



Time Allowed: 3 Hours

Full Marks: 100

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

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

Answer Question No. 1 and any FIVE from Question No. 2 to Question No. 8.

SECTION – A

1. Multiple Choice Questions

[15 × 2 = 30]

- (i) Which Article prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities. But it does not prohibit their employment in any harmless innocent work?
- (a) Article 22
 - (b) Article 23
 - (c) Article 24
 - (d) Article 21
- (ii) Indian democracy is said to rest on the acclaimed four pillars and these are the legislature, the executive, the judiciary, and
- (a) The Election Commission of India
 - (b) The Government Department
 - (c) The Military
 - (d) The Press
- (iii) Right to life includes within its ambit the right to live with human dignity. This right is an inclusive right excluding
- (a) Right to food
 - (b) Right to marriage
 - (c) Right to employment
 - (d) Right to education
- (iv) What happens to a contract on the death of the offeror before acceptance?
- (a) The offer remains valid for a reasonable time
 - (b) The offer automatically converts into a contract
 - (c) The offer lapses immediately
 - (d) The legal heirs of the offeror must renew the offer
- (v) A continuing guarantee can be revoked either by the surety or by ____.
- (a) Creditor's refusal
 - (b) Death of the surety
 - (c) Expiry of time
 - (d) Performance of contract



- (vi) Section 5 of the Sale of Goods Act states that a contract of sale may be made in writing, by word of mouth, or implied from the conduct of parties. Such a contract is formed by ____.
- (a) Transfer of ownership without consent
 - (b) An offer to buy or sell and its acceptance
 - (c) Delivery of goods without payment
 - (d) Mutual promises without consideration
- (vii) As per the Negotiable Instruments Act, which of the following is not a type of endorsement?
- (a) Saturated
 - (b) Blank
 - (c) Restrictive
 - (d) Conditional
- (viii) If the assets of a firm are insufficient to discharge the debts and liabilities of the firm, the partners shall bear the deficiency in ____
- (a) profit sharing ratio
 - (b) capital ratio
 - (c) Equally
 - (d) As determined by the Court
- (ix) Under Limited Liability Partnership Act, 2008, records related to the notice of situation of registered office should be preserved for
- (a) 5 years
 - (b) 8 years
 - (c) 14 years
 - (d) Permanently
- (x) The LLP shall file the Statement of Account and Solvency in the prescribed form. Which is this Form:
- (a) Form 5
 - (b) Form 6
 - (c) Form 7
 - (d) Form 8
- (xi) The completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to
- (a) Voluntary retirement
 - (b) Death or disablement
 - (c) Resignation
 - (d) Superannuation



- (xii) The quorum for a public company having more than 5,000 members is ____
- (a) 2
(b) 5
(c) 15
(d) 30
- (xiii) As per section 63 of the Companies Act, 2013 which of the following cannot be used to issue bonus shares?
- (a) Free reserves
(b) Securities premium account
(c) Capital redemption reserve account
(d) Revaluation account
- (xiv) Which one of following is not a Key Managerial Personnel
- (a) Whole Time Director
(b) Managing Director
(c) Woman Director
(d) Manager
- (xv) Which type of ethics is concerned with understanding the controversial controversial topics like war, animal rights and capital punishment?
- (a) Applied ethics
(b) Descriptive ethics
(c) Meta ethics
(d) Normative ethics

Answers:

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

SECTION – B

(Answer any 5 questions out of 7 questions given. Each question carries 14 Marks) [5 × 14 = 70]

2. (a) Discuss the essentials of contingent contract and its enforcement with an example. [7]
- (b) Examine the rights of Pawnee under Indian Contracts Act, 1872. [7]

Answers:

- (a) Section 31 defines 'contingent contract' as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

The following are the essentials of contingent contract:

- Uncertainty and futurity of the event to which it is related;



- Uncertain future event must be collateral to the contract.
- An agreement to sell unspecified half share in the property is not contingent contract.
- An agreement to purchase a property is neither a contingent contract nor can it be characterized as a mere possible right or interest. It was contended that the contract is a ‘contingent contract’ because of either of the parties to the contract may refuse to perform his part on the contract. The Court held that the argument is fallacious. Such a contingency would not be a collateral to a contract. An agreement to purchase a property is neither a ‘contingent contract’ nor can it be characterized as a mere possible right of interest.
- Reciprocal promises are not contingent contracts as they cannot be said to be collateral to each other. The law allows the enforcement of a contingent contract after the event upon which it was contingent has happened. The contingency which is the essence of a condition must be distinguished from mere futurity.
- An obligation is not to be classified as conditional because its performance is not yet due.
- A contingent contract need not necessarily be independent on any external event. It may be conditional on the voluntary act or the future conduct of one of the parties or a third person.

Enforcement of contingent contract

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

Examples:

- a) A makes a contract with B to buy B’s horse if A survives C. This contract cannot be enforced in law unless and until C dies in A’s lifetime.
- b) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refused to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.
- c) A contract to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

(b) Rights of pawnee

The rights of the pawnee are described in Section 173, 175 and 176.

- Section 173 provides that the pawnee may retain the goods pledged, not only for the payment of the debt or the performance of the promise, but for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.
- Section 175 provides that the pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.
- Section 176 provides that if the pawnor makes default in payment of the debt, or performance at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise and retain the goods pledged as a collateral security, or he may sell the things pledged, on giving the pawnor a reasonable notice of the sale. If the proceeds



of such sale are less than the amount due in respect of the debt or promise, the pawner is still liable to pay the balance. If the proceeds of the sale are greater than the amounts so due, the pawnee shall pay over the surplus to the pawner.

3. (a) **Discuss the provisions relating to Annual Return, Inspection of documents and penalty for false statement under Limited Liability Partnership Act, 2008.** [7]
- (b) **Examine the different parties to the instruments as per the Negotiable Instruments Act, 1881.** [7]

Answers:

(a) Annual return

Section 35 seeks that every LLP shall be required to file with the Registrar an Annual Return duly authenticated every year in Form No. 11 along with the fees. The annual return of an LLP having turnover up to ₹ 5 crore during the corresponding financial year or contribution up to ₹ 50 lakhs shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return, to the effect that the annual return contains true and correct information. In all other cases, the annual return shall be accompanied with a certificate from a Company Secretary in practice to the effect that he has verified the particulars from the books and records of the LLP and found them to be true and correct.

Provided that where the corporate insolvency resolution process has been initiated against the limited liability partnership under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) or the Limited Liability Partnership Act, 2008 (06 of 2009) having turnover upto five crore rupees during the corresponding financial year or contribution upto fifty lakh rupees has come under liquidation under the said Code, 2016 or the said Act, 2008, the said annual return may be signed on behalf of limited liability partnership by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator and no certification by a designated partner shall be required]

The Central Government is given power to prescribe, by rules, the contents and manner for filing of such return.

If any LLP fails to comply with the filing of Annual Return, such LLP and its designated partners shall be liable to a penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for designated partners.

Inspection of documents

Section 36 provides that the following documents of LLP shall be available with the Registrar for inspection by any person on payment of fee-

- incorporation document;
- names of partners and changes, if any made therein;
- statement of account and solvency; and
- annual return.

**Penalty for false statement**

Section 37 provides that if in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement-

- which is false in any material particular, knowing it to be false; or
- which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in the Act, be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine which may extend to ₹ 5 lakhs but which shall not be less than ₹ 1 lakh.

(b) Parties to the Instruments

The transaction of the instrument requires at least two persons. One is the drawer and other is the drawee. The drawer of the instrument is the person who makes a bill of exchange or a cheque and the person thereby directed to pay is called the drawee. The definition of drawer is not exhaustive; the maker of the promissory note can also be called a drawer.

Drawer in case of need – When in the bill or in any endorsement thereof the name of any person is given in addition to the drawee to be resorted to in case of need, such a person is called a ‘drawee in case of need’.

Acceptor – After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the acceptor.

Acceptor for honor – When a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it supra protest for honor of the drawer or any one of the endorser, such person is called an ‘acceptor for honor’.

Payee – The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the ‘payee’.

Holder – Section 8 defines the term ‘holder’. The holder of a promissory note or a bill of exchange or cheque is any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

The term ‘holder’ as defined in Section 8 of the Act would not include a person, who, though in possession of the instrument, had no right to recover the amount due from the parties thereto, such as the finder of a lost instrument payable to bearer or a thief in possession of such an instrument, or even the payee himself, if he is prohibited by an order of court from receiving the amount due on the instrument. Where a plaintiff sued not as a holder in possession of the promissory note but claimed to recover the debt, on the basis of a succession certificate, he would be the only person entitled to recover the debt.

Holder in due course – Section 9 defines the term ‘holder in due course’. It means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or the endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

The holder in due course under Section 9 has to satisfy the following three conditions-

- An endorsee becomes a holder in due course for consideration;
- He can become an endorsee before the amount mentioned in the promissory note became payable; and
- He should have no sufficient cause to believe that any defect existed in the title of the person from whom he was to derive his title.

As regard to the second condition the promissory note becomes payable either on demand or at maturity.



Payment in due course – Section 10 defines this expression as payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

4. (a) **Analyze the provisions relating to the compliance of records, returns and notices under section 50 of The Code on Wages, 2019 Act.** [7]
- (b) **Examine the provisions of Payment of Gratuity Act, 1972 with reference to the exemption of employer from liability in certain cases.** [7]

Answers:

- (a) Section 50 lays down provisions relating to the compliance of records, returns and notices. The provisions mandates that:
- 1) Every employer of an establishment to which this Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages and such other details in such manner as may be prescribed.
 - 2) Every employer shall display a notice on the notice board at a prominent place of the establishment containing the abstract of this Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name and address of the Inspector-cum-Facilitator having jurisdiction.
 - 3) Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.
 - 4) The provisions of sub-sections (1) to (3) shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose: Provided that such employer, when demanded, shall produce before the Inspector-cum-Facilitator, the reasonable proof of the payment of wages to the persons so employed.

Explanation:- For the purposes of this sub-section, the expression “domestic purpose” means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation

- (b) **Exemption of employer from liability in certain cases**

Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days’ notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-

- that he has used due diligence to enforce the execution of this Act, and
- that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;



In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

5. (a) Explain the concept of 'Small company' as per the Companies Act, 2013. [7]
- (b) Demonstrate the different roles and responsibilities of the audit committee as specified by the Board under Section 177 of the Companies Act, 2013. [7]

Answer:

- (a) The concept of small companies has also been introduced for the first time in Companies Act, 2013 much in the same way as OPCs. However, OPCs and small company cannot be formed for non-economic objectives as certain companies can be under Section 8 of the Companies Act, 2013.

The Finance Minister of India proposed revision of the definition of a small company, as covered under section 2(85) of the Companies Act, 2013 while presenting the Union Budget 2021. The basic purpose behind the proposal was to provide the facility of ease of doing the business and to reduce the compliance burden for many companies.

As per the new definition of small company provided under section 2(85) of the Companies Act, 2013, the small company means and covers the company which satisfies the following two conditions-

- Paid-up capital of the company should not exceed ₹ 4 Crores; and
- Turnover of the company should not exceed ₹ 40 Crores.

However, it is important to note here that the following companies, despite satisfying both the above conditions, are not eligible to qualify as a small company-

- A public company,
- A holding company,
- A subsidiary company,
- Company registered under section 8,
- A company that is governed by any special act.

Vide the Companies (Management and Administration) Amendment Rules, 2021, a new e-Form MGT-7A is introduced. Accordingly, from the Financial Year 2020-2021, the small company is required to file their annual return in new e-Form MGT-7A. Notably, the due date for filing the annual return in e-Form MGT-7A will be 60 days from the date of an annual general meeting.



(b) Audit Committee.

1. The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
2. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority, Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
3. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
4. Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—
 - i. the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - ii. review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - iii. examination of the financial statement and the auditors' report thereon;
 - iv. approval or any subsequent modification of transactions of the company with related parties; Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed; 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 is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall 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;
 - vii. evaluation of internal financial controls and risk management systems;
 - viii. monitoring the end use of funds raised through public offers and related matters.
5. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
6. The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain



professional advice from external sources and have full access to information contained in the records of the company.

6. (a) **Mr. P, a director of XYZ Ltd, a public company, holds professional qualifications in cyber security. During a Board meeting, the CEO raised concerns about increasing cyber threats. At the request of the Managing Director, Mr. P undertook to resolve the issue and successfully secured the company's online systems. He subsequently submitted a bill of ₹10 lakhs for his professional services. However, the CEO instructed the accounts department not to honour the bill, arguing that this constitutes a special service and is already covered under Mr. P's director remuneration. Additionally, he claims that paying the bill would cause the total directors' remuneration to exceed the 11% limit of net profits under the Companies Act.**

Analyze the given situation and examine whether Mr. P's bill can be legally honoured, with reference to the legal provisions governing directors' remuneration and payment for special services. [7]

- (b) Demonstrate the rights of shareholders as per the Companies Act, 2013. [7]**

Answer:

(a) Given case:

- Mr. P is professionally qualified in cyber security.
- The Managing Director specifically requested him to address the company's cyber security concerns.
- Mr. P rendered specialised professional services beyond his normal duties as a director.
- He successfully secured the company's online systems and charged ₹10 lakhs for such professional services.

Legal Provision:

- As per Section 197 (1) of the Companies Act, 2013, the total managerial remuneration payable by a public company, to its directors, including managing director, whole time director and its manager, in respect of any financial year shall not exceed 11% of the net profits of that company.
- As per Section 197 (4) of the Companies Act, 2013, the remuneration payable to the Directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

(a) the services rendered are of a professional nature; and

(b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under subsection (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

**Explanation:**

Mr. P's bill of ₹10 lakhs may be legally honoured because:

- He rendered professional cyber security services in a capacity distinct from his role as a director.
- He possesses the requisite professional qualifications.
- Such payment is permissible under Section 197 of the Companies Act, 2013.
- The amount is not treated as directors' remuneration and therefore does not count towards the 11% ceiling on managerial remuneration.

- Accordingly, the CEO's objections regarding both "special service being covered by director remuneration" and the "11% limit" are not valid, provided the statutory conditions for payment of professional fees to a director are satisfied.

(b) 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 company [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 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;
 - iv. To apply to the court (now Tribunal) for relief in case of mismanagement;
 - v. To apply to the court (now Tribunal) for winding-up of the company; and
 - vi. To share in the surplus on winding-up

7. (a) **Explain the Principles of Public Life set by Lord Nolan for the first time in the year 1995, and later on these were refined by the Committee on Standards in Public Life appointed by the British Government.** [7]



- (b) Summarize the standards of ethical conduct promulgated by the Institute of Cost Accountants of India for practitioners (any seven points). [7]

Answers:

- (a) The Seven Principles of Public Life were set out by Lord Nolan for the first time in the year 1995. These principles of public life will apply to anyone who works as a public office holder, including elected and appointed to public office either locally or nationally. These principles apply to civil service, local government, the police, the Courts and probation of services, non-departmental public bodies, health, education, social care services. These principles also apply to other sector that delivers public services. The British Government appointed a committee called as Committee on Standards in Public Life to advise the Prime Minister on ethical standards of public life.

The Committee submitted its first report in the year 1995 containing the seven principles of public life. The said principles have been amended over year. The seven principles of public life as amended up to and as on 2015 are as follows-

- Selflessness – Holders of public office should act solely in terms of the public interest.
 - Integrity - Holders of public office must avoid placing themselves under any obligation to people or organizations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
 - Objectivity - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
 - Accountability - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
 - Openness - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
 - Honesty - Holders of public office should be truthful
 - Leadership - Holders of public office should exhibit these principles in their own behavior. They should actively promote and robustly support the principles and be willing to challenge poor behavior wherever it occurs.
- (b) The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.
- The Institute of Cost Accountants of India has promulgated the following standards of ethical conduct for practitioners-
- maintain at all times independence of thought and action;
 - not to express an opinion on cost / financial reports or statements without first assessing her or his relationship with her or his client to determine whether such Member might expect her or his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts; and



- when preparing cost / financial reports or statements or expressing an opinion on cost / financial reports or statements, disclose all material facts known to such Member in order not to make such cost / financial reports or statements misleading, acquire sufficient information to warrant an expression of opinion and report all material misstatements or departures from generally accepted accounting principles.
- not to disclose or use any confidential information concerning the affairs of such Member's employer or client unless acting in the course of his or her duties or except when such information is required to be disclosed in the course of any defense of himself or herself or any associate or employee in any lawsuit or other legal proceeding or against alleged professional misconduct by order of lawful authority or any committee of the Society in the proper exercise of their duties but only to the extent necessary for such purpose;
- inform his or her employer or client of any business connections or interests of which such Member's employer or client would reasonably expect to be informed;
- not, in the course of exercising his or her duties on behalf of such Member's employer or client, hold, receive, bargain for or acquire any fee, remuneration or benefit without such employer's or client's knowledge and consent; and
- take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter.
- conduct himself or herself toward other Members with courtesy and good faith;

8. (a) **Rahul entered into a contract with Umesh to supply him 2,000 Pens @ ₹ 5.00 per pen, to be delivered at a specified time. Thereafter, Rahul contracts with Mukesh for the purchase of 2,000 pens @ ₹ 4.50 per pen, and at the same time told Mukesh that he did so for the purpose of performing his contract entered into with Umesh. Mukesh failed to perform his contract in due course and market price of each pen on that day was ₹ 5.25 per pen. Consequently, Rahul could not procure any pen and Umesh rescinded the contract.**

(i) **Analyze the amount of damages which Rahul could claim from Mukesh in the circumstances?**

(ii) **Analyze what your answer would be if Mukesh had not informed about Umesh's contract, with reference to the provisions of the Indian Contract Act, 1872. [7]**

(b) **Demonstrate the duties of an Auditor laid down by the Companies Act, 2013 in Section 143. [7]**

Answers:

(a) **Legal provision:**

Section 73 of the Indian Contract Act, 1872 states that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.



When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation:

(i) When Mukesh was informed about Umesh's contract

In the given case, Rahul contracted with Umesh to supply pens at ₹5.00 each. To perform this, he contracted with Mukesh at ₹4.50 each, expressly telling Mukesh that the pens were for fulfilling Umesh's contract. Since Mukesh was informed about Umesh's contract, he knew that failure would prevent Rahul from performing his obligation to Umesh. Thus, Rahul can claim consequential damages.

Damages = The difference between Rahul's selling price to Umesh and his purchase price from Mukesh.
= (₹5.00 – ₹4.50) × 2000 = ₹1000

(ii) When Mukesh was NOT informed about Umesh's contract

In the given case, Rahul contracted with Umesh to supply pens at ₹5.00 each. To perform this, he contracted with Mukesh at ₹4.50 each. Mukesh was not informed about Rahul's contract with Umesh. If Rahul had kept the contract with Umesh a secret, Mukesh cannot be held liable for any special circumstances. The loss of resale profit is no longer in contemplation. Instead, Rahul can only claim general damages, i.e., difference between contract price and market price.

Loss = (₹5.25 – ₹4.50) × 2,000 = ₹1,500

(b) The duties of an auditor have been laid down by the Companies Act, 2013, provided in Section 143. The Act explains the duties in a simplified manner, although the list given is not exhaustive.

1. Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely: –

- whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its member;
- whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debenture and other securities have been sold at a price less than that at which they were purchased by the company;
- whether loans and advances made by the company have been shown as deposits;
- whether personal expenses have been charged to revenue account;



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- where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:
Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries its subsidiaries and associate companies insofar as it relates to the consolidation of its financial statement with that of its subsidiaries its subsidiaries and associate companies .
2. The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement or other document which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made there under or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statement or other document give a true and fair view of the state of the company's affairs as at the end of its financial year and such other matters as may be prescribed.
 3. The auditor's report shall also state–
 - whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;
 - whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
 - whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
 - whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
 - whether, in his opinion, the financial statements comply with the accounting standards;
 - the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
 - whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
 - any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
 - whether the company has adequate internal financial controls system internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;
 - such other matters as may be prescribed.
 4. Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.
 5. Every auditor shall comply with the auditing standards.



6. Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.
7. Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:
- Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:
- Provided further that the companies, whose auditors have reported frauds under this subsection to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.
- No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred, if it is done in good faith.