has been convicted for an offence and sentenced for more than six months.

Role and Definition of KMP Positions	

A. Chief Executive Officer, Manager, or Managing Director	• Responsible for managing the company.
	• MD is a director with substantial powers over the company's management and affairs.
	• MD can be appointed through:
	  ◦ Articles of Association.
	  ◦ Agreement with the company.
	  ◦ Resolution in a general meeting.
	  ◦ Board resolution.
	• A manager is an individual managing the company's affairs under the board's direction and control.

B. Company Secretary	• Oversees the efficient administration of the company. • Ensures compliance with regulatory requirements and secretarial standards. • Must be a member of the Institute of Company Secretaries of India (ICSI).
C. Whole-Time Director	• Defined as a director in full-time employment of the company. • Involved in daily operations and may have a significant stake in the company. • A Managing Director can also serve as a Whole-Time Director.
D. Chief Financial Officer	• Manages the financial status of the company. • Oversees cash flow operations, financial planning, and crisis contingency plans. • Leads the treasury and financial functions of the company.

Question 70A:

Analyze the concept of operational and financial control in a large organization. **[June 25 - 7 Marks]**

Answer:

A financial controller is responsible for the financial function of an overall organization. An operational controller job title specifies the responsibilities for a particular part of a company, so those duties vary from business to business depending on its operations.

While there are some similarities of an operations or business controller versus financial controller, they are definitely two distinct roles within an organization. Both positions usually involve budgeting, forecasting and financial reporting. The financial control deals with the organization's daily accounting operations. It includes overseeing accounting, payroll, accounts payable and accounts receivable departments.

By managing the organizational budget and the preparation and publishing of regulatory and monthly financial reporting, the financial controller gauges fiscal efficacy.

Unlike a financial controller, the role of operation control includes reporting and budgeting responsibilities including fiscal reporting for a particular unit within the larger company.

Question 70B:

Examine the duties of an auditor as per the Companies Act, 2013. **[MQP Dec 25 Set 2 - 7 Marks]**

Section -143- Powers and Duties of Auditors and Auditing Standards

- **(1) Rights of Auditors** → To Access records of all subs and Associates relating to consolidation of F.S.
  - Access to books of accounts at all times
    - R.O.
    - Other Place
  - Ask From officer info and explanation as he deems fit.

- **(2) Auditor shall make a report to members**
  - On examination
    - Financial statements or Accounts
      - Considering
        - Accounting and auditing standard
        - Matter to be included in report
        - Order under 143 (1) CARO
          - To the best of his knowledge
            - Said accounts and FS give a true and fair view of Co.'s affairs.

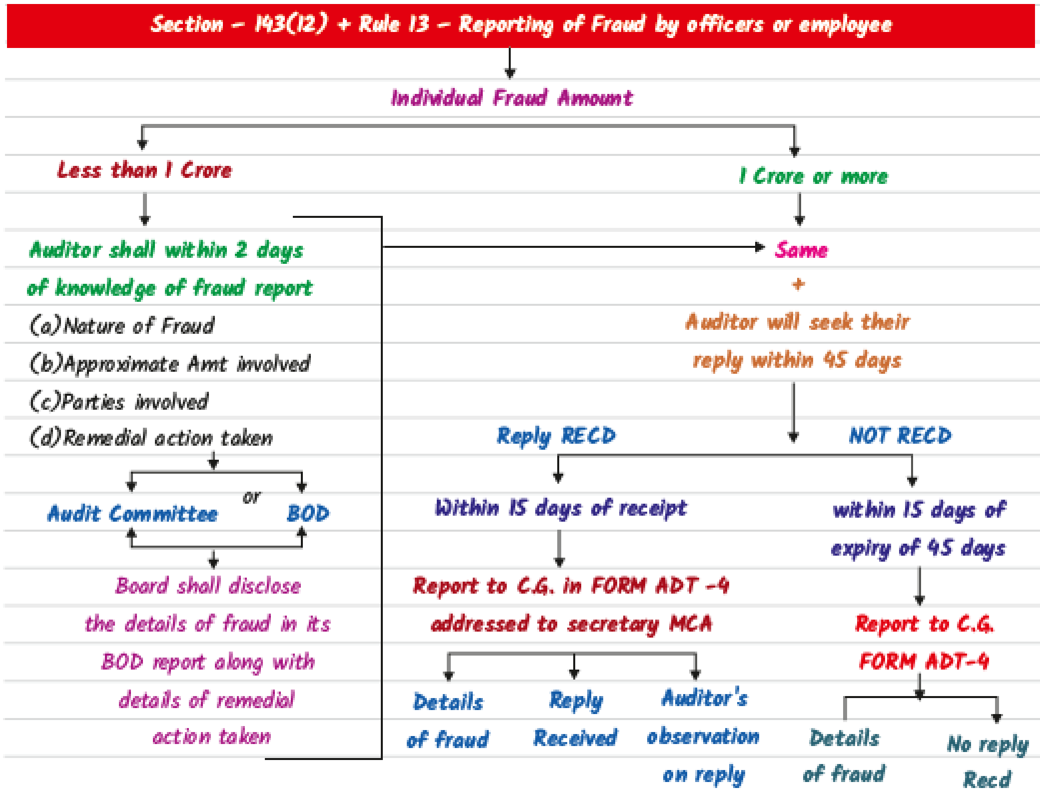
- **(1) (a) to (f) Right to enquire**
  - Whether
    - Loans and advance made by co. are secured and not prejudicial to int of co.
    - Transaction represented by book entry are not prejudicial to the int of co.
    - Loan and advances shown as deposit
    - Personal exp charged to revenue expense.
  - Where
    - Not being investment or banking Co.
      - Company sold the investment below cost.
    - Shares allotted for cash
      - Whether cash Recd?
      - If not
        - Whether position stated in accounts
          - Correct
          - Regular
          - Not misleading

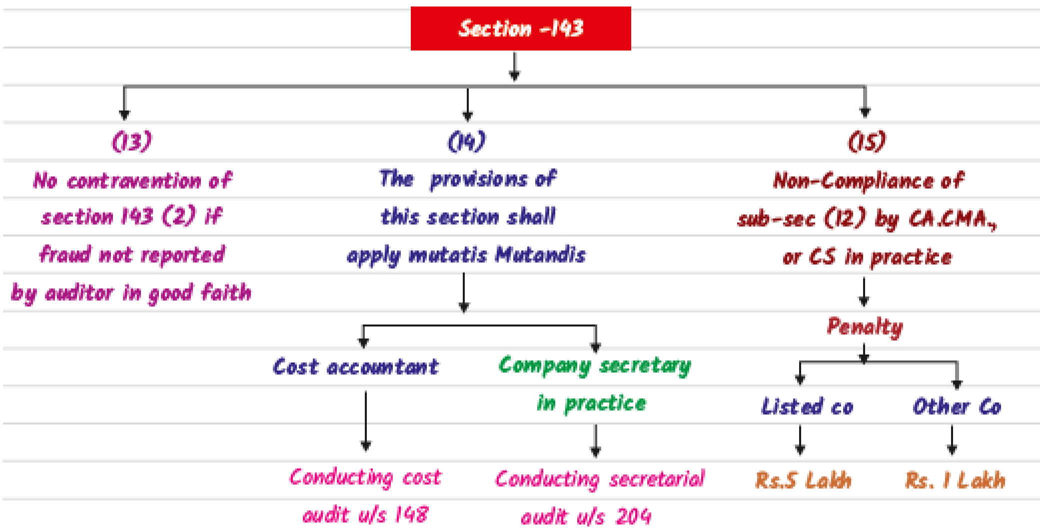
Section -143 (3)

- Auditor's Report shall also state
  - Whether
    - Obtained all the info's and explanation necessary for audit
      - If not, details and impact of same on F.S.
    - Audit report or branch not audited by him has sent to him.
    - Proper
      - Books of accounts are kept by co.
      - Proper returns for audit recd from branches not visited by him.
    - Co's B/S and P/L A/C are in agreement with BOA.
    - F.S. comply with Accounting standards.
    - Any director disqualified u/s 164(2)
    - Co. has adequate internal Financial Control
  - Other
    - Observation or comments of Auditors on F.S. + On matter having adverse effect
    - Any qualification reservation or adverse remark on maintenance of A/cs.
    - Other matters as prescribed whether
      - Whether
        - Company disclosed the impact of pending litigations on its F.S.
        - Co. made provision for material Foreseeable losses if any.
        - Cash deposited by co during 8th Nov 2016 to 30 th Dec, 2016 was in accordance with books of accounts.
        - Any delay in transferring Amt to IEPF

Section – 143

- (5) Government company
  - Auditor shall submit copy of audit report to C and AG. Along with
    - Directions issued by C and AG
    - \+ Action taken
    - \+ Impact on F.S.
- (6) Right of C and AG
  - Within 60 Days of Receipt of Report
    - Conduct supplementary Audit of F.S. of co. by such person as he may deem fit. + May require additional information of the same
    - and
    - Comment or supplement such audit report
      - If any comments Given
        - Audit report shall be sent by Co to each person emitted + Placed before AGM
- (9) Every auditor shall comply with auditing standard.
- (8) Audit of Branch accounts
  - By company's auditor or other qualified auditor
  - Foregin Branch
    - Auditor of such country Or Company's Auditor
  - Branch auditor send report
    - Auditor of company.


Section – 143(12) + Rule 13 – Reporting of Fraud by officers or employee
Individual Fraud Amount
Less than 1 Crore
1 Crore or more
Auditor shall within 2 days
of knowledge of fraud report
(a)Nature of Fraud
(b)Approximate Amt involved
(c)Parties involved
(d)Remedial action taken
Audit Committee
or
BOD
Board shall disclose
the details of fraud in its
BOD report along with
details of remedial
action taken
Same
+
Auditor will seek their
reply within 45 days
Reply RECD
NOT RECD
Within 15 days of receipt
Report to C.G. in FORM ADT -4
addressed to secretary MCA
Details
of fraud
Reply
Received
Auditor's
observation
on reply
within 15 days of
expiry of 45 days
Report to C.G.
FORM ADT-4
Details
of fraud
No reply
Recd


Section -143
(13)
No contravention of
section 143 (2) if
fraud not reported
by auditor in good faith
(14)
The provisions of
this section shall
apply mutatis Mutandis
Cost accountant
Company secretary
in practice
Conducting cost
audit u/s 148
Conducting secretarial
audit u/s 204
(15)
Non-Compliance of
sub-sec (12) by CA,CMA.,
or CS in practice
Penalty
Listed co
Other Co
Rs.5 Lakh
Rs. 1 Lakh