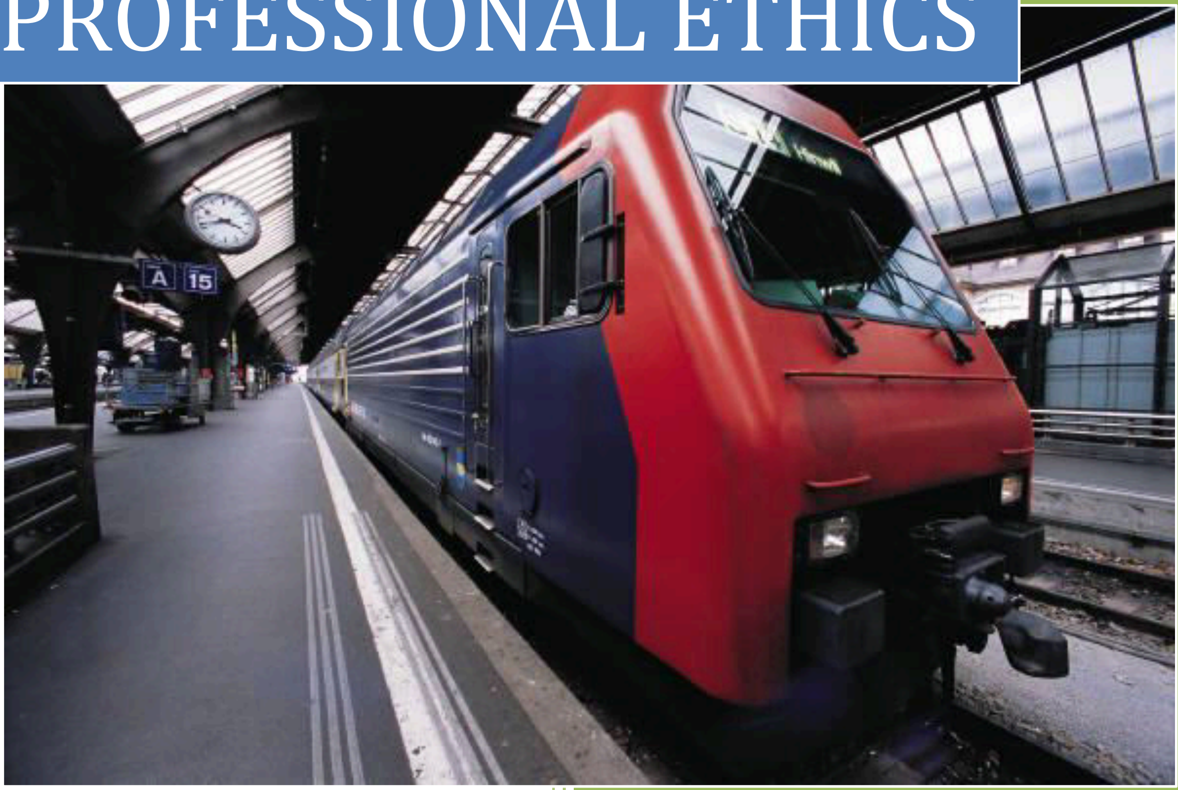
CA FINAL

ADVANCED AUDITING & PROFESSIONAL ETHICS



AYUSH GUPTA

(B.com, CA FINAL)

Professional Ethics

Relevant Provisions of CA Act 1949

Section 2(2) : Members deemed to be in Practice

- A member shall be deemed to be in practice, if he individually or in partnership, in consideration of remuneration --:
    - Engages himself in practice of accountancy or
    - Offers to perform Services involving auditing or other related services or
    - Holds himself out to the public as an accountant or
    - Renders such other services which in the opinion of the Council, may be rendered by CA in practice (Management Consultancy Services & Other Services)
- CA who is Salaried employee of CA in Practice shall be deemed to be in practice for limited purpose of training articled clerk.
- A member deemed to be in practice if he, in his Professional Capacity --:
    - Act as a Liquidator, Trustee, Executor, Administrator, Arbitrator, Receiver, Advisor or representative for Costing, Financial or Taxation Matter.
    - Takes up an appointment made by CG or SG or a Court of law or any other Legal Authority.
    - Act as a Secretary.
- Management Consultancy and other Services includes Acting as Advisor or Consultant to an issue on matters like Drafting of Prospectus, Memorandum Selection of Various Agenacis etc. **(But it does not include activities of Broking, Underwriting, Portfolio Management)**

Section 6 : Significance of Certificate of Practice

- If a CA Surrendered his Certificate of Practice due to misconduct, he can not in any other capacity take up any other Practice separable from his capacity to practice as a member of the Institute.
- This is because once a person becomes a member of the institute, he is bound by the provision of CA Act 1949 and regulation made thereunder.

Section 7 : Using Designation as CA

- A member in practice can not use any other designation than that of a CA nor any other description.
- However they can use any other letter etc. Indicating degree of other institutions.

● A member not in practice and does not use designation of a CA may use any other description.

Section 8 : Disabilities for the Purpose of Membership

● Age Less than 21 years

● Unsound Mind

● Undischarged Insolvent

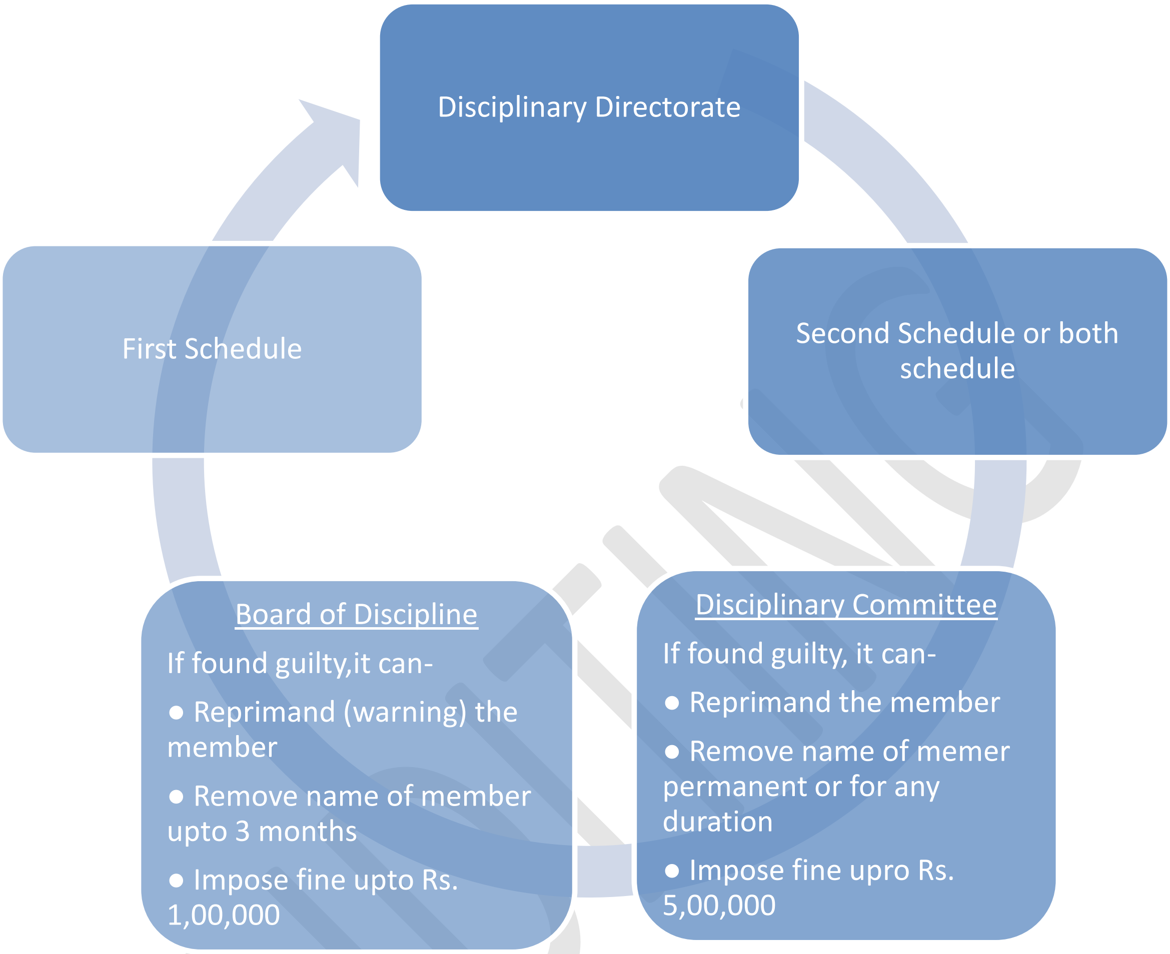
● Discharged Insolvent but hasn't obtained from the Court a Certificate w.r.t. misfortunate Insolvency

● Convicted of an offence involving Moral Turpitude

● Removed from Membership of ICAI due to misconduct

__Section 21 :__ Disciplinary Mechanism

Complaint against member of ICAI



Appeal to Appellate authority – within 90 days

It Can –

- Confirm, Modify or set aside the order.
- Impose, set aside, reduce or enhance penalty.
- Remit the case to the board of discipline or disciplinary Committee for reconsideration.
- Pass such order as the authority thinks fit.

Section 24 : Penalty for falsely claiming to be a Member

Any Person who –

● Not being a member of ICAI represents that he is a member of institute or uses the designation CA or

● Being a member of ICAI but not having COP represents that he is in practice or practices as CA

Shall be punsished.

Penalties

● First Conviction : Fine upto Rs. 1,000

● Second Conviction : Fine upto Rs. 5,000 or imprisonment upto 6 months or both

Section 27 : Maintenance of Branch Office

● **Office** : A place where a name board is fixed or where such place is mentioned in the letter head or any other documents as a place of business.

● However name board can be put in place of residence of member provided it is a name board of individual member and not of firm.

● If a CA or firm of CA has more than one office in india, each one od such office should be in the separate charge of a member of the institute, who may be either partner/employee.

● However, separate incharge is not required in the following cases --:

❶ Members Practicing in Hilly Area – Subject to following Condition –

◦ Another office is permitted in plain area during Winter – 3 Months

◦ Regular office need not be closed and correspondence will continue at regular office

◦ No description of office in plain area on official documents

◦ Intimation of ICAI for commencement of winter and on closure of office

◦ Name board – Officed of 3 Months Only

❷ Second Office – If it is situated in –

◦ Same premises in which first office is situated or

◦ In the same city or

◦ Within 50 km. From the Municipal limits of the city in which first office is situated

Section 28A – 28B : Quality Review Board (QRB)

● ***Section 28A*** – The CG shall by notification constitute a QRB consisting of –

◦ A Chairperson

◦ 5 Members nominated by Council

◦ 5 Members nominated by CG

● ***Section 28B*** – Functions of QRB –

◦ ICAI – Recommendation – Quality

◦ Review – Work of Member of ICAI

◦ ICAI Member – Recommendation

Professional Misconduct

● Misconduct in relation to Professional work covered by –

◦ First Schedule – Part I, II, III

◦ Second Schedule – Part I, II

Other Misconduct

● Misconduct in relation of area other than Professional work Covered by –

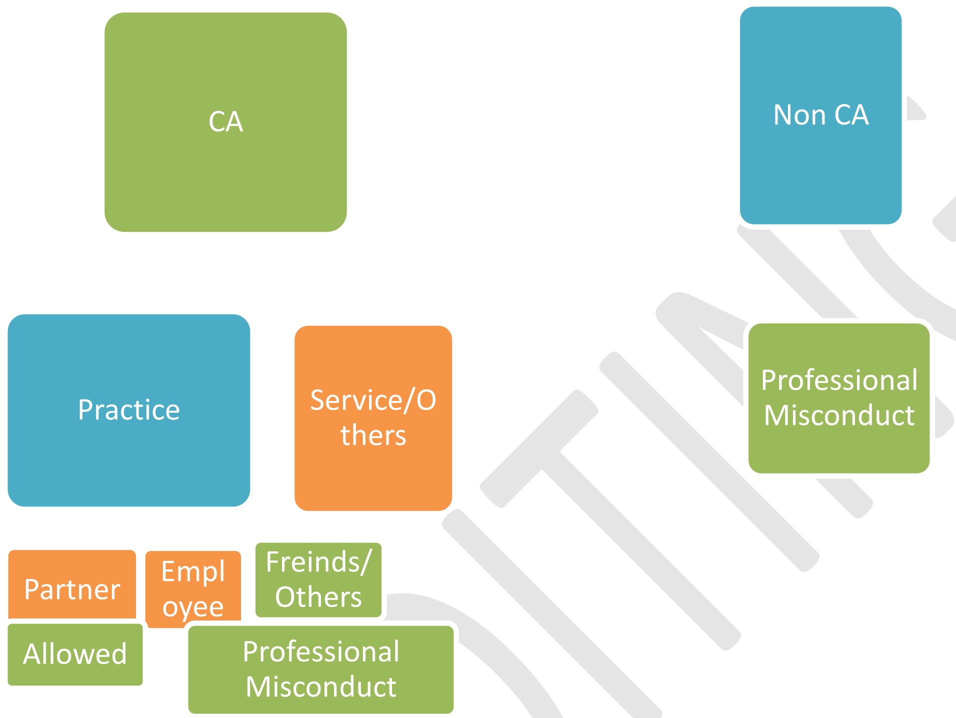
◦ First Schedule – Part IV - ❶ Guilty of any Civil or Criminal offence which is Punishable for imprisonment upto 6 months

❷ Bring discrepate to the Profession of ICAI

◦ Second Schedule – Part III – Imprisonment upto 6 months

First Schedule – Part I – Professional Misconduct – Members in Practice (Clause 1 to 12)

Clause – 1 : Allowing a person to practice in his name



Clause – 2 : Sharing of Fees with others

- Permitted –
    - Member of ICAI
    - Partner/Retired Partner
    - Legal representative of deceased Partner
    - Members of recognised Professional bodies

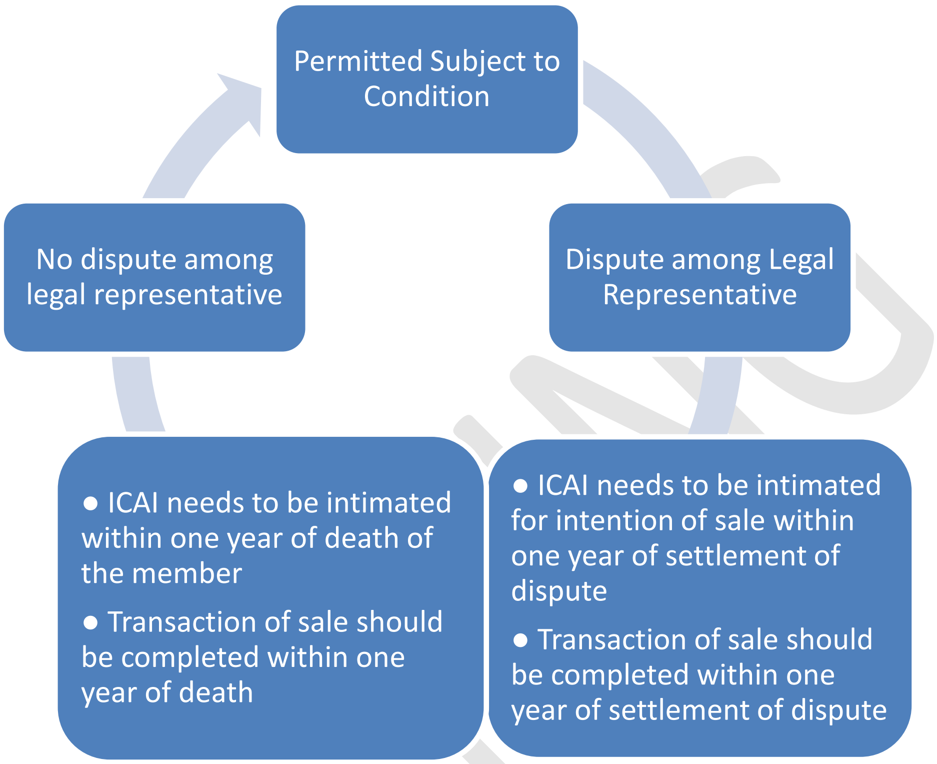
      (ICSI, ICWAI, Bar Council, ITA, IAI)
    - Persons having prescribed qualification

      (CS, CWA, BE, B.Arch., B.Tech., MBA, Actuary)

● Sale/Transfer of goodwill in case of death of Member

◦ Partnership firm – Not Permitted

◦ ***Proprietorship*** -



__Clause – 3 :__ Sharing of other profits

● Permitted -

◦ Another Member

◦ Member of Recognised Professional bodies

__Clause – 4 :__ Partnership

● Enters into partnership in or outside India with any person other than following --:

◦ CA in practice

◦ Members of recognised professional bodies

(ICSI, ICWAI, Bar Council, ITA, IAI, IE)

◦ A person who but for his residence abroad entitled to become member of ICAI

◦ Persons having qualification as prescribed by council of ICAI or CG

__Clause – 5,6,7 :__ **Securing Work/Solicitation work/Advertisement**

__Clause – 5 :__ Securing work from others

● A member in practice will be guilty of Professional misconduct if he secures any professional work through the services of others who is not a employee or his partner.

__Clause - 6 :__ Solicitation

● A member will be deemed to be guilty of professional misconduct if he-

◦ Solicits Clients or

◦ Professional Work

directly or indirectly by Circular, Advertisement, Personal Communication or by any other means

● Allowed form of Soliciting Work

◦ Secure Professional Work from another CA in Practice

◦ Responding tenders or enquiries

● Prohibited forms of Soliciting Work

❶ Advertisement and Note in Press

◦ A Member Can not advertise subject to following exceptions –

▪ A Member may advertise Change in Partnership, Address of Practice and telephone Numbers

▪ Classified Advertisement in Journal/news letter of institute for sharing Professional work or seeking partnership or salaried employment of accountancy nature provided it contains only CA's Name, Address, Telephone No., Fax or E-mail Address.

❷ Empanelment for allotment of Audit/Professional Work

◦ To apply for being part of a Panel – Allowed

◦ To enquire existence of a Panel (Roving enquiries) – Professional Misconduct

❸ Publication of Name or Firm Name in Telephone/Other directories

◦ Entry in telephone directory by making a special request or by means of additional Payment is not permitted

◦ Entries in telephone directory is permitted subject to following conditions –

▪ Entry should appear in separate section of Chartered Accountants

▪ Member should belong to the Town/City of which directory is published

▪ Entry Should not be Bold or Abnormal type of letters or in a box

▪ Order of entries should be Alphabeti and Logical

▪ Entry should not give the impression of publicity or advertisement

▪ Payment for the Entries if any should not be unreasonable

▪ Entries Should not be restricted and should be open to all CA's in Town/City

❹ Issuing Hand Bills

◦ To Client and Staff – Allowed

❺ Publications of Books or Articles

◦ Not Permitted

❻ Issue of Greeting Cards or Invitations

◦ Invitations to Relative, Client, Friends

◦ Firm name is Permitted

❼ Soliciting Professional work by making Roving enquiries

◦ Not Permitted

❽ Scope of Representation u/s 225(3)

◦ Representation should not be used to secure needless publicity and soliciting for his continuance as an auditor

❾ Acceptance of original professional work emanating from a client introduced by another member

◦ Not Permitted

❿ Public Interviews

◦ Permitted

⓫ Advertisement under Box Numbers

◦ Not Permitted

● Guidelines for posting the Particulars on Website

Some Important Guidelines

◦ CA's and CA's Firm are free to create their own website.

◦ Website should run on "Pull" Model not on "Push" Model

◦ Members are not allowed to use logo (other than prescribed by ICAI)

◦ Only Passport size photo of member is Parmitted

◦ Address of Website may be different from the name of the firm

Clause – 7 : Advertisement of Professional Achievements

● Advertisements of professional achievemrnts

● Using designation other than CA (Sec. 7)

● However degrees of recognised Universities/Membership as Professional bodies may be used

Clause – 8 : Prior Communication With Previous Auditor

● A Member in Practice will e guilty of Professional Misconduct, if he accepts audit without any prior communication with Previous Auditor

● Mode of Communication :

- ◦ Registered post acknowelgement due or by hand against a written acknowledgement
- ◦ Letter under Certificate of Posting is not sufficient to establish communication

● Evidence of –

- ◦ Dispatch – Not Required
- ◦ Receiving by Previous Auditor – Required

● Requirement of Communication -

- ◦ Every audit except Special Audit

Clause – 9 : Compliance with Section 224 & 225

● Accepts an appointment without ascertaining whether the requirement of Section 224 & 225 of Companies Act 1956 have been duly complied with.

Clause – 10 : Charging Fees on %age of Profits or on Contingent Finding

● Not Permitted except as Permitted under Regulatio

● Regulation 192 (Restriction on Fees) : In Respect of the Cases Fees may be fixed as Specified Below –

1.	In Case of Receiver or Liquidator	On the Basis of %age of Realisation or Disbursement of Assets
2.	In Case of Co – Operative Society	On the basis of %age of Paid up Capital or Working Capital or Gross/Net Income or Profits
3.	In case of Valuer for the purposes of Direct Taxes and Duties	On the basis of %age of Value of Property

<u>Clause – 11 :</u> Engage in any Business/Occupation

● Engage in any business/occupation other than profession of CA unless Permitted by Council so to engage

● Directorship in a Company – Permitted

● MD/WTD – Requires Permission from Council of ICAI

<u>Clause – 12 :</u> Allowing a Person to sign on his behalf

● Allows a Person not being a Member in Practice or a Member not being his Partner to sign on his behalf or on behalf of his firm any B/S, P&L, Report on FS

<u>First Schedule – Part II – Professional Misconduct – Members in Service</u>

<u>Clause – 1 :</u> Sharing of Salary With Others

● Pays or Allows or Agrees to pay directly or indirectly to any person any Share in the emoluments of the employment undertaken by him

<u>Clause – 2 :</u> Acceptance of Consideration from Others

● Accepts or Agrees to accept any part of Fees, Profits or Gains from a Lawyer, a CA or Broker engaged by such company, firm or person or agent or customer of such Company, firm or person by way of Commission or Gratification.

First Schedule – Part III – Professional Misconduct – Members Generally

Clause – 1 :

● Act as a Fellow Member of ICAI when Not a Fellow Member

Clause – 2 :

● Does Not Supply information called by Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, QRB or the appellate Authority.

Clause – 3 :

● Providing False information while inviting work from any other permitted mode Under clause 6 & 7

First Schedule – Part IV – Other Misconduct – Members Generally

● A member in Practice or not, shall be deemed to e guilty of other misconduct if he-

◦ is held guilty of any Civil or Criminal Court for an Offence which is punishable for a period not exceeding 6 months

◦ in the opinion of the Council brings disrepute to the Profession or the Institute as result of his action whether or not related to his Professional Work

Second Schedule – Part I – Professional Misconduct – Member in Pratice

Clause – 1 : Breach of Confidentiality

● If a Member discloses the information acquired in course of professional engagement to any person other than client unless

◦ Permitted by Client

◦ Required by Law

- Guidelines for Taxation Fraud Identified
  - Related to Past
    - Advise the Client to Disclose
      - Disclosure Made
        - No Further Duty
      - Client Deny
        - Do not affect CY A/cs
          - Represented By Us
            - Withdraw from CY Assignment and report To IT Authority
          - Represented By Others
            - Continue the Work for CY
        - Affect CY A/cs
          - Issue Qualified Report
  - Related to Current Year
    - Advise the Client to Disclose
      - Not Disclosed
        - Issue Qualified Report
        - Client not Permitted to continue
          - No Further Duty

<u>Clause – 2 :</u> Certification Without Examination

● A member will be deemed to be guilty of Professional Misconduct if he Certify in his name or firm's name any Opinion on FS unless examination has been made by him/ Partner/ Employee or another CA in Practice

<u>Clause- 3 :</u> Permitting use of name

● Permitting use of name in Connection with the estimate of earning Contingent upon future transactions when following is Disclosed :-

- Source of Information
- Basis of Forecast
- Significant Assumptions
- No Vouching for Accuracy

<u>Clause – 4 :</u> Expressing Opinion on FS of Related Parties

● A Member in Practice will be deemed to be guilty of Professional Misconduct if he expresses an opinion on FS of an entity in which he or his partner has substantial interest (20% , Either Individually or in Aggreegate)

● If the member or his partner or relative is director of the Company

● Relative Means Spouse, Children, Parents, Brother & Sister

<u>Clause – 5 :</u> Failure to Disclose Material Fact

● Failure to disclose a Material fact, not disclosed in FS but disclosure of which is necessary so as to prevent the FS from being Misleading

<u>Clause – 6 :</u> Failure to Report Material Misstatement

● Failure to report a Material Misstatement known to him and appears in FS

Clause – 7 : Work without due diligence or grossly negligent in performing the Work

● Due diligence – Skill, Care, Competence

● Grossly Negligence – High degree of negligence (Dishonestly, Willingly)

Clause – 8 :

● Failure to obtain sufficient information necessary to express an Opinion or

● Its exceptions are so sufficient to negate the disclaimer

Clause – 9 :

● Failure to invite attention to Material Departure from generally accepted auditing procedures

Clause – 10 :

● Fails to keep the client money (Other than fees or remuneration) in a separate bank account

OR

● Use such Money for the purpose for which they are intended within a reasonable time

Second Schedule - Part II – Professional Misconduct – Members generally (Practicing, Servicing, Others)

Clause – 1 :

● Contravenes of the Provision of this Act or the regulation made thereunder or any guidelines issued by Council

Clause – 2 :

● Breach of Confidentiality of information acquired as an employee

Clause – 3 :

● Providing false information to ICAI, Council, Commitee, Discipline authorities, QRB

Clause – 4 :

● Embezzles or defalcates the money received in professional capacity.

Second Schedule – Part III – Other Misconduct

● Guilty of any Civil or Criminal Court for an offence which is punishable for a term exceeding 6 months

Council General Guidelines 2008

Some Important Guidelines :

❶ *Maintenance of Books of Accounts*

● Irrespective of applicability of section 44AA of IT Act 1961, A member in practice is required to made the following books

◦ Cash Book

◦ Ledger

❷ *No. Of Tax Audit Assignment U/S 44AB of IT Act 1961 (i.e. Reporting on Form 3CD)*

● Individual CA – 45 Audit (Individual, HUF, Firm, Company etc.)

● Firm of CA – 45 Audit per Practicing Partner

● 44AD, 44AE, 44AF – Not Counting

● No. Of Branches – One

● Branches of one Co. – One

❸ *Audt Under Company Law and Audit under IT Act - Different*

Company Law	***IT Act***
● Requires audit of FS Only	● Require audit of FS + Form 3CD
↓	↓
● Ceiling limit – 20 (Company Law)	● Ceiling limit – 45 (ICAI)
- 30 (ICAI) ↓ (Including Pvt. Companies)	↓ (Including Ind., HUF, Firm, Co. & Others)

❹ *Appointment of an auditor in case of undisputed Audit Fees*

● Prior Auditor fees Not Paid → Incoming auditor may accept the offer but only in case of Sick Unit

❺ *Appointment of Statutory Auditor*

● PSU/Govt. Co./Listed Co./Other Public Co. -

◦ Turnover = 50 crore or More

↓

◦ Auditor – Cannot accept any other Work (Like Management Consultancy Work) at a fees higher than audit Fees

❻ *Appointment in a Concern in Which Member is indebted*

● For an amount exceeding the amount specified as per law (For Eg. Rs. 1000 under Co. Act)

OR

● Rs. 10,000 (Wherever not Specifed)

Will be invalid