

Ch. 19 - PE and liabilities of Auditors

(3) Relevant Provisions of CA Act, 1949:

✓ I. Membership of the Institute:

✓ II. Chartered Accountants in Practice:

(A). Certificate of Practice [Sec. 6]

(B) Members deemed to be in practice [Sec. 2(2)]

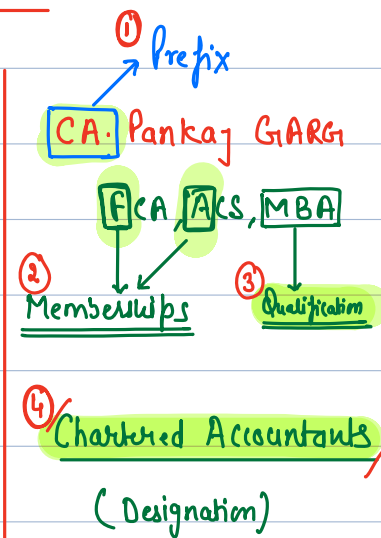
(C) Using designation as "Chartered Accountants" (Sec. 7):

(a) Members in Practice shall use the designation "Chartered Accountants"

(b) Other members may use the designation "Chartered Accountant".

(c) Prefix "CA" is allowed to be used by any member.

(d) A person who is member of any recognised professional bodies like ICSI, ICWAI, may mention his membership on office documents, but cannot use designation "Company Secretary" or "Cost Accountant" on his visiting card.



Notes: - Any designation in substitution / addition of "Chartered Accountants" is not allowed.

- Designation like "Insolvency Professional" and "Registered Valuer" are permitted by the Council, to be used by a member in practice.

- Members may themselves registered as "Merchant Bankers" under SEBI Regulations and Caption "Advisor / Consultant to an Issue" can be used in offer documents.

(D) Companies not to engaged in Accountancy (Sec. 25): will be discussed later.

(E) Branch office (Sec. 27):

OFFICE: A place where name board of firm is affixed and a place which is described as office on office documents.

Note: Name Board of the firm cannot be affixed at the Residence.

However, name-plate of Individual member can be affixed at residence.

Branch office: A member in practice or a firm of CAs can open any number of offices in India, provided every such office shall have a separate incharge.



Member of ICAI; may or may not have COP; associated either as Partner/Employee.

Note: Incharge shall be actively associated with the office. (i.e. ≥ 182 days residence in the City where office is situated or office attendance).

Exceptions of Requirement of Separate Incharge:

↓ 2 Exceptions

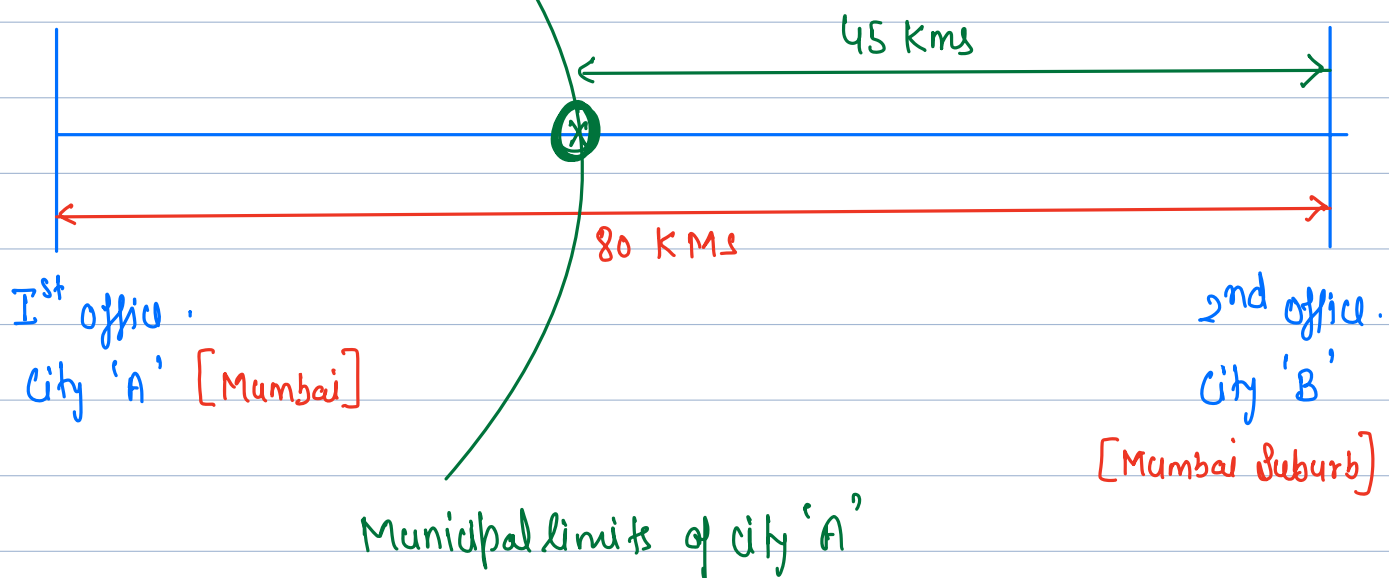
(i) Second office: Separate incharge is not required if 2nd office is situated:

(a) in same premises;

(b) in same City;

(c) within 50 kms from municipal limits of first office.

Example:



- Separate incharge not required as distance from municipal limits of 1st office to 2nd office does not exceed 50 kms.

Ex: In this case, if a separate incharge is engaged who is a retired Income-tax officer, whether it is a professional misconduct.

(ii) Temporary office in Plain Area:

Members practicing in hilly area can open a temporary office in plain area during winter season, without separate incharge, subject to following conditions:

- (a) Name Board of the firm shall be displayed at temporary office for three months only.
- (b) Temporary office can be opened for three months only during winter season.
- (c) Principal office in hilly area need not be closed during these three months.
- (d) Temporary office should not be mentioned as place of business on office documents.
- (e) Intimate to ICAI - before commencement of winter; and, after closing of office in plain area.

Note: As per Regulation 189, Intimation is to be given to ICAI, within one month of opening or closing of Branch office.

III. KYC Norms: - From Book -

IV. Disciplinary Mechanism: - From Book -

(4) Schedules to CA Act, 1949:



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(4) Schedules to CA Act, 1949:

First Schedule, Part I - Professional Misconduct for Members in Practice:

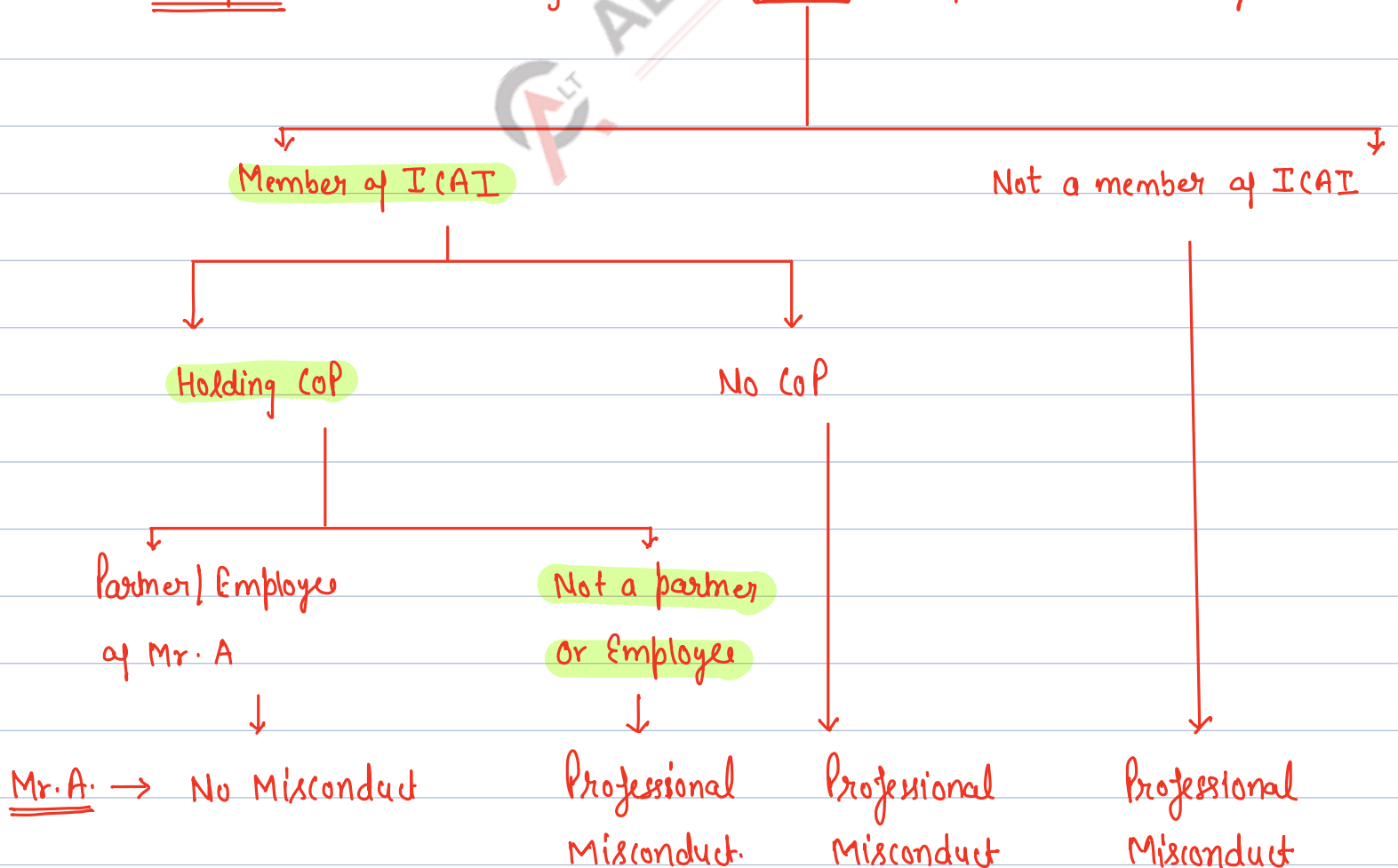
Clause - 1: Restrictions on allowing use of name to others:

A member in practice is deemed to be guilty of professional misconduct, if he allows a person to practice in his name or firm's name, as a chartered accountant,



unless such other person is also a practicing CA and Partner/Employer

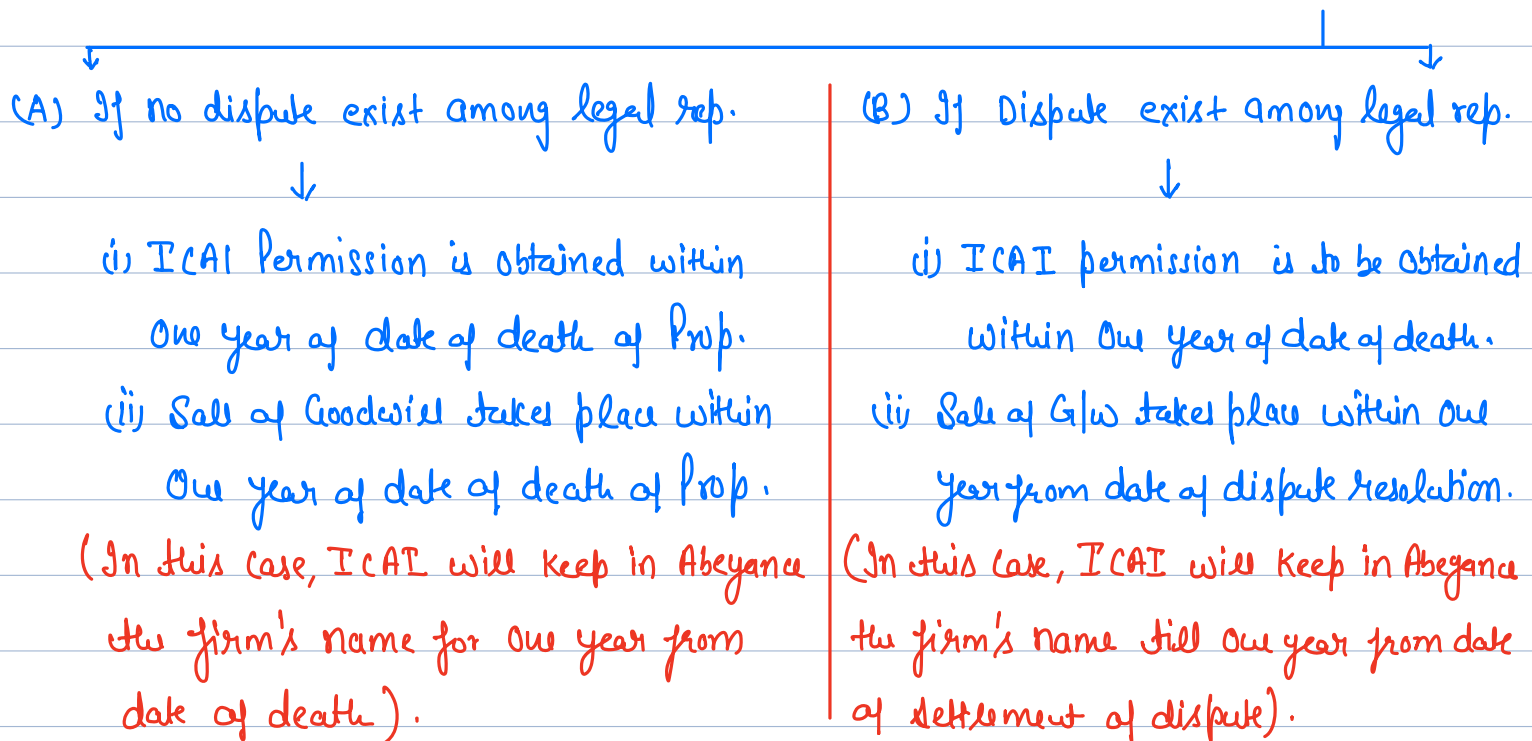
Example: Mr. A (Practicing CA) allow Mr. X to practice in name of Mr. A.



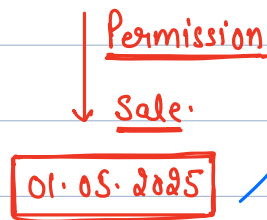
Clause 2: Sharing of profits with others:

- A member in practice shall be deemed to be guilty of professional misconduct, if he pay or allow or agree to pay or allow, directly or indirectly, any share, commission or brokerage in profit of professional work with others.
- However, this restriction is not applicable if profits are shared with:
 - (a) a Member of Institute;
 - (b) Partner;
 - (c) Retired Partner;
 - (d) Legal representative of deceased Partner;
(If provided in Partnership deed)
 - (e) Members of recognised professional bodies;
[Reg. 53A - ICSI; ICWAI; IAI; IIA and Bar Council]
 - (f) Persons having recognised Qualification;
[Reg. 53A - CS, Cost Accountant, B.Tech, B.E, B.Arch, Actuary, LLb, MBA]

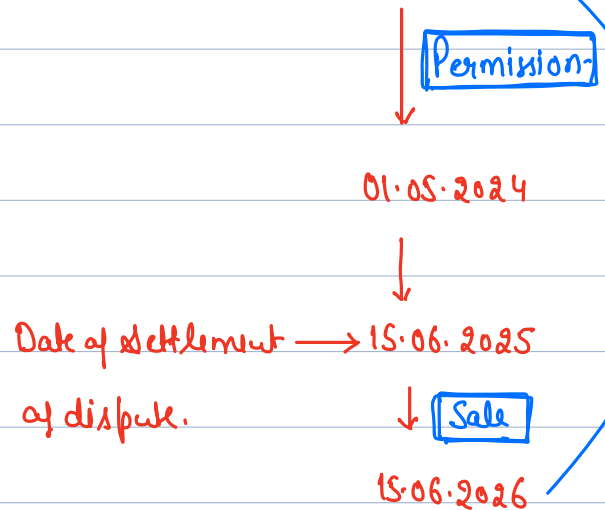
Sale of Goodwill: Council of ICAI permit the legal representative of deceased Proprietor to sell the Goodwill of Proprietorship firm, provided



Ex: Date of death - 01.05.2024



Date of Death - 01.05.2024



- Notes:
- (i) Consideration should be determined in lumpsum, though may be paid in instalments.
 - (ii) Consideration as a %age of future realisation is not permissible.
 - (iii) Similar provisions also applicable in case of death of all partners at same time, in case of partnership firms.

Clause - 3: Restriction on sharing of other's profit:

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A member in practice is deemed to be guilty of professional misconduct, if he accept or agrees to accept

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any profit of professional work of a person who is not a member of ICAI.

Note: Sharing with other's profits with persons covered under Regulation 53A is permitted.

Clause - 4: Restriction on Partnership with others:

A CA in practice is deemed to be guilty of professional misconduct, if he enters into partnership with persons other than:

- (a) Another member in practice;
- (b) Persons having prescribed Qualifications;

Reg. 53A - CS, Cost Accountant, B.Tech, B.E. B.Arch, Actuary, MBA and LLB.

- (c) Members of recognised professional bodies;

Reg. 53B - Members of ICSI, ICWAI, IAI, IIA, Bar Council and Members of Professional bodies outside India, whose qualification of accountancy are recognised by Council of ICAI.

- *(d) Persons, who but for residence abroad, are entitled for membership of ICAI.

Summary of clause 1, 2, 3, 4

	<u>Permitted</u>
Clause - 1 : Restriction on use of Name	Another Practicing CA + <u>Partner</u> / <u>Legal Rep.</u>
Clause - 2 : " " Sharing of profits with others	<u>Partner</u> / Re. Partner / Another Member / Legal Rep. / 53A-Q / 53A-M
Clause - 3 : " " Sharing of other's Profit	→ Another Member / 53A-Q / 53A-M <u>Partner</u>
Clause - 4 : " " Partnership with others	→ Another Practicing CA / 53A-Q / <u>53B-M</u>