

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

DECEMBER 2021

MODULE 3



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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These answers have been written by competent persons and the Institute hope that the **GUIDELINE ANSWERS** will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

In answers to the questions based on case study, the students may write any other alternative answer with valid reasoning.

The Guideline Answers contain information based on the Laws/Rules relevant for the Session. Students are expected to be well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

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PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2021

ADVANCED TAX LAWS AND PRACTICE

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

2. All the references to sections mentioned in Part - A of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2021-22, unless stated otherwise.
3. Working notes should form part of the answer.

PART A

Question 1

(a) Anil, aged 82 years is a retired Govt. Servant and a resident of Delhi, for the previous financial year 2020-21 his income during the year from different sources is as under :

1. Pension from the Govt. of India ₹ 58,000 per month
2. Rent from a house property situated at Noida (UP) ₹ 30,000 per month
3. Interest from SBI on Saving Bank A/c ₹4,000
4. Interest on Saving A/c from a Co-operative Society Bank ₹3,000
5. Interest from SBI on Fixed Deposit Receipts ₹46,000

During the year Anil paid :

1. ₹12,000 towards Municipal tax for the property situated at Noida (UP).
2. ₹90,000 deposited in Sukanya Smridhi Scheme for the benefit of his granddaughter for whom he is legal guardian.
3. ₹51,000 towards donation in the P.M. Drought Relief fund by cheque.

Compute Income Tax liability of Anil for assessment year 2021-22, assuming that he does not opt for Special Tax regime u/s 115BAC. (5 marks)

(b) Veena has a house property acquired on 15th Nov, 1999 for ₹4,80,000. She incurred improvement expenditure on such property ₹80,000 on 19th Sep., 2000 and ₹50,000 on 18th July, 2012. Market value of such property as on 1st Apr., 2001 was ₹6,50,000. On 16th Aug., 2019 such property is compulsorily acquired by the Government and compensation decided at ₹21,50,000. 20% of the compensation received on 31st Dec., 2020 and balance on 2nd April, 2021. Expenditure incurred to get compensation is ₹10,000. Compute income under the head Capital Gains of Veena for the assessment year 2021-22.

The cost of inflation indices for various financial years is :

Financial Year	2001-02	2012-13	2018-19	2019-20	2020-21
Cost Inflation Index	100	200	280	289	301

(5 marks)

(c) With reference to the Circular No. 29 dated 2nd October 2019 regarding clarification in respect of option under section 115BAA of the Income Tax Act, 1961 inserted through the Taxation Laws (Amendment) Ordinance 2019, what are the clarifications issued by the board on following issues relating to exercise of option under section 115BAA :

- (i) Allowability of brought forward loss on account of additional depreciation and
(ii) Allowability of brought forward MAT credit. (5 marks)

Answer 1(a)**Computation of Tax Liability of Mr. Anil for the AY 2021-22**

<i>Particulars</i>	<i>Amount (₹)</i>	<i>Amount (₹)</i>
1 Income from Salary		
Pension received from Govt. of India	6,96,000	
Less : Standard deduction u/s 16(ia)	(50,000)	6,46,000
2. Income from House property		
Rent Receive from House Property	3,60,000	
Less : Municipal Tax	(12,000)	
	3,48,000	
Less : Standard Deduction u/s 24 @ 30%	(1,04,400)	2,43,600
3 Income from other sources		
Interest from SBI on Saving Bank A/c	4,000	
Interest from a Co-operative Society Bank on Saving bank account	3,000	
Interest from SBI on Fixed Deposit Receipts	46,000	53,000
Gross Total Income		9,42,600
Less : Deductions under chapter VI		
80C Sukanya Smridhi Scheme	90000	
80TTB towards interest to Senior Citizen	50000	
80G Donation to PM Drought Relief fund (eligible for 50% deduction only)	25500	(1,65,500)
Total Income		7,77,100
Computation of Tax		
Tax on Rs. 7,77,100		55,420
Add : SHEC @ 4%		2,217
Total Tax liability		57,637
Rounded off [Section 288B]		57,640

Note: Deduction u/s 80C towards Sukanya Smridhi Scheme is allowed for minor daughter of an Individual and also allowed to Grand Parents who is legal guardian of minor granddaughter.

Answer 1(b)

Computation of Capital Gain of Mrs. Veena for the AY 2021-22

<i>Particulars</i>	<i>Amount (₹)</i>
Sale Consideration (W.N. 1)	21,50,000
Less : Expenses on transfer	(10,000)
Net Sale Consideration	21,40,000
Less : Indexed cost of acquisition (6,50,000 x 289/100) (W.No.2)	(18,78,500)
Less : Indexed cost of improvement (50,000 x 289/200) (W.No.3)	(72,250)
Long Term Capital Gain	1,89,250

Working Notes:

1. The compensation (i.e. ₹21,50,000) decided by the Government shall be treated as sale consideration. The income arising from compulsorily acquisition of property shall be taxable in the year in which first instalment has been actually received. Hence full value of sale consideration i.e. ₹21,50,000 is taken for computing capital gains for AY 2021-22.
2. Cost of acquisition is the original cost of acquisition (i.e. ₹4,80,000) or Fair market value as on 1st April, 2001 (i.e. ₹ 6,50,000) whichever is higher.
3. Cost of improvement incurred before 1st April, 2001 is to be completely ignored for computing capital gains.
4. Though the property was compulsorily acquired by the Government in the PY 2019-20 but the compensation were received in the PY 2020-21, and PY 2021-22, therefore the entire amount shall be taxable in the PY 2020-21, as first instalment is received in PY 2020-21. However indexation benefit shall be available till the year of compulsorily acquired (i.e. previous year 2019-20).

Answer 1(c)

Circular No. 29/2019 dated 2.10.2019 clarified the following situations:

(i) Allowability of brought forward loss on account of additional depreciation:

As regards the allowability of brought forward loss on account of additional depreciation, it may be noted that clause (1) of sub-section (2) of the newly inserted section 115BAA of the Income tax act, 1961 provides that the total income shall be computed without claiming any deduction under clause (iia) of sub-section (1) of section 32 (additional depreciation), and clause (ii) of the said sub-section provides that the total income shall be computed without claiming

set off of any loss carried forward from any earlier assessment year if the same is attributable, inter alia to additional depreciation.

Therefore, a domestic company which would exercise option for availing benefit of lower tax rate under section 115BAA shall not be allowed to claim set off of any brought forward loss on account of additional depreciation for an Assessment Year for which the option has been exercised and for any subsequent Assessment Year.

Further, as there is no time line within which option under section 115BAA can be exercised, it may be noted that a domestic company having brought forward losses on account of additional depreciation may, if it so desires, exercise the option after set off of the losses so accumulated.

(ii) Allowability of brought forward MAT credit

As regards allowability or brought forward MAT credit, it may be noted that as the provisions of section 115JB relating to MAT itself shall not be applicable to the domestic company which exercises option under section 115BAA of the Income tax Act, 1961, it is hereby clarified that the tax credit of MAT paid by the domestic company exercising option under section 115BAA of the Act shall not be available consequent to exercising of such option.

Further, as there is no time line within which option under section 115BAA can be exercised, it may be noted that a domestic company having credit of MAT may, if it so desires, exercise the option after utilising the said credit against the regular tax payable under the taxation regime existing prior to promulgation of the Ordinance.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

- (a) JKPS Ltd. is an Indian company, which sets up a new manufacturing unit. It incurs the following expenditure in connection with the manufacturing unit :

<i>Particulars</i>	<i>Amount</i>
<i>Preparation of project report</i>	<i>8,00,000</i>
<i>Legal and other charges for issue of additional capital required for the new unit</i>	<i>2,00,000</i>
<i>Cost of project</i>	<i>35,00,000</i>
<i>Capital employed in the new unit</i>	<i>30,00,000</i>
<i>Total</i>	<i>75,00,000</i>

Calculate the amount of deduction admissible to the company u/s 35D (Amortisation of Preliminary Expenses) of the Income Tax Act, 1961, for the assessment year 2021-22. (5 marks)

- (b) State with reasons as per the provisions of Income Tax Act, 1961, if following transactions are useful for the purpose of Tax Planning :
- (i) Puneet purchased an electric vehicle on 17th July, 2020 for his personal

- use, he purchase this vehicle from the loan taken from SBI and paid ₹95,000 towards interest on that loan for the financial year 2020-21. (2 marks)
- (ii) Vasudevan sold his only residential house in the month of May 2020, on the sale he arise LTCG of ₹1.73 crore as per Income Tax Act, 1961. He is willing to purchase one Flat at Noida (UP) at a cost of ₹75 lakh and one flat at Gurugram (Haryana) at a cost of ₹85 lakh respectively. (3 marks)
- (c) (i) What is the penalty if any person fails to furnish information or document of transfer pricing as per Section 271G of Income Tax Act, 1961 ? (2 marks)
- (ii) Who is Transfer Pricing Officer (TPO) ? Can TPO amend any order passed by him regarding rectification of Arm's Length Price ? (3 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) The following incomes are derived by Pranshul an individual for the financial year ended 31st March, 2021 :

Particulars	Amount
Agriculture income from Lands in Tanzania	3,50,000
Rent received from let out House Property in Washington USA	4,90,000
Pension received from the British Government	6,23,000
Interest received from Govt. of India	30,000
Dividend received from an Indian Co., ONGC Ltd.	15,000

Examine the taxability of the above income under Income Tax Act, 1961 of Pranshul for the assessment year 2021-22, in case where he is (a) Resident (b) Non-resident. (5 marks)

- (ii) Explain the followings with reference to the provisions of Advance Ruling u/s 245 of the Income Tax Act, 1961 :
- (a) Kiran a non-resident filed an application for advanced ruling on a transaction to be undertaken, AAR has delivered the Advanced ruling on the subject sought but Kiran is not satisfied with the ruling given by AAR and willing to appeal against the orders of AAR, what is the remedy available with Kiran in this regard ? (2 marks)
- (b) Sumit a non-resident is willing to file an application for advance ruling regarding determination of fair market value of a property situated at Mumbai, can he do so ? (1 mark)
- (c) Narayan a resident assessee claims that the advanced ruling sought by his sister in respect of a similar transaction undertaken by her is also applicable to him, is he right ? (1 mark)
- (d) Kaka a non-resident is going to undertake a transaction with a resident in India, he has three different questions in his mind with respect to the

transaction, should he file a single application or three applications to the AAR, please guide him ? (1 mark)

- (iii) *Explain the provisions relating to presumptive taxation scheme for assesses engaged in eligible professionals u/s 44 ADA of the Income Tax Act, 1961.* (5 marks)

Answer 2(a)

Admissible preliminary expenditure u/s 35D of the Income Tax Act, 1961 for the assessment year 2021-22 are as under:

Step No. 1 : Actual Expenditure (Total of Preparation of project report and Legal and other charges for issue of additional capital required for the new unit) is ₹8,00,000 + ₹2,00,000 = ₹10,00,000

Step No. 2 : 5% of the 'Cost of project' or 'Capital Employed' whichever is higher = ₹1,75,000 (i.e. 5 % of 35,00,000 being higher of "cost of project" or "capital employed")

Step No. 3 : Eligible preliminary expenditure being minimum of the following:

- a) Actual expenditure = ₹10,00,000 or
- b) 5% of Capital employed = ₹1,75,000

Step No. 4 : Amount eligible for amortization = ₹1,75,000 (minimum of ₹10,00,000 or ₹1,75,000)

Step No. 5 : Amount of deduction u/s 35D for current year (till 5 years) being 1/5th of eligible amount i.e. ₹1,75,000. So ₹35,000 is the admissible to the company u/s 35D (Amortisation of Preliminary Expenses) for the assessment year 2021-22.

Answer 2(b)

- (i) A new section 80EEB of the Income tax Act, 1961 has been inserted to provide for a deduction of upto Rs. 1.50 lakhs for interest on loan taken for purchase of an electric vehicle from any financial institution. This deduction is available to an individual.

Deduction upto Rs. 1.50 lakhs would be allowed in respect of interest payable on loan taken for purchase of electric vehicle provided loan should be sanctioned by the financial Institution during the period between 01.04.2019 to 31.03.2023. The section does not specify the nature of use of such electric vehicle whether for personal or business use.

In light of the provisions mentioned above, Mr. Puneet can claim the deduction of Rs. 95,000 under section 80EEB from his income, even though it has been purchased for personal use, to save the tax payable.

- (ii) There is an amendment in section 54 of the Income tax Act, 1961, where any capital gain arising on sale of long-term residential house and capital gain does not exceed Rs. 2 crore, tax payer is allowed to invest in two residential house in India (earlier it was allowed one house) and capital gain will be taxed accordingly. This option is given once in life time of tax payer.

The deduction is allowed to individual/HUF on transfer of a long term residential property. Such person can purchase within one year before or two year after the date of transfer of such property or can construct the house property within 3 years.

Therefore Mr. Vasudevan can purchase both the properties (situated in noida as well as in gurgaon) and long term capital gain tax can be saved to the extent of amount spent for purchase of above said properties.

Answer 2(c)

- (i) As per Section 271G of Income tax Act, 1961, if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by sub-section (3) of section 92D, the assessing officer or the Transfer Pricing Officer as referred to in Section 92CA or the Commissioner (Appeals) may direct such person shall pay, by way of penalty, a sum equal to 2% of the value of the international transaction or specified transaction for each such failure.
- (ii) For the purpose of Section 92CA "Transfer Pricing Officer (TPO)" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorized by the board to perform all or any of the functions of an Assessing officer specified in section 92C and 92D of the Income tax Act, 1961 in respect of any person or class of persons.

Yes, TPO can amend any order passed by him regarding rectification of Arm's Length Price, when any mistake is observed which is apparent from the record and provisions of section 154 w.r.t. rectifications of mistakes shall apply accordingly. Where any amendment is made by Transfer Pricing Officer, he shall send a copy of his order to the assessing officer who shall thereafter proceed to amend of assessment in conformity with such order of the Transfer Pricing Officer.

Answer 2A(i)

Taxability of Total Income of Mr. Pranshul for AY 2021-22

<i>Particular</i>	<i>Amount in ₹</i>	<i>If Assessee is Resident</i>	<i>If Assessee is Non-Resident</i>
Agriculture income from Lands in Tanzania	3,50,000	Rs. 3,50,000 Fully Taxable , as only agriculture income from land situated in India is exempt.	Not Taxable , Since the income has accrued and arisen outside India.
Income from let out House Property in Washington USA	4,90,000	Taxable ₹3,43,000 (after standard deduction @ 30%) as global income is taxable in the hands of Resident	Not Taxable , Since the income has accrued and arisen outside India.
Pension received from the British Government	6,23,000	Taxable ₹ 5,73,000 (after deducting Rs. 50000 as standard deduction), as global income is taxable in the hands of resident.	Not Taxable , since the income has accrued and arisen outside India.

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Interest received from Govt. of India	30,000	Rs. 30,000 Fully Taxable, global income is taxable in the hands of Resident	Rs. 30,000 Fully Taxable, Since the income has accrued and arisen in India.
Dividend received from an Indian Co., ONGC Ltd.	15,000	Rs. 15,000 Fully Taxable, Since the income has accrued and arisen in India and w.e.f. 1.04.2020 (i.e. financial year 2020-21), dividend declared, distributed or paid by a domestic company shall be taxable in the hands of the recipient. (W.N. 1)	Rs. 15,000 Fully Taxable, Since the income has accrued and arisen in India and w.e.f. 1.04.2020 (i.e. financial year 2020-21), dividend declared, distributed or paid by a domestic company shall be taxable in the hands of the recipient. (W.N. 1)
Gross Total Income		Rs. 13,11,000	Rs. 45,000

Working Note 1 : Section 115-O relating to dividend distribution tax payable by the domestic company shall not be applicable on or after 1.04.2020. Hence w.e.f. 1.04.2020 (i.e. financial year 2020-21), dividend declared, distributed or paid by a domestic company shall be taxable in the hands of the recipient.

Answer 2A(ii)(a)

In this case Appeal cannot be filed against the decision of the AAR. However, such ruling can be questioned by way of writ petition before the High Court, or by way of Special Leave Petition before the Supreme Court of India. [Based on Finance Act, 2020]

Alternative Answer 2A(ii)(a)

Under Section 245W of the Income Tax Act, the applicant, if he is aggrieved by any ruling pronounced or order passed by the Board for Advance Rulings may appeal to the High Court against such ruling or order of the Board for Advance Rulings within sixty days from the date of the communication of that ruling or order, in such form and manner, as may be prescribed:

Where the High Court is satisfied, on an application made by the appellant in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in sub-section (1), it may grant further period of thirty days for filing such appeal.

In this case Appeal can be filed against the decision of the AAR before the High Court. [**New Section 245W inserted vide Finance Act, 2021**]

Answer 2A(ii)(b)

Mr. Sumit cannot file an application before the Advance Ruling Authority as under section 245R(2)(ii) of the Income Tax Act, an application cannot be filed for where the question involves determination of fair market value of any property.

Answer 2A(ii)(c)

The claim of Mr. Narayan, a resident assessee, that advanced ruling sought by his

sister in respect of a similar transaction undertaken by her is also applicable to him, is not right, as advance ruling is binding only in the case of applicant only.

Answer 2A(ii)(d)

Mr. Kaka can file a single application. Even though the word used in the definition is singular namely "question", it is clear that there can be more than one question in one application. This has been made amply clear by column No. 8 of the Form No. 34C.

Answer 2A(iii)

- (i) Section 44ADA of the Income Tax Act, 1961 has been inserted to provide for estimating the income of an assessee engaged in any profession referred in section 44AA(1) such a legal, medical, engineering or architectural, accountancy, technical consultancy, interior decoration or any other profession as is notified by the Board.
- (ii) The gross receipts should not exceed Rs. 50 lakhs during the financial year.
- (iii) Presumptive Income shall be estimated @ 50% of the total gross receipts.
- (iv) Deductions u/s 30 to 38 shall not to be allowed from such income (including interest and remuneration to partners in case of partnership firm)
- (v) Assessee is not required to maintain books of accounts u/s 44AA and gets the accounts audited u/s 44AB unless it claims that the profit and gains from the profession is lower than the deemed profit and gains and its income exceeds the maximum amount which is not chargeable to income tax.

PART B

Question 3

- (a) *KK Ltd. is in the business of manufacturing of freezing components for domestic market at Jaipur. During the month of December 2020, it has acquired the following :*

Sr. No.	Particulars	Taxable value of inward supply (₹)	GST charged by supplier (₹)
1	Solar lamp (to be used in office)	1,00,000	5,000
2	Soya milk drinks (to be used in factory canteen)	20,000	3,600
3	Spray guns (to be used in factory)	45,000	8,100
4	Truck (for transportation of manufactured goods from factory to godown)	19,00,000	5,32,000
5	Lift (Installed in office premises and mainly used by office employees of KK Ltd.)	17,50,000	3,15,000

Calculate the amount of input tax credit available to KK Ltd. for the month of December 2020. Assume that the conditions for claiming input tax credit [including conditions imposed by rule 36(4)] are satisfied. Annual turnover of KK Ltd. is generally more than ₹40 crore. (5 marks)

- (b) X Ltd. supplies a generator set to Y Ltd. in the Intra-state supply, provides the following information:

Sr. No.	Particulars	Amount in ₹
(1)	Price of generator set	8,70,000
(2)	Installation charges for the generator	34,000
(3)	Entry fees levied by the Municipal Corporation	6,000
(4)	One part is directly fitted in generator set at place of Y Ltd. (amount paid by Y Ltd., directly to supplier, as per contract this amount should be paid by X Ltd, included in the price of generator set)	3,000
(5)	Discount @ 3% on generator price (recorded in Invoice)	
(6)	X Ltd. provide additional discount of 1.5% at year end, based on additional purchase of other generator set.	

Calculate the taxable value of supply of generator set under GST Law along with the reasons. (5 marks)

- (c) Jitender, an Indian resident, aged 45 years, returned to India on 18th Dec., 2020 after visiting Australia for 7 days. He brought the following goods with him :

Sr. No.	Particulars	Value in ₹
(i)	Mobile phone	18,000
(ii)	Two laptop computers worth ₹40,000 each	80,000
(iii)	Wine, 2 Litres	16,000
(iv)	Digital Camera	62,000
(v)	Personal effects (clothes)	35,000
(vi)	Travel Souvenirs	12,000

Compute the amount of customs duty payable by Jitender. (5 marks)

- (d) (i) 'M' booked a banquet hall on 5th July, 2020 for an agreed sum of ₹ 25,000 and paid an advance of ₹6,000 on that date. Function held in the banquet hall on 14th August, 2020. Thereafter, on 26th September, 2020 the owner of convention hall issued invoice for 25,000 indicating balance of 19,000 is payable. 'M' paid the balance payment on 2nd November, 2020. Determine time of supply in this case under GST Law. (3 marks)

- (ii) Whether a person having multiple business verticals in a state can obtain different registrations under GST Law ? (2 marks)
- (e) Anil, a registered dealer running its business smoothly but due to pandemic there was no purchase and sale in the month of December 2020, he is willing to file his GST returns by a SMS only. Can he do so ? If yes, what are the conditions for doing this ? (5 marks)

Answer 3(a)**Lift considered as Immovable Property****Computation of Input Tax Credit (ITC) available to KK Ltd. for December, 2020**

Sr. No.	Different Items	Particulars	ITC in Rs.
1	Solar lamp	Used in office in course of furtherance of business of KK Ltd. (ITC available)	5,000
2	Soya milk	ITC on food & beverage not available under Section 17(5)(b) of Central Goods and Services Tax Act, 2017, even if it is used for factory canteen.	---
3	Spray guns	Used in factory in course of furtherance of business of KK Ltd. (ITC available)	8,100
4	Truck	Truck for transportation of manufactured goods is eligible for ITC (this rule is applicable even if KK Ltd. is not in the business of transportation of goods)	5,32,000
5	Lift	Used in office in course of furtherance of business of KK Ltd. (Working Note 1)	Nil
Total Input Tax Credit available			5,45,100

Working Note:

- As per Latest AAAR Maharashtra dated: 20.07.2020 Order No. MAH/AAAR/RS-SK/24/2020-21**, held that GST ITC **shall not be available on Lift**. The AAR said that the erection of lift can be done only inside the building structure as an integral part of the building in which lift is to be installed.

The lift when installed in the building makes the building fit for occupation and becomes a **permanent fixture of the building itself**. Hence, the same will be considered as an immovable property, and ITC is not available on it.

As per another case of MP-AAR concluded that a lift is an integral part of a **'building'** which is specifically excluded from the definition of 'plant & machinery', and thus, ITC on lifts cannot be availed.

Alternative Answer 3(a)**Lift considered as Plant and Machinery****Computation of Input Tax Credit available to KK Ltd. for December, 2020**

<i>Sr. No.</i>	<i>Different Items</i>	<i>Particulars</i>	<i>ITC in Rs.</i>
1	Solar lamp	Used in office in course of furtherance of business of KK Ltd. (ITC available)	5,000
2	Soya milk	ITC on food & beverage not available under Section 17(5)(b) of Central Goods and Services Tax Act, 2017, even if it is used for factory canteen.	---
3	Spray guns	Used in factory in course of furtherance of business of KK Ltd. (ITC available)	8,100
4	Truck	Truck for transportation of manufactured goods is eligible for ITC (this rule is applicable even if KK Ltd. is not in the business of transportation of goods)	5,32,000
5	Lift	Used in office in course of furtherance of business of KK Ltd. (ITC available)	3,15,000
Total Input Tax Credit available			8,60,100

Working Note:

As per Explanation to Section 17(5) of Central Goods and Services Tax Act, 2017 : the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises

ITC on lift is not specifically blocked under Section 17(5) of Central Goods and Services Tax Act, 2017.

Answer 3(b)**Computation of Taxable value of supply of generator set**

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount in Rs.</i>
1	Price of generator set	8,70,000
2	Installation charges for the generator	34,000
3	Entry fees levied by the Municipal Corporation	6,000

4	One part is directly fitted in generator set at place of Y Ltd. (amount paid by Y Ltd, directly to supplier, as per contract this amount should be paid by X Ltd, included in the price of generator set) As it is already included in the price, no need to add again.	Nil
5	Discount @ 3% on generator price (recorded in Invoice) = Since discount is given at the time of supply and recorded in invoice, the value of the supply shall not include such discount. (Rs. 8,70,000*3/100= Rs. 26,100)	(26,100)
6	X Ltd. provide additional discount of 1.5 % at year end, based on additional purchase of other generator set. (Such discounts are not deductible because this discount is not link to above generator set and there is no prior agreement).	Nil
Value of Taxable Supply		8,83,900

Answer 3(c)**Computation of Customs duty payable by Mr. Jitender**

S. No.	Particulars	Amount (Rs.)
I	Mobile Phone	18,000
II	Two laptop computers worth Rs. 40000 each (Working Note-1)	40,000
III	Wine, 2 Litres (wine upto 2 litres can be accommodated in General Free Allowance)	16,000
IV	Digital Camera	62,000
V	Personal effects (clothes)	Exempt
VI	Travel Souvenirs	Exempt
Total dutiable goods imported		1,36,000
Less : General Free Allowance under Rule 3 of Baggage Rules, 2016		(50,000)
Balance goods on customs duty is payable		86,000
Total Customs duty payable=Rs. 86,000 @ 38.50% (Working Note-2)		33,110

Working Notes:

- As per Notification no. 11/2004-Customs, dated: 08-01-2004, one laptop computer is exempted when imported by a passenger (other than crew member) of the age of 18 years or above.

2. Rate of custom duty on Baggage is 35%. As per section 110 of Finance Act, 2018, w.e.f 02-02-2018, the Social Welfare Surcharge is also levied @ 10% on the aggregate of duties, taxes and cesses. Hence total custom duty on Baggage is 38.50%.

Answer 3(d)

- (i) As per section 31(2) of Central Goods and Services Tax Act, 2017 read with rule 47 of Central Goods and Services Tax rules, the tax invoice is to be issued within 30 days of supply of service.

In the given case the invoice is not issued within the prescribed time limit. As per section 13(2)(b) of Central Goods and Services Tax Act, 2017, in a case where the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Therefore, the time of supply of service to the extent of Rs. 6,000/- is 5th July, 2020 as the date of payment of Rs. 6,000/- is earlier than the date of provision of service. The time of supply of service to the extent of the balance Rs. 19,000/- is 14th August, 2020 which is the date of provision of service.

- (ii) Yes, in terms of the proviso to Sub-Section (2) of section 25 of Central Goods and Services Tax Act, 2017, a person having multiple business verticals in a State **may obtain** a separate registration for each business vertical, subject to such conditions as prescribed in the registration rules.

Answer 3(e)**Yes, he can file GSTR-1 and GSTR-3B by a single SMS.**

In terms of Rule 67A of the Central Goods and Services Tax Rules, 2017, Tax payers can file **Nil Return** under section 39 of Central Goods and Services Tax Act, 2017 in Form GSTR-3B or a Nil details of outward supplies under section 37 of Central Goods and Services Tax Act, 2017 in Form GSTR-1, through an SMS, apart from filing it through online mode, on GST portal. To file Nil returns (GSTR-1 and GSTR-3B) through SMS, the taxpayer must fulfil following conditions:

1. He must be registered as Normal taxpayer/Casual tax payer/ SEZ Unit/ SEZ Developer.
2. He must have a valid Goods and Services Tax Identification Number (GSTIN).
3. Phone number of authorised signatory must be registered on the GST portal.
4. No data should be in saved or submitted stage for Form GSTR-1 on the GST Portal, related to that respective month.

Nil return in Form GSTR-3B or NIL details in form GSTR-1 can be filed anytime on or after the 1st of the subsequent month for which the return is to be filed. Taxpayer should have opted for the filing frequency as either monthly or quarterly. Nil Form GSTR-1 for a tax period must be filed by the taxpayer if:

1. There is no outward supplies (including supplies on which tax is to be charged

on reverse charge basis, zero rated supplies and deemed exports) during the month of quarter for which the return is being filed.

2. No amendments are to be made to any of the supplies declared in an earlier return.
3. No credit or Debit notes to be declared / amended.
4. No details of advances received for services to be declared or adjusted.

Attempt all parts of either Q. No. 4 or Q. No. 4A

Question 4

- (a) *Determine the place of supply in the following cases according to the provisions under IGST Act, 2017 :*
- (i) *Salman Khan of Delhi purchased a Residential plot in France. He hires Mumbai based architect to design the structure for his Residential plot.*
 - (ii) *Raj provided training and development to the employees of ABC a firm which is not registered under the Act. ABC is located in Gurugram but training and development programme was conducted in Noida.*
 - (iii) *Rajiv, a bank manager, is transferred from Agra (UP) to Pune (Maharashtra). Rajiv's family is stationed in Kanpur (UP). He hires sigma carrier of Agra (UP) registered in UP, to transport his household goods from Kanpur to Pune (Maharashtra).*
 - (iv) *Golden Events, an event management company at Noida (UP), organised a Customer Meet function for M/s Bala Diamonds of Bhopal (Registered in M.P.), at Maldives.*
 - (v) *Mr. Sharma travelling from Delhi to Chennai in a flight. He desired to watch an English movie during the journey by making the necessary payments to the Airlines. (5 marks)*
- (b) *What are the circumstances under which GST registration may be cancelled by the proper officer u/s 29(2) of CGST Act, 2017 ? (5 marks)*
- (c) *Define the powers of proper officer for passing Best Judgment Assessment u/s. 62 of CGST Act, 2017. What is the time limit of passing such orders and what are the circumstances of withdrawal of such assessment orders ? (5 marks)*

OR (Alternate question to Q. No. 4)

Question 4A

- (i) *An importer, imports some luxury items and deposited the same in a warehouse on 1st September, 2019, due to lack of demand, he applies for extension of warehousing period and department granted the extension till 31 December, 2020. The importer did not remove the goods even after the extended date. In the meantime the goods were destroyed in the warehouse. Then the importer applied for remission under section 23 of the Custom Act, 1962. Department rejected his claim stating that remission cannot be granted on goods stored in*

the warehouse. Discuss whether the refusal of claim by department is valid or not with reference to the Customs law and decided case law. (5 marks)

- (ii) *Who are the ineligible persons to opt alternative composition scheme in GST vide Notification No. 2/2019-CT, dated 7th Mar, 2019. (5 marks)*
- (iii) *Examine and comment on the following issues with reference to the CGST Act, 2017 and Circular No. 71/218-CGST, dated 26th Oct., 2018.*
- (a) *Is the amount required to be deposited as advance tax while taking registration as a Casual Taxable Person should be 100% of the estimated gross liability? (2 marks)*
- (b) *Manoj, an Exhibitionist from Gujarat, is running an exhibition in Delhi from last few days he also registered himself as Casual Taxable Person in Delhi, as the response from public is very good, he decided to continue his exhibition in Delhi for a further period of six months. What should he do under GST Law ? (3 marks)*

Answer 4(a)

- (i) Since the immovable property is located outside India, therefore, as per provision to section 12(3) of the Integrated Goods and Services Tax Act, 2017, the place of supply will be **Delhi**, being the location of recipient.
- (ii) As ABC is not registered, the place of supply shall be the place where services are actually performed i.e. **Noida**. (Section 12(5) of Integrated Goods and Services Tax Act, 2017).
- (iii) The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation i.e. **Kanpur**, (UP). (Section 12(8) of Integrated Goods and Services Tax Act, 2017).
- (iv) Since the recipient is a registered person and the event is held outside India, the place of supply is the location of the recipient i.e. **Bhopal**, (M.P.). (Section 12(7) of Integrated Goods and Services Tax Act, 2017).
- (v) The place of supply of such services of showing movie on demand is the first scheduled point of departure of the conveyance for the journey i.e. **Delhi**. (Section 12(10) of Integrated Goods and Services Tax Act, 2017).

Answer 4(b)

The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,

- (a) A registered person has contravened such provisions of the Act or the rules made there under as may be prescribed: or
- (b) A person paying tax under section 10 has not furnished returns for three consecutive tax periods: or
- (c) Any registered person, other than person specified in clause (b), has not furnished return for a continuous period of six month; or

- (d) Any person who has taken voluntarily registration under Section 25(3) has not commenced business within six months from the date of registration; or
- (e) Registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

However, the proper officer shall not cancel the registration without giving the person opportunity of being heard.

Answer 4(c)

The power of proper officer for passing Best Judgement Assessment is given below:

Section 62(1)- Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish return under section 39 (monthly/ quarterly) or section 45 (final return), even after the service of a notice under section 46 (requiring him to furnish the return within a period of 15 days), the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered.

The assessment order shall be issued within a period of **five years** from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Section 62(2) - where the registered person furnishes a valid return within 30 days of the service of the assessment order under subsection(1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under subsection (1) of section 50 or for payment of the late fee under section 47 shall continue.

Answer 4A(i)

As per section 61 of the Customs Act, 1962, the imported goods can be deposited in a warehouse for a maximum period of one year subject to extension in some cases. Thus, removal of goods should be planned properly and the goods shall be moved within the prescribed period, else there will be necessary penalties resulting in sheer loss of money.

Every effort must be made to see that the goods are cleared from the warehouse in time before the goods get destroyed or damaged beyond repair. No remission is granted on such goods deposited in a warehouse where the importer failed to clear within the stipulated time.

In the case of *Decorative laminates (1) Pvt. Ltd 2010 (HC)*, The High Court held that no remission under Section 23 of the Customs Act, 1962 can be allowed for warehoused goods if they are lost or destroyed in the warehouse after the expiry of warehousing period.

The High Court further held that where the goods are not cleared within the permissible warehousing period, such goods are deemed to be improperly removed in terms of section 72(1)(b) of the Customs Act, 1962.

Hence in the present case, action taken by the **department is correct** and in line with the Customs Law.

Answer 4A(ii)

The following persons are ineligible persons to opt alternative composition scheme in GST vide Notification No.2/2019-Central Tax (Rate) dated 7th March, 2019.

- (i) Eligible to pay tax under composition scheme governed by section 10 of the Central Goods and Services Tax Act, 2017.
- (ii) Engaged in making any supply which is not leviable to GST.
- (iii) Engaged in making any inter-state outward supply.
- (iv) A Casual Taxable person or Non-Resident Taxable Person.
- (v) Engaged in making supply through e-commerce operator, who is liable to TDS under Section 52
- (vi) Engaged in making supply of ice cream, other edible ice, pan masala or tobacco & manufactured tobacco substitute. W.e.f. 1-10-2019, suppliers of aerated water are also not eligible to pay concessional tax under notification No.2/2019-Central Tax (Rate) dated 7th March, 2019.

Answer 4A(iii)

- (a) No, It has been noted that while applying for registration as a casual taxable person, the Form GST REG-1 (S. No.11) seeks information regarding the "**estimated net tax liability**" only and not the gross tax liability.

It is accordingly clarified that the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering **the due eligible ITC** which might be available to such taxable person.

- (b) Under section 27 of Central Goods and Services Tax Act, 2017, a person can obtain registration under casual taxable person for 90 days which can be further extended for a maximum of 90 days. Thus, in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as casual taxable person and would be required to obtain registration as a normal taxable person.

While applying for normal registration the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter / consent letter shall be treated as the proper document as a proof for his place of business.

In such cases he would not be required to pay advance tax for the purpose of registration.

He can surrender such registration once the exhibition is over.

As discussed above, Mr. Manoj, an Exhibitionist from Gujarat, should apply for a normal registration.

Question 5

- (a) *William a US citizen comes to India on 16th Nov, 2020 on tourist visa, and returning to USA after five months on 15th April, 2021. He purchased some goods in India on which he had paid IGST and plan to carry such goods along with him. Is there any provision of refund of IGST paid on such goods ?*

(3 marks)

- (b) A Consigner is to move goods from the Kochi (Kerala) to Noida (UP). He appoints transporter X for the movement of the goods. Transporter X moves the goods from Kochi to Bhopal (Madhya Pradesh). For completing the remaining journey from Bhopal to Noida transporter X hands over the goods to transporter Y. Thereafter goods are moved to the destination by transporter Y. Discuss the procedure to be followed with reference to E-way bill under GST Law on above transaction. (3 marks)
- (c) What is the description, frequency (monthly/quarterly/half yearly/annually) and due date for filling the following GSTR :
- (i) GSTR-5
 - (ii) GSTR-6
 - (iii) GSTR-8 (3 marks)
- (d) A registered person who has paid central tax and state tax or UT tax, as the case may be, on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply. Does he adjust the GST amount which is paid by him under wrong head ? Is any interest is liable on the amount of IGST payable ? (3 marks)
- (e) Briefly explain the power to search suspected persons in certain other cases under section 101 Customs Act, 1962. (3 marks)

Answer 5(a)

Yes, Mr. William is eligible to claim refund of IGST paid by him under section 15 of Integrated Goods and Services Tax Act, 2017 as summarised below:

The integrated tax paid by tourist leaving India

- On any supply of goods taken out of India by him
- Shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation – for the purpose of this section, the term “tourist” means a person not normally resident in India, who enters India for stay of not more than six months for legitimate non immigration purposes.

All outbound tourist carrying goods on which IGST has been paid are entitled to claim refund at the point-of-exit. Integrated tax is eligible for refund. Person seeking such refund must be a tourist who has entered India for genuine non-migrant purposes. As per Section 15 of Integrated Goods and Services Tax Act, 2017 Tourist will be eligible for the refund but the procedure and the rules are not yet notified.

Answer 5(b)

In this case only one e-way bill is required. Part A can be filled by the consigner and then the e way bill will be assigned by the consigner to transporter X. Transporter X will fill the vehicle details etc., in part B and will move the goods from Kochi to Bhopal.

On reaching Bhopal, transporter X will assign the said e-way bill to the transporter

Y. Thereafter transporter Y will be able to update the details of Part B. Transporter Y will fill the details of his vehicle and move the goods from Bhopal to Chandigarh.

Answer 5(c)

<i>GSTR</i>	<i>Description</i>	<i>Frequency and due date for filling</i>
GSTR-5	Simple monthly return for Non Resident Tax payers	Monthly (within 20 day of the next month) Or Within seven days after the last day of the period for which registration as non resident is valid, whichever is earlier.
GSTR-6	Return for Input Service Distributer	Monthly (13th of the next month)
GSTR-8	Return for e-commerce operator	Monthly (10th of the next month)

Answer 5(d)

Section 77 of the Central Goods and Services Tax Act, 2017

A taxable person who had paid tax in error is entitled to refund only after the discharge of the correct tax due so that the incorrect tax paid due to wrong classification of tax, reflects on the common portal as “paid in excess”. In this case, suo moto adjustment is not permissible.

Further, As per Section 19 of Integrated Goods and Services Tax Act, 2017, No interest is payable on such IGST paid due to payment of CGST, SGST/UTGST on transactions which later was held as interstate.

Answer 5(e)

Under Section 101 of the Customs Act, 1962 an officer of the customs empowered generally or specially by an order of Principal Commissioner of customs can search any person if he has reason to believe that any person has secreted about his person, the following goods which are liable to confiscation, or documents relating thereto:

- (a) Gold;
- (b) Diamonds;
- (c) Manufactures of gold and diamond;
- (d) Watches;
- (e) Any other class of goods which the Central Government may, by notification in the official Gazette, specify.

The power under Section 101 is without prejudice to the power conferred under Section 100 of the Customs Act, 1962.

Question 6

- (a) *MT Ltd. imported an automated machine by ship, from USA in January, 2021. The details in this regards are as under :*

(i) <i>Cost of machine at the factory of the exporter</i>	<i>USD 10,000</i>
(ii) <i>Transport charges from the factory of exporter to the Port for shipment</i>	<i>USD 400</i>
(iii) <i>Handling charges paid for loading the machine in the ship</i>	<i>USD 40</i>
(iv) <i>Freight charges from exporting country to India</i>	<i>USD 2,500</i>
(v) <i>Buying commission paid by the importer</i>	<i>USD 100</i>
(vi) <i>Lighterage charges paid by the importer at port of importation</i>	<i>₹8,000</i>
(vii) <i>Freight incurred from port of entry to Inland Container Depot</i>	<i>₹32,000</i>
(viii) <i>Ship demurrage charges paid at port of importation</i>	<i>₹9,000</i>

Date of bill of entry 10th January 2021, on this date rate of BCD was 15% and exchange rate as notified by CBIC was ₹75 per USD.

Date of entry inward 15th January 2021, on this date rate of BCD was 10% and exchange rate as notified by the CBIC was ₹73 per USD.

Integrated tax is 18%, ignore GST compensation cess.

Compute the total custom duty and integrated tax payable under customs law on an imported machine. (8 marks)

- (b) *Bajaj & Sons has a warehouse in the state of Gujrat. The turnover is more than ₹40 lakh and Bajaj & Sons has taken GST registration from Gujrat. From the following information given below, find out GST payable by Bajaj & Sons for the month of November 2020 :*

- Invoice No. 1002 issued to X Ltd. and value of taxable supply is ₹40,000. X Ltd. has utilised warehouse for the storage of oranges*
- Invoice No. 1003 issued to Y Ltd. and value of taxable supply is ₹2,45,000. Y Ltd. has utilised warehouse for the storage of manufactured goods.*
- Invoice No. 1004 issued to Z Ltd. and value of taxable supply is ₹90,000. Z Ltd. has utilised warehouse for the storage of potato chips.*
- Invoice No. 1005 issued to K Ltd. Bajaj & Sons has provided consultancy to K Ltd. on the maintenance of warehouse buildings. Consultancy fee is ₹1,00,000.*

Above figures are exclusive of GST. GST rate is 18%. Bajaj & Sons to avail input tax credit pertaining to the following :

- (i) *Balance available in the electronic credit ledger on November 1st, 2020 is ₹28,000.*

- (ii) Salary paid to manager ₹30,000 per month.
- (iii) Fees paid to an advocate on November 28, 2020 pertaining to recovery of disputed rent of ₹10,000 (advocate does not charge any GST).
- (iv) Air Conditioner purchased for office ₹30,000 + 28% GST (₹8,400)

Assume that the conditions for claiming input tax credit [including conditions imposed by rule 36(4)] are satisfied. (7 marks)

Answer 6(a)

Computation of assessable value and total customs duty and integrated tax payable

Sr. No.	Particulars	Amount
1.	Cost of machine at the factory (in USD)	\$10,000
2.	Add: Transportation charges up to port. (in USD)	\$400
3.	Add: Handling charges at port. (in USD)	\$40
4.	FOB Value of Machine (in USD)	\$10,440
	Exchange rate of Rs. 75 per USD is to be considered as notified by CBIC on the date of filing of bill of entry.	75
5.	FOB Value in Rupees	₹7,83,000
6.	Add: freight charges up to India (USD 2500* ₹75)	₹1,87,500
7.	Add: Lighterage charges paid by the importer	₹8,000
8.	Add: Ship demurrage charges on chartered vessels	₹9,000
9.	Add: Insurance @ 1.125% of FOB Value of goods, Third proviso to rule 10(2) of Custom valuation Rules 2017. (i.e. 1.125% of ₹7,83,000)	₹8,809
10.	CIF Value	₹9,96,309
	Rate of duty is 10 % (rate of duty prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later).	
11.	Add: Basic custom duty @ 10%	₹99,631
12.	Add: Social welfare surcharge @ 10% of BCD	₹9,963
13.	Value for integrated tax purpose	₹11,05,903
14.	Add: integrated tax @ 18 % (levied on assessable value, Custom duties and social welfare cess)	₹1,99,062
15.	Total Custom Duty and integrated tax payable (₹99631 + 9963 + 199062)	₹3,08,656

Working Note:

- Buying commission is not includible in the Assessable value.

Answer 6(b)**Computation of New GST Payable for Bajaj & Sons for the month of November 2020**

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1.	Invoice no. 1002 (oranges is an agriculture produce, GST not applicable)	Nil
2.	Invoice no. 1003 (18 % of Rs. 2,45,000)	44,100
3.	Invoice no. 1004 (18 % of Rs. 90,000) (potato chips is not agriculture produce, hence GST is applicable)	16,200
4.	Invoice no. 1005 (18 % of Rs.1,00,000)	18,000
5.	Total GST on outward supply	78,300
6.	Less : Input Tax Credit (ITC)	
7.	Balance available in the electronic credit ledger on November 1, 2020	(28,000)
8.	Salary paid to manager Rs. 30,000 per month (No GST is Involved)	--
9.	Fees paid to an advocate on November 28, 2020 (GST on this input supply is payable by Bajaj & Sons for November 2020 under reverse charge mechanism. It will be eligible for ITC only in December 2020).	--
10.	Air Conditioner purchased for office Rs. 30,000 + 28% GST Rs. 8,400)	(8400)
11.	Total GST on inward supply	(36,400)
12.	Balance	41,900
13.	<i>Add</i> : GST payable on reverse charge mechanism (fee paid to an advocate is subject to reverse charge mechanism, 18% of Rs. 10,000)	1,800
14.	Balance GST payable through electronic cash ledger	43,700

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

Attempt the following:

- (a) *“The Companies Act, 2013 permits a company to pay certain commissions and prohibits the payment of all other commissions, discounts etc.” Comment.*
- (b) *Draft an Affidavit of a Creditor in proof of his debt in Proceeding for the Liquidation of a Company.*
- (c) *Write down the procedure of dissolution of Partnership through mutual agreement.*
- (d) *Explain the various process involved while writing a Legal Opinion.*

(5 marks each)

Answer 1(a)

Section 40 of the Companies Act, 2013, read with the Company (Prospectus and Allotment of Securities) Rules, 2014 as amended, permits a company to pay certain commissions and prohibits the payment of all other commissions, discounts etc.

- (i) The company may exercise the powers of paying commissions conferred by sub-section (6) of section 40 of the Act, provided that the rate and amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section and the rules made thereunder.
- (ii) The rate or amount of the commission shall not exceed the rate or amount prescribed in rules made there under subsection (6) of section 40 of the Act
- (iii) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

As per Rule 13 of the Company (Prospectus and Allotment of Securities) Rules, 2014 as amended, a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:

- a. The payment of such commission shall be authorized in the company's articles of association;
- b. The commission may be paid out of proceeds of the issue or the profit of the company or both;
- c. The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

- d. the prospectus of the company shall disclose –
- i. the name of the underwriters;
 - ii. the rate and amount of the commission payable to the underwriter; and
 - iii. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally
- e. there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
- f. a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Answer 1(b)

Specimen Affidavit of Creditor in proof of his debt in Proceeding for the Liquidation of a Company

IN THE (HIGH) COURT OF.....

The matter of the Companies Act, 2013

And

The matter of the liquidation of Company Limited.

I, A. B., aged years, Daughter/Son of Shri Resident of
..... do hereby on oath (or on soleman affirmation) state as follows:

1. That the abovenamed company was on the day of,20..., the date of the order for winding up the the same, and still is justly indebted to me in the sum of Rupees(Rs) only in account of (describe briefly the nature of the debt).
2. That in proof of the aforesaid debt I attach hereto the documents marked A, B and C.
3. That I have not, nor have any person or persons by my order or to my knowledge or belief for my use, received the aforesaid sum of Rupees or any part thereof, or any security or satisfaction for the same or any part thereof except the sum or security (state the exact amount of security).
4. That this affidavit is true, that it conceals nothing and no part of it is false.

Sd/- A. B.

Dated

Deponent

Verification

I, the above named deponent, verify that the contents of paragraphs 1 to 4 of this affidavit are true to the best of my personal knowledge.

Sd/-A.B.

Deponent

Date

I Daughter/Son ofR/o.....
..... declare, from a perusal of the
papers produced by the deponent before me that I am satisfied that he is Shri A.B.

Sd/.....

Solemnly affirmed before me on this.day of
20.....of(time) by the deponent.

Sd/.....

(Oath Commissioner)

Answer 1(c)

When jural relation between all the partners inter se is snapped, this constitutes dissolution of the partnership firm. Dissolution of a partnership firm may take place:

1. Without the intervention of the Court.
2. With the intervention of the Court.

Dissolution without the intervention of the Court may take place:

- (a) by mutual agreement between the partners,
- (b) by the adjudication as insolvent of all the partners or of all the partners but one.
- (c) by the business of the firm becoming unlawful,
- (d) subject to agreement between the partners:
 - (i) by the expiry of the term fixed,
 - (ii) by the death of a partner,
 - (iii) by the insolvency of a partner,
- (e) by notice in writing in case of partnership at will.

Dissolution with the intervention of the Court may be made on any of the grounds contained in Section 44 of the Indian Partnership Act, 1932.

The mere incoming or outgoing of partners does not dissolve the firm.

Different forms of notices to dissolve partnership firm without intervention of the Court by mutual agreement between the partners are as given below:

No. 1

Notice to Dissolve Partnership

To

.....
.....

Pursuant to the articles of the partnership entered into between yourself and me on..... I hereby give you notice that I intend to terminate the partnership now subsisting between us with effect from.....

Dated:

Place:

No. 2**Notice to Dissolution of Partnership for Insertion in a Newspaper**

Notice is hereby given that the partnership lately subsisting between us the undersigned (A, B & C of etc.) carrying business as at..... under the style or firm of A, B & C has this day been dissolved by mutual consent (or is dissolved by effluxion of time). All debts due to and owing by the said late firm will be received and paid by the said A, who will continue to carry on the said business under the same style and firm.

Dated :

Sd/-A, B and C.

Answer 1(d)**Drafting a legal opinion can and should always be split into three processes:**

The mental attitude, the thinking process and the writing process.

I. *The mental attitude*

The mental attitude is required to write a good opinion, or give good advice, is that of a practitioner as opposed to an academic. The approach required is a practical approach not an academic approach. The practical approach is something to be developed and acquired, and defining it does not necessarily help. But, the four fundamental principles to remember to develop the right mental attitude at all times are:

- (a) You are dealing with a real situation.
- (b) The facts are more fundamental than the law.
- (c) The law is a means to an end.
- (d) Answer the question.

II. *The Thinking Process*

The next stage in writing an opinion is the thinking process. It involves the following stages:

- (a) Read and digest your Instructions
- (b) Answer the primary question
- (c) Digest & organise the facts.
- (d) Construct a legal framework
- (e) Look at the case as a whole
- (f) Consider your advice.

III. *The Writing Process*

Simply knowing your opinion, knowing the answer, does not mean the writing process is a mere formality. You have to know how to express yourself in an opinion, how to transfer the thinking process on the paper.

The legal opinion should be written following a structure. It should be entitled OPINION or ADVICE and contain the title of the case in the heading. The first

paragraphs should serve as an introduction to the legal opinion, laying out the salient facts and what you have been asked to advise about.

At this point, many legal opinions will set out the main conclusions and advice and the overall opinion. This is good practice as it will encourage focus throughout the legal opinion and the reader will be able to read the following paragraphs knowing where they are leading. A percentage chance of success can be included in this section if appropriate. The subsequent paragraphs should set out your reasons for reaching the legal opinion which you do in the opening paragraphs. This is where the legal structure will come in. Each issue should be taken in its logical order. Each section should include your opinion on that issue and the reasons for it.

There are certain rules of structure which ought to be followed for the sake of consistency in legal opinions. One example of these is that liability should be dealt with before quantum in civil claims. If there are two or more defendants take each of the defendant's liability in turn before turning to quantum.

The concluding paragraph of a legal opinion ought to be a 'Next Step' paragraph advising what needs to be done to strengthen the client's case.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

Explain the following:

- (a) *What are the factors to be considered while giving out Premises on Lease and License Basis?*
- (b) *Ingredients of an Agency Contract.*
- (c) *Procedure to Draft a Written Statement.*
- (d) *“Goodwill of a business is an intangible asset”. Comment.*

(4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

Write short notes on the following:

- (i) *Consideration for a Guarantee and Surety's Liability in a Contract of Guarantee.*
- (ii) *Mortgage by deposit of Title Deed.*
- (iii) *Necessary Provisions and Purposes of On-Line Shopping Agreements.*
- (iv) *Rights and Liabilities of the Mortgagee.*

(4 marks each)

Answer 2(a)

While deciding to give out premises on leave & license basis some of the factors to be considered are as follows:

- *Possession* : In a leave and license agreement, the owner is deemed to be in legal or judicial possession of the premises and the licensee is in constructive possession of the premises.

- *Income Tax* : In a leave and license agreement the owner has to pay the applicable rate of tax.
- *Municipal Tax* : In a leave and license agreement the Municipal Authorities may charge taxes as applicable in the area and if there is a security deposit amount sometimes the Municipal Authorities may calculate a notional interest on the securities deposit amount and charge tax thereon.

Answer 2(b)

As per Sections 182 to 238 of the Indian Contract Act, 1872, main ingredients of an agency contract are as under:

- (i) Authority should be given either expressly or impliedly to bind his principal.
- (ii) While the principal should not be a minor, an agent could be a minor
- (iii) Consideration is not necessary.
- (iv) For the acts of the agent, the principal is liable unless the principal has exceeded his authority
- (v) The authority of an agent extends to the doing of all that is necessary and collateral to the doing of the main act.
- (vi) Obligations under this act are not assignable unless:
 - a) the nature of the business necessitates such assignment.
 - b) customs of usage of trade in the locality with regard to the business permit such assignment.
 - c) Such assignment is expressly permitted by the contract of agency.

Answer 2(c)

Procedure to Draft a Written Statement

A defendant should within the specified time from the date of service of summons on him/her, present a written statement of his defence. When the defendant relies on several distinct grounds of defence or set off, founded upon separate and distinct facts, they should be stated in separate paragraphs (O.8, R.7 of CPC), and when a ground is applicable, not to the whole claim but only to a part of it, its statement should be prefaced by words showing distinctly that it is pleaded only to that part of the claim, thus: "As to the mesne profits claimed by the plaintiff, the defendant contends that, etc." or "As to the price of cloth said to have been purchased by the defendant, the defendant contends that, etc." A written statement should be drafted carefully and artistically. All the general rules of pleading should apply to a written statement.

When it is intended to take several defences in the same written statement, the different kinds of defences should be separately written. It is convenient to adopt the following order for the several pleas:

- i. Denials – Denials to be specific
- ii. Dilatory pleas

- iii. Objections in point of Law
- iv. Special defence (pleas in Confession and avoidance)
- v. Set off and counter - claim

All admissions and denials of the facts alleged in the plaint should be recorded in the first part of the written statement and before any other pleas are written. Rule 3 of Order VIII of CPC requires that the defendant must deal specifically with each allegation effect of which he/she does not admit the truth. Rule 5 of the CPC provides that every allegation of the fact in the plaint, if not denied in the written statement, shall be taken to be admitted by the defendant. If a defendant wishes to add an affirmative statement of his own version to the denial of a plaint allegation, or to add anything in order to explain his admission or denial, it is better and more convenient to allege the additional facts along with the admissions or denial, than to reserve them until after the admissions or denials have been recorded. If there are some defences which are applicable to the whole case and others which apply only to a part of the claim, the former should preferably be pleaded before the latter.

Answer 2(d)

Wharton's Law lexicon defines goodwill as the advantage or benefit which is required by a business, beyond mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers.

Supreme Court of India in *Khushall Khengar Shah v. Khorshedbanu*, AIR 1970 SC 1147, had opined goodwill of a business as an intangible asset being the whole advantage of the reputation and connections formed with the customers together with the circumstances which make the connections durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years because of its reputation, location and other features.

Answer 2A(i)

Consideration for a Guarantee

Section 127 of the Indian Contract Act, 1872 defines consideration for guarantee as "Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee". Consideration between the principal debtor and the creditor is good consideration for guarantee given by surety. It is not necessary that the thing done or the promise made for the benefit of the principal debtor should be at the desire of the surety. The word "done" in the above definition shows that past benefit to the principal debtor can be good consideration for a bond of guarantee.

Surety's Liability

According to Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

The surety's liability is not deferred until the creditor exhausts his remedies against the principal debtor. In the absence of some special equity the surety has no right to

restrain an action against him by the creditor on the ground that the principal debtor is solvent or that the creditor may have relief against the principal debtor in some other proceedings.

The liability of the surety being co-extensive with that of the principal debtor, is joint and several with the latter and, therefore, in the absence of a clear intention to the contrary it is at the option of the creditor, to decide whether he shall proceed against the surety or the principal debtor. Of course, a guarantor is prima facie entitled to have the debt proved as against him.

Answer 2A(ii)

Mortgage by Deposit of Title Deeds

Mortgage by deposit of title deeds is called in English law as equitable mortgage. It is an oral transaction and no documents like Deed of Mortgage is required to be executed. No written acknowledgement is required for creating this mortgage. It is however, prudent to have a record of transaction to avoid difficulties to establish the creation of the mortgage. In this case, a *Memorandum of Mortgage* by deposit of title deeds is prepared by the mortgagee to secure the specific mortgage money. The main characteristics of this type of mortgage are as under:

1. Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered.
2. Delivery of title deeds is required to be made in Bombay, Madras and Calcutta and other specified towns to which the facility is extended by State Government from time to time through Gazette notification. It is not necessary for creation of mortgage that the property be located in the specified town or the company making deposit should have its registered office in that town.
3. This deposit can be made by the company through its nominee or agent duly authorised or any other persons authorized by the Board of Directors/Shareholders as the case may be.
4. Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor.
5. Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage.

Equitable mortgage is preferred by the lenders/banks/creditors/financial institutions as well as the commercial enterprises because of the inherent advantages viz. (a) to save time and avoid inconvenience of documentation, and registration; (b) to minimise cost of creating mortgage and cost of borrowed funds by saving stamp duty; (c) to maintain secrecy of the debt transaction; (d) section 180 of the Companies Act, 2013.

Answer 2A(iii)

Sale and purchase of goods through electronic media like Amazon/Flipkart etc. platforms is called on-line sale-purchase Agreement. This is basically an implied Sale Purchase Agreement that contains usual ingredients of law of contract like:

1. Offer with terms of sale, given in the advertisement on media.

2. Acceptance by the purchase as expressed by clicking the purchase order button on the mobile/computer apparatus.
3. Clearance of consideration either in advance or cash-on –delivery basis, and either through Banks or electronic payment-services channels like paytm etc. or cash.
4. Delivery of articles through courier.
5. Taking delivery, examining the goods and accepting them.
6. Any supplementary terms like return of defective goods, short supply, lack of warranty etc. and jurisdiction of courts, services, warrantee/guarantee period of the goods, discount and exchange offers, voices etc.

Answer 2A(iv)

Rights of Mortgagee

- a. Right to Sell - If borrower fails to return the loan in time then the mortgagee has the right to sell the property of the mortgagor, but the same can only be sold through auction subject to approval from the Court.
- b. Right to Recover Shortfall- In case the amount to be recovered falls short after selling the property, mortgagee shall have the right to recover the balance due.
- c. Refusal of Debt
- d. Mortgagee shall have the right to get a foreclosure decree from the court.

Liabilities of Mortgagee

- a. Property should be protected to the best possible extent.
- b. No alteration to the property.
- c. Proper Insurance Cover against the Property.
- d. All taxes, revenues levied by government should be paid.

Attempt all parts of either Q. No. 3 or Q. No. 3A

Question 3

Draft the following documents (Assume Facts if necessary):

- (a) *Draft a Special Power of Attorney. Assume facts.*
- (b) *Draft an FIR. Assume facts.*
- (c) *Draft Gift Deed.*
- (d) *Draft a Specimen Deed of Revocation of a Public Charitable Trust named Devtulya Vriddha Seva Samiti Ashram (Regd.), Gwalior (M.P.) for failure to settle debts. (Assume necessary data). (4 marks each)*

OR (Alternate question to Q. No. 3)

Question 3A

Distinguish between the following:

- (i) *Distinguish between Fidelity guarantee and Continuing guarantee.*

- (ii) *Distinguish between Retirement of partner and Expulsion of partner.*
- (iii) *Distinguish between Supplemental Deed and Endorsements.*
- (iv) *Distinguish between Writ of Habeas Corpus and Quo-warranto.*

(4 marks each)

Answer 3(a)

SPECIMEN FORM OF SPECIAL POWER-OF-ATTORNEY
(To Present Document for Registration)

BY THIS POWER OF ATTORNEY I, AB of etc., do hereby appoint CD of, etc., my attorney for me and on my behalf to appear for and represent me before the Sub-Registrar of..... of all times as may be necessary and to present before him for registration the..... deed dated the..... day of made between, etc., to admit the execution of the said deed by me (if necessary to admit the receipt of consideration), to do *inter-alia* any act, deed or thing as may be necessary to complete the registration of the said deed in the manner required by law and when it has been returned to him after being duly registered, to give proper receipt and discharge for the same.

And I, the said AB, do hereby agree and declare that all acts, deeds and things done, executed or performed by the said CD shall be valid and binding on me to all intents and purposes as if done by me personally which I undertake to ratify and confirm whenever required.

IN WITNESS WHEREOF, I, the said AB, have hereto signed (or, put my signature, or set hand and seal at.....this.....day of.....

Signed, sealed and delivered

Witnesses

AB

Answer 3(b)

To,

The Officer-in-charge/The Superintendent

..... (name of police station)

(name of place)

Sub: Request for lodging an FIR regarding the missing of the shares certificates

Sir,

This is to inform you that I have lost the physical shares certificate of Kamal Ltd, representing 10,000 equity shares at my house. The same was lost due to change of house. The details are mentioned below:

Type of Security	Folio No	No. of shares held	Certificate no.	Distinctive No.
Equity	E0213456	10,000	123154	10000-19999

I request you to register an FIR and provide a copy of the same.

Yours Faithfully,

Name of the Person submitting FIR with signature

Answer 3(c)

Deed of Gift for Love and Affection

THIS DEED of GIFT is made on the.....day of..... BETWEEN AB, etc. (called "the donor") AND CD, etc. (called "the donee").

WHEREAS the donor is the absolute owner and is in possession of the property described in the Schedule and out of his paternal affection for his daughter, the donee, is desirous of making a gift of the said property to the donee at the time of her marriage.

The donor and done are related to each other as father and daughter

That the donor has no other male child and has two daughters only.

That the done has been taking care of the donor in his old age.

That the Donor is also living with the donee's family.

That the donor is of sound mind and is not under any intoxication, undue influence, or correction while making the gift deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the natural love and affection of the donor for the donee, the donor transfers to the donee free from encumbrances ALL the property described in the Schedule TO HOLD the same to the donee absolutely for ever.
2. The donee has accepted this Gift and has taken the physical possession of the said property.

IN WITNESS WHEREOF, the donor gets and subscribes his signature and deliver in presence of witness

Date:

Places:

Name of Donor with Signature

The Schedule above referred to

Signed, sealed and delivered

AB

CD

Answer 3(d)

This Deed is made and entered on the.....day of 2021 by AB. (hereinafter called 'the Settlor') of the one part and CD etc. (hereinafter called "the trustee" of the other part).

WHEREAS by a deed of trust dated.....the Settlor transferred him the property specified therein to the Trustee upon trust to sell the same and with the proceeds of the sale to pay the debt due from the settlor to the several creditors named in the said deed;

AND WHEREAS the Trust created as aforesaid has not yet been communicated to any of the aforesaid creditors;

AND WHEREAS the settlor now desires to revoke the said trust and to make other arrangements for the discharge of his aforesaid debts;

NOW THIS DEED WITNESSES that the Settlor hereby revoked the trust created by the aforesaid deed of trust.

IN WITNESS WHEREOF, parties have signed this Deed on the day of..... 20....

.....

(Settlor)

.....

(Trustee)

In the presence of :

- 1.
- 2.

Answer 3A(i)

Fidelity guarantee

A surety's liability for the faithful discharge by another of his duties depends in each case on the exact terms of that guarantee. The surety is not discharged from the liability for the principal debtor's default because the default would not have happened if the creditor had used all the powers of superintending the performance of the debtor's duty which he could have exercised, because the employer of the servant whose due performance of work is guaranteed does not contract with the surety that he will use the utmost diligence in checking the servant's work.

If the employer of a servant whose fidelity has been guaranteed continues to employ him even after a proved act of dishonesty without notice to the guarantor, the surety is discharged. That is a basic principle implicit in the very nature of a fidelity guarantee. The guarantor in such a case guarantees the fidelity and ensures the loss against the risk of infidelity and not the fact of infidelity. If the employer wants to continue a dishonest servant after his dishonesty has been proved then he must give the guarantor notice of the fact of infidelity so that the guarantor may get an opportunity to say whether he would continue his guarantee or not for a man whose infidelity has been proved.

Continuing guarantee

Section 129 of the Indian Contract Act, 1872 lays down that a guarantee which extends to a series of transactions is called a continuing guarantee, and according to Section 130, a continuing guarantee may be revoked by the surety at any time as to

future transactions, by notice to the creditor. Continuing Guarantee is of two types, (i) Prospective (ii) Retrospective. The former one is given for future debt(s) and the latter one is given for existing debt(s). It is in the hands of the Surety to make sure that the liability regarding time or amount can be limited according to his wishes and interest. Under Continuing Liability, the Surety is liable for unpaid and left balance at the end of the guarantee.

Answer 3A(ii)

Sections 32 and 33 of the Indian Partnership Act, 1932 deals with Retirement and Expulsion of Partner

Retirement of Partner

When one or more partners leaves the firm and the remaining partners continue to do the business of the firm, it is known as retirement of a partner. A Partner may retire-

- a) with the consent of all the other partners,
- b) in accordance with an express agreement by the partners, or
- c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

Due to retirement, the existing partnership comes to an end and the remaining partners form a new agreement and the partnership firm is reconstituted with new terms and conditions. At the time of retirement, the retiring partner's claim is settled.

Expulsion of Partner

A partner can be expelled from a firm by a majority of the partners where such a power is conferred by the agreement between the partners and the power is exercised in good faith.

Answer 3A(iii)

Supplemental Deed

Supplementary deed is a document which is entered into between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document on which the parties to the document have agreed which otherwise cannot be done by way of endorsement. Thus, supplemental deed is executed to give effect to the new facts in the deed. When a deed or document is required to be supplemented by new facts in pursuance of or in relation to a prior deed this can be affected by either endorsement on the prior deed when short writing would be sufficient, or by executing a separate deed described as supplemental deed.

Endorsements

Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instrument. The term "endorsement" is used with reference to negotiable documents like cheques, bill of exchange share certificates etc. For example, on the back of the cheque to sign one's

name as Payee to obtain case is an endorsement on the cheque. Thus, to inscribe one's signatures on the cheque, bill of exchange or promissory note is endorsement within the meaning of the term with reference to the Negotiable Instrument Act, 1881. Endorsement is used to give legal significance to a particular document with reference to new facts to be added in it.

Answer 3A(iv)

Habeas Corpus

The writ of habeas corpus is a remedy available to a person who is confined without legal justification. This writ is used to release a person who has been unlawfully detained and imprisoned. The words "Habeas Corpus" literally mean "to have a body". This is an order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for his detention. This writ has to be obeyed by the detaining authority by production of the person before the Court. Under Articles 32 and 226 of the Constitution of India, any person may move the Supreme Court and the High Court of competent jurisdiction respectively, for the issue of this writ. The applicant may be the prisoner himself moving the Court or any other person may move the Court on his behalf to secure his liberty praying for the issue of the writ of habeas corpus. By virtue of this writ, the Court directs the person so detained to be brought before it to examine the legality of his detention. If the Court concludes that the detention was unlawful, then it directs the person to be released immediately. No person can be punished or deprived of his personal liberty except for violation of any law and in accordance with the due process of law. Dis-obedience to the writ of habeas corpus attracts punishment for contempt of Court under the Contempt of Courts Act, 1971.

Quo warranto

The writ of quo warranto is prayed, for an inquiry into the legality of the claim which a person asserts to an office or franchise and to oust him from such position if he is an usurper. The holder of the office has to show to the Court under what authority he holds the office. This writ is issued when:

- (i) the office is of a public and of a substantive nature;
- (ii) the office is created by a Statute or by the Constitution itself; and
- (iii) the respondent must have asserted his claim to the office. It can issue even though he has not assumed charge of the office.

The fundamental basis of the proceedings of quo warranto is that the public has an interest to see that no unauthorised person usurps a public office. It is a discretionary remedy which the Court may grant or refuse. When an applicant challenges the validity of an appointment to a public office, it is maintainable whether or not any fundamental or other legal right of such person has been infringed. This writ is intended to safeguard against the usurpation of public offices.

Question 4

- (a) *Draft a Specimen Deed of Sale by a Certificated Guardian (Appointed by the Court) of a Hindu Minor. Assume requisite data, if necessary.*

(b) Draft a Specimen Agreement for Hire-Purchase between Financier and Guarantor.
Assume facts.

(8 marks each)

Answer 4(a)

Deed of Sale by a Certificated Guardian of a Hindu Minor

THE DEED OF SALE made the day of.....

BETWEEN

AB of, etc. (vendor) of one part

And

CD of, etc. (purchaser) of the other part.

WHEREAS by an order made by the District Judge of..... in Case No.....of under Act VIII of 1890 (cause title) the said AB was appointed certificated guardian of XY who was then and is still now a minor under the age of 21 years.

AND WHEREAS by an order dated the..... day of..... made by the District Judge of..... in Misc. Judicial Case No.....of..... the said AB was authorized to sell the lands, hereditament and tenement belonging solely and exclusively to the said minor on terms thereunder contained which property is fully mentioned and described in the Schedule hereto.

AND WHEREAS the said order is still in full force and virtue.

AND WHEREAS in pursuance of the said order the said AB as such certificated guardian has contracted with the said CD for absolute sale of the said property at and for the sum of Rs.....

NOW THE INDENTURE WITNESSETH that for the consideration as aforesaid and in exercise of the powers, authorities and liberties conferred upon and vested under and by virtue of the hereinbefore recited order dated..... and all other powers and authorities enabling him in that behalf the said AB do hereby grant, convey, sell, transfer, assign and assure as certificated guardian of the said minor the said property and every part whereof unto and to the use of the said CD, To Have and To Hold the same absolutely and for ever.

AND THIS INDENTURE FURTHER WITNESSETH that the said AB do hereby covenant with the said CD that the said AB has not hereto before done, executed, performed or knowingly suffered to the contrary any act, deed or thing whereby or by reason or means whereof the said property or any part thereof may in any way be encumbered or prejudiced in title or estate or the said AB may be hindered or prevented from granting, transferring, conveying, selling, assigning or assuring the same in the manner hereinbefore indicated.

The Schedule above referred to

IN WITNESS WHEREOF, etc.

Signed, sealed and delivered

AB

CD

Answer 4(b)

Agreement for Hire-Purchase -- Financier with a Guarantor
(Three Party Agreement)

THIS AGREEMENT made this day.....BETWEEN the.....
(hereinafter called "the Owner") which expression..... of the first part and
the..... (hereinafter called the "Hirer" which expression.....) of the second
part and the..... (hereinafter called "the guarantor" which
expression.....) of the third part.

WHEREAS the owner on the request of the hirer has purchased the goods described
in the Schedule A hereto from the dealer in order to let the same to the hirer on the terms
and conditions hereinafter appearing and the guarantor has agreed to guarantee the
payment of the hire and performance of other conditions by the hirer in accordance with
the terms of this agreement.

WHEREBY in consideration of the above it is agreed between the parties as follows:

1. *Hire* : The hirer shall pay to the owner on the execution of this agreement the
sum of Rs..... the hire for the first month and on the first day of every
calendar month or year during the hiring the sum of Rs..... by way of
hire for the said goods, or shall pay the rent specified in Schedule-B hereto and
payable without demand on the day therein mentioned.
2. *Option to purchase* : The hirer shall at any time during the hiring have the option
of purchasing the said goods for Rs.....and in that event the hirer shall
receive credit for all sums previously paid by him under the preceding clause.
Until a purchase shall have been effected and the price fully paid the said goods
shall remain the property of the owner.
3. *Hirer's covenants* : During the hiring tenure the hirer will not sell, pledge,
hypothecate, charge or in any manner encumber the goods or part with possession
of the said goods or any of them without the consent in writing of the owner.
4. *Change in address* : The hirer shall forthwith intimate the owners any change of
address of the hirer and of the address of the premises where the asset is kept
and shall further more forthwith notify the owner in writing of any loss or damage
to the said asset.
5. *Default clause* : If the hirer shall make default in the punctual payment in full, of
the said monthly hire or in the observance or performance of any of the provisions
of this agreement, on his part to be observed and performed the hiring shall
immediately determine (specify here other conditions stipulated by the owner).
6. *Owner to make possession* : On the determination of the hiring, the owner may
without notice or demand retake possession of the said goods and for that purpose
may by himself or by his agent or servants enter into or upon any premises occupied
by the hirer and search the same if necessary for the hired goods.
7. *Option to terminate hiring*: The hirer may terminate this agreement at any time
by returning the said goods at the owner's place of business.

8. *Rights of damages not affected* : If the hiring is terminated by the hirer under clause 8 such termination shall not prejudice the owner's right to recover the hire upon the date of such termination nor his right to recover damages for any prior breach of this agreement by the hirer, and the hirer shall not be allowed credit or set off for on account of any payments previously made by him.
9. *Compensation for depreciation* : At the termination of this agreement either at the instance of the hirer or the owner, the hirer shall pay to the owner by way of compensation for depreciation of the said article such sum as with the amount previously paid for hire shall make up a sum equal to not less than one half of total amount payable under the agreement.
10. Any notices required to be given herein shall be given to the parties hereto in writing and by either Registered Post Acknowledgment parties due or by hand delivery at the addresses above mentioned or at such other addresses as the parties hereto may hereafter substitute by notice in writing.
11. *Consequences of breach* : The guarantor further agrees that in consideration of the premises, and in case of breach of the terms of this contract by the hirer, he shall restore possession of the asset to the owner and shall pay such sums of hire of the asset as may have fallen due to the owner alongwith any other sum that may become payable to the owner.
12. In case of any further dispute the parties to the agreement will refer the dispute to Arbitration under the Arbitration & Conciliation Act 1996.
13. Any time or other indulgence granted by the owner shall not prejudice or affect his strict rights under this agreement.

Schedule A

Description of Assets

1. Name.
2. Accession No.
3. Mark/Trade Name.
4. Year of Manufacture.
5. Type of Machine.
6. No. of Machine.
7. Other description:
8. Accessories affixed to the asset:

SCHEDULE B

The amounts payable under this Agreement are as under:

Due Date	Amount (Rs.)
...

IN WITNESS WHEREOF the parties hereunto have set and subscribed their hands the day, month and year hereinbefore mentioned and bind themselves their heirs, successors and administrators and assigns.

With suitable change for guarantor.

Witness: 1.

Signature of Hirer

Witness: 2.

Signature of Owner

Signature of Guarantor

Question 5

- (a) *“Promoter means a person who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise.” Elucidate. (4 marks)*
- (b) *Samaksh and Puneet are partners in a firm manufacturing and marketing jeans in the name and style of Novelty Garments. Now they want to admit Ms. Sameeksha, a Sartorial expert, as a new partner. Prepare a Deed of Agreement for admission of Ms. Sameeksha into the firm. (6 marks)*
- (c) *Draft a Deed of License for use of wall of a Building for publicity and advertisement for goods, etc. Assume facts if necessary. (6 marks)*

Answer 5(a)

As per Section 2(69) of the Companies Act, 2013, Promoter" means a person –

- (a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

Generally Promoter of a company is a person who does the necessary preliminary work in connection with the formation and the establishing of the company. It is Promoters only who conceives an idea, develops it, formulates a scheme or project and takes all the necessary steps for the formation of a company to implement the project or the scheme.

Before the company is registered by the Registrar of Company, promoters continue to be known as promoters. They gather funds for meeting the expenses in connection with the formation of the company and spend them, which are known and designated as "preliminary expenses" and a provision is made in the articles of association of the company authorising the company and its directors to reimburse promoters the preliminary expenses incurred by them, and also a provision for the formalisation of the contracts which the promoters of the company had entered into with third parties prior to the

company coming into existence. Promoters usually enter into contracts with the prospective directors, solicitors, bankers, brokers, underwriters, auditors, secretary, manager and with those who offer to sell land, plant, machinery equipment etc. for implementing the proposed project. Such contracts are known as "promoters' contracts" which are not binding on the company because the company had not come into existence when they were entered into with third parties by the company's promoters.

However, as a matter of practice, the company, on its incorporation enters into fresh contracts with the third parties on the lines of the promoters' contracts, which then become binding on the company.

Answer 5(b)

This Agreement is made at this day of between Mr. Samaksh and Puneet hereinafter jointly referred to as the existing partners of the one part and Ms. Sameeksha hereinafter referred to as the new partner of the other part.

Whereas Mr. Samaksh and Mr. Puneet are carrying on business in partnership in the name and style of M/s. Novelty Garments from the day of under and by virtue of the deed of partnership dated the day of entered into between them.

And Whereas the existing partners now desire to admit Ms. Sameeksha as an additional partner in the said partnership firm and Ms. Sameeksha is also willing to join the said partnership on the terms hereinafter provided.

And Whereas the present book value of their shares in capital contribution of the existing partners Mr. Samaksh and Mr. Puneet and in the assets of the Firm is rupees. and rupees respectively which Ms. Sameeksha has agreed to accept.

And Whereas Ms. Sameeksha is willing to bring in a capital contribution of rupees..... in the Firm.

Now it is agreed by and between the partners hereto as follows:

1. The existing partners hereby admit Ms. Sameeksha as a partner along with the existing partners of the said firm carried on or in the name of M/s. Novelty Garments from the day of, 20.....
2. The partnership business will be carried on the same name as above mentioned and at the same place of business as at present.
3. The business of the partnership will be the same as at present carried on and may be changed or added to with the consent of all the partners.
4. The shares in the capital assets including goodwill of the firm as on this day of the said three partners will be treated as follows -
 - Mr. Samaksh 40%
 - Mr. Puneet 40%
 - Ms. Sameeksha 20%
5. The shares of the parties hereto in the net profit and losses of the partnership will be as follows:
 - Mr. Samaksh 40%

Mr. Puneet 40%

Ms. Sameeksha 20%

6. The duration of this new partnership will be at will but any partner may retire from the partnership by one month's prior notice.
7. In case of difference of opinion on any question regarding business, the opinion of the majority will be final and binding on all the partners.
8. Subject to what is otherwise provided herein the terms and conditions mentioned in the said deed of partnership dated will be binding on the parties as if the said Ms. Sameeksha was a party thereto and subject as aforesaid the said the deed of partnership as amended by this agreement will be treated the deed of partnership between the parties hereto.
9. The change in the constitution of the said firm made by this agreement will be notified or registered under the Partnership Act, and Income Tax Act, as per the legal requirements thereof.

IN WITNESS WHEREOF the parties have put their hands the day and year first hereinabove written.

Signed by the within named Mr. Samaksh in the presence of.....

Signed by the within named Mr. Puneet in the presence of.....

Signed by the within named Ms. Sameeksha in the presence of.....

Answer 5(c)

THIS DEED OF LICENSE is made on the..... day of20...BETWEEN AB of, etc. (the Licensor) of the one part and CD of, etc. (the Licensee) of the other part.

WHEREAS the said CD has applied to AB for the use of the eastern outside wall of his building being premises No.... for the purposes of utilising the same for publicity and advertisement of his goods, a specimen copy whereof with type and design shall be delivered to the licensor, for a period of two years.

AND WHEREAS the said AB has agreed to grant the license on the following terms and conditions:

1. That the said CD shall be entitled to use the said outer wall of premises No... for the purpose of publicity and advertisement of his goods by coloured signs, marks, letters or other representations for two years from the date, in dimensions measuring..... and not contrary to any regulations of the Municipality or other public body or authority.
2. That the said CD shall pay Rs..... as such publicity and/or advertisement charges per month in advance within the 5th day of every current month.
3. That in the event the said outer wall or the plaster thereof is damaged on account of any act, default or negligence or omission on the part of CD, he shall forthwith execute all the necessary repairs thereto or in the alternative pay adequate compensation to AB on that account.

4. That the said CD shall pay for all taxes and impositions on account of such advertisement.
5. That the said AB shall be entitled to revoke this license within the said period of two years only on failure to pay regularly the fees or taxes or impositions as aforesaid.
6. That the said CD shall not be entitled to affix on the said wall any representation of other goods nor have any interest in the said wall and further shall indemnify the said AB against any damage suffered in case such display or advertisement is found to be in breach of statutory rules or authoritative order.

IN WITNESS WHEREOF the parties have executed this Deed the day and year above written.

Witnesses:

Signature

(1) AB

(2) CD

Question 6

- (a) *Amicable Corporation Ltd. incorporated under the Companies Act, 2013 purchased an independent house comprising two floors in Gurgaon in the State of Haryana for a sum of ₹3.5 crore for providing company accomodation to Dinesh, Company Secretary on the first floor and it was decided that the company shall have its guest house at ground floor.*

For facilitating its registration, Mrs. Rajwati, the Chairman - cum-Managing Director Executed the following special power of attorney :

“By this power of attorney, I, Rajwati Chairman, Amicable Corporation Ltd., do hereby appoint authorize Dinesh to be my agent and authority for the purposes of Executing registration of the property purchased by the company from Antarctic Builders Ltd. On this 15th day of September, 2018.

For and on behalf of Amicable Corporation Ltd.

Sd/-

Chairman

On presentation of this document, the Registrar refused to complete the registration Procedure stating that the power of attorney is void.

In the light of the above answer the following :

- (i) *Is the action of the Registrar legally tenable ? State reason.*
- (ii) *Draft a power of attorney as you would have been the Company Secretary.*
- (iii) *Property registration charges are 8% for a man and 6% for a woman. Will you advise that the power of attorney be executed in favour of Mrs. Rajwati to derive this benefit ?*
(8 marks)

(b) *Define Anticipatory Bail.*

Draft a Bail Application before a Magistrate during Police Enquiry under Section 437, Cr.PC 1973. (8 marks)

Answer 6(a)

- (i) The due execution of documents is important to create legal binding documents. This is particularly so for the execution of deed, which has strict requirements to ensure that it is valid and enforceable. Further when a document is to be registered with the Registrar, the execution must strictly comply with certain requirements otherwise the document will not be accepted.

In the present case a specific power of attorney is to be executed to attain the purpose of a specific Act.

Further as per the provision of Section 22(2) of the Companies Act, 2013 a company may, by writing under its common seals, authorize any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

It may be noted that in case a company does not have a common seal, the authorization under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company.

Thus the refusal by Registrar is legally tenable as the specific power of attorney is not in the prescribed manner.

- (ii) Specific Power of attorney to be presented to execute registration of property by this power of attorney:

I, Rajwati Chairperson of Amicable Corporation Limited do hereby appoint MR. Dinesh company secretary of the Company, my attorney for me and on my behalf to appear for and represent me before the Registrar of Gurgaon, Haryana of all times as may be necessary and to present before him for Registration the Title Deed dated....day.....of..... and to do any Act, deed or thing as may be necessary to complete the registration of the said deed in the manner provided by law and when it has been returned to him after being duly registered, to give proper receipt and discharge for the same.

And I Rajwati, the Chairperson of Amicable Corporation Limited, do hereby agree and declare that all acts, deeds and things done, executed or performed by the said Mr. Dinesh shall be valid and binding on me to all intents and purposes as if done by me personally which I undertake to ratify and confirm whenever required

Signed, sealed and delivered

Rajwati, Chairperson of Amicable Corporation Limited

Witness

Dated 15th September, 2021

- (iii) Chairperson being a female will not make any difference as the property is to be registered in the name of the Company. If the property would have to be registered in the personal capacity of Mrs. Rajwati the benefit could have been in the terms of savings in Stamp Duty. As far as issue of power of attorney is concerned there is no distinction between man and woman.

Answer 6(b)

An “anticipatory bail” is granted by the High Court or a Court of Session, to a person who apprehends arrest for having committed a non-bailable offence, but has not yet been arrested according to Section 438 Cr.PC. An opportunity of hearing must be given to the opposite party before granting anticipatory bail (*State of Assam v. R.K. Krishna Kumar* AIR 1998 SC 144).

**Bail Application before a Magistrate during Police Enquiry
under s. 437, Cr.PC 1973**

In the Court of..... Magistrate

The State

Versus

Accused AB son of TZ, Village:

Thana:

In the matter of petition for bail of accused

AB, during police enquiry

The humble petition of AB the accused above-named

Most respectfully sheweth:

1. That your petitioner was arrested by the police on 7th March 2021 on mere suspicion. That nearly a month has passed after the arrest but still the Investigating Police Officer has not submitted a charge-sheet.
2. That your petitioner was not identified by any inmate of the house of CM where the burglary is alleged to have taken place, nor any incriminating article was found in his house.
3. That your petitioner has reason to believe that one GS with whom your petitioner is on bad terms and who is looking after the case for complainant has falsely implicated your petitioner in the case out of grudge.
4. That your petitioner shall fully co-operate with the police.
5. That your petitioner is not likely to abscond or leave the country.

Your petitioner prays that your Honour may be pleased to call for police papers and after perusing the same be pleased to direct the release of your petitioner on bail. And your petitioner, as in duty bound, shall ever pray.

Advocate

AB

Verification

I, AB, son of TZ, residing at..... by occupation business, do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named. I know and I have made myself acquainted with the facts and circumstances of the case and I am able to depose thereto.
2. The statements in paragraphs 1 to 5 of the foregoing petition are true and correct to my knowledge and belief.
3. I sign this verification on the 7th day of March 2021.

Solemnly affirmed by the said AB

on 7th March 2021 at the Court

House at.....

Before me

Notary/Magistrate

BANKING LAW AND PRACTICE

(Elective Paper 9.1)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Read the following case study and answer the questions that follows :

BANKING SCENARIO

Several issues facing the Indian Banking Sector have occupied the attention of policy makers in the last few years. Being a regulator and supervisor of the banks, the Reserve Bank stands committed to ensuring a sound and robust banking system in the country. Emergence of new business models and new technology and its application in banking and finance have thrown up new opportunities.

Finance and Banking have emerged as engines of global economic growth. It is argued, that technology has played a pivotal role in the proliferation of financial services. Cheques, Wire Transfers, ATMs and Credit Cards were important innovations of such nature. Fast forward to more recent times, we are already witnessing yet another paradigm shifts in banking on the back of a technological revolution that promises better customer experience, risk management and returns to shareholders.

Global Banking : Emerging Regulatory Trends.

The global financial crisis represents a watershed for the banking sector. It exposed the inherent vulnerabilities of an otherwise formidable international financial system. The crisis paved the way for an overhaul of the regulatory framework. Long lasting changes in the economic and financial environment, and shift in the competitive landscape of financial services industry.

International standard setting bodies like the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB) were prompt on addressing the shortcomings of the pre-crisis regulatory framework. Consequently, many regulatory norms, including leverage, liquidity and capital adequacy were reviewed as a part of the Basel III reforms aimed at making the global financial system more resilient. Given the initiatives taken by the international bodies, policy makers across jurisdictions have been fulfilling their regulatory framework. These policies are expected to pay back in the medium to long run by enhancing the soundness and resilience of the global banking system.

More recently, with the global growth slowdown that began in 2018, credit growth, being pro-cyclical has decelerated across major economies. Thus, in turn, has adversely affected bank profitability. Despite distinct improvement in asset quality, structured weakness continued over reliance on investment in government securities in the Euro area and wholesale funding in many advanced economies. Nevertheless, capital position of banks has improved consistently in major advanced and emerging

market economics on the back of various regulatory reforms introduced after the global financial crisis.

Indian Scenario :

At the Reserve Bank of India, the Banks have largely complied with Basel Standards. In terms of recent progress, the India banking sector is slowly turning around on the back of improvements in assets quality with enhanced resolutions through the Insolvency and Bankruptcy Code (IBC). Despite the recent decline in impaired assets and a significant improvement in provisioning, profitability of the banking sector remains fragile. Capital position of banks has, however, improved on account of recapitalisation of public sector banks by the Government and Capital raising efforts by private sector banks. Nevertheless, the sector continues to encounter challenges from events like these around the telecom sector. Consequently, the overhang of Non-Performing Assets (NPAs) remains relatively high which is weighing on credit growth. Also in view of subdued profitability and deleveraging by certain corporates, risk averse banks have shifted their focus away from large infrastructure and industries loans towards retail loans. This diversification strategy, while helpful in risk mitigation tool, has its own limitations. The banking stability indicator, as reported in RBI's Financial Stability Report of December 2019, shows an improvement.

Emerging Structure of Banking :

While global banking system is still in the process of addressing the gaps exposed by financial crisis, new issues have surfaced and challenged the traditional banking business. Globally banks are facing increasing competition from non-traditional players, which are taking advantages of digital innovation. Banking structures across the globe are adapting to these new impulses. Numerous Fintech Start-ups are spanning the banking financial services industry. Through collaborations with Fintech players, several banks are applying a hybrid model where mobile services interact with banking services.

Banks are not only facing competition from Fintech Companies but also from large technology. Companies (Big Techs) which are entering into financial services industry in a big way. At present, financial services are only a small part of their business globally. But given their size and reach their entry into financial services has the potential to bring about rapid transformation of the financial sector landscape. It may, of course, bring many potential benefits. These developments pose a challenge to banks as well as banking regulators. A very different banking sector is emerging in terms of structure and business model, in the coming years.

So, what would be a possible scenario in India ?

Distinct segments of banking institutions may emerge in the coming years comparing a few large Indian Banks, several mid-sized banking institutions, smaller banks and the digital player who may act as service provider directly to customers or through banks by acting as their agents or associates. The reoriented banking system will of course be characterised by a continuous of banking. The banking space would also include both traditional players with strong customer base and new technology led players.

In the contest of the emerging scenario, a properly worked out consolidation of Public Sector Banks can generate synergies in allocation of workforce and branches as well as streamlining of operations to meet the future challenges.

Ultimately the strength of a banking system depends on the strengths of its corporate governance that fosters a robust and ethics driven compliance culture. In this contest the Reserve Bank has been issuing instructions on corporate governance.

Digital Disruptions:

Besides structural Changes, digital disruption will continue to transform the banking sector, initiatives undertaken by the Government, the Reserve Bank and the Industry have led to a radical shift towards ubiquitous digitalisation, which has provided an impetus to adoption of technology. These is a unique confluence of several positions like demographic dividend, JAM trinity, etc. that would further support rapid digitalisation of financial services in India. With traditional business, banks are expanding into newer areas such as insurance, asset management, brokerages and other services.

In the light of these developments, conventional banking is making way for next generation banking with a focus on digitalisation and modernisation. The movement towards digital payments has also been facilitated by introduction of fast payment system, such as Immediate Payment Service (IMPS), and Unified Payment Interface (UPI), which provide immediate credit to beneficiaries and are available round the clock. There is considerable interest at international fora to understand and learn from Indian experience in furthering digital payments (via NEFT, UPI etc). The National Payment Corporation of India (NPCI) has also decided to set up a subsidiary to focus on taking the UPI model to other countries which will help enhance global outreach of India's payment systems.

Strengthening Regulation and Supervision :

In the contest of ever expanding dimensions of the banking sector in the 21st century, we need to be aware of the extensive regulatory and supervisory reforms essential for ensuring stability and inclusiveness of the banking sector. It has been RBI's endeavour to constantly improve the efficacy of its supervisory and regulatory functions, so that the resilience of the regulated financial entities can be enhanced. A number of steps have been taken on the recent past in this regards. Appropriately recognising the systemic importance of Non-Banking Financial Companies (NBFCs) and their outer linkages with the financial systems, the Reserve Bank has taken necessary steps to ameliorate the concerns relating to their asset quality and liquidity. As regards the co-operative banking segment, Reserve Bank has developed a robust stress testing framework for Urban Cooperative Banks (UCBs) and taken several other measure.

Way Forward :

The changing landscape of the Banking Industry will unfold in the backdrop of a strong regulatory and supervisory regime with increased intensity and tech enabled supervision of banks. The challenge before the banks is to make the best use of technology and innovation to bring down intermediation costs, while protecting their bottom lines. Further Artificial Intelligence (AI), Machine Learning (ML) and Big Data are becoming central to financial service innovations. One of the challenges for policy maker, especially in countries like India, is to ensure that new innovations in banking sector serve the customer by reducing the cost of financial services and enhancing the range and access to products in a manner that is safe. Advanced

analytics and real time monitoring of emerging cyber security risks will be critical in detecting potential threats and enabling pre-emptive action. As the Indian Banking Sector is propelled forward to a higher orbit, banks would have to strive hard to remain relevant in the changed economic environment. The possibilities are enormous. We should be seized of the issues and act in time.

Questions :

- (i) Many regulatory norms including leverage, liquidity and capital adequacy were reviewed as part of the Basel III reforms aimed at making the global financial system more resilient. Enumerate briefly such Basel III regulatory reforms. To what extent these Basel III reforms were implemented in India ?*
- (ii) What are the major issues facing, the India Banking Sector in recent times ? How to address the issue of NPAs ?*
- (iii) How the technology has played a pivotal role in the proliferation of financial service ? There is evidence that Fintech Companies are acting as enablers in the banking ecosystem. Elucidate.*
- (iv) Distinct segments of banking institutions may emerge in the coming years. What would be a possible scenario in India ? What are likely benefits of consolidation of Public Sector Banks ? Where the focus has to be ?*
- (v) What are the challenges ahead for the Banks ? As the Indian Banking Sector is propelled forward to a higher orbit, banks would have to strive hard to remain relevant in the changed economic environment. How ? (10 marks each)*

Answer 1(i)

To address liquidity risk, new instruments such as the Liquidity Coverage Ratio (LCR) and the Net Stable Funding Ratio (NSFR) were introduced, supplemented by large exposure framework capping large and risky exposures. Aimed at addressing the "Too Big To Fail (TBTF)" problem. The FSB phased in the Total Loss Absorbing Capacity (TLAC) for the Global Systemically Important Banks (G-SIBS) to rebuild their capital buffers.

Various jurisdictions also adopted other key reforms initiated by the FSB, such as sound resolution regime for financial institutions regarding Non-Banking Financial Intermediation (NBFIs). The FSB has been conducting annual monitoring exercise since 2011. Broadly, it has been observed that, several aspects of non-bank financial intermediation which contributed to the financial crisis have considered declined.

At the Reserve Bank of India, the Bank has largely complied with Basel Standards in terms of Countercyclical Capital Buffer (CCB), Capital requirement for Central Counter Parts (CCPS), leverage Ratio framework, Liquidity Coverage Ratio (LCR), Net Stable Funding Ratio (NSFR), Domestic Systemically important Banks (D-SIBS) requirements and a supervisory framework for measuring and controlling large exposure.

On the resolution front, some progress has been made in terms of the notification issued by the Central Government under section 227 of the Insolvency and Bankruptcy Code (IBC), 2016. It is expected to have an integrated framework for resolution of financial firms operating in India in the near future. The implementation of these reforms of particular importance for having a resilient financial system in India.

Answer 1(ii)**Major issues facing the Indian Banking sector in recent times:**

1. *Deteriorating Financial Health of Banks* : Despite the recent decline in impaired assets and a significant improvement in provisioning, profitability of the banking sector remains fragile. The overhang of Non-Performing assets (NPAs) remains relatively high which is weighing on credit growth.
2. *Structural Changes* : The need for brick and mortar branches is being reviewed continuously as digitization has literally brought banking to one's finger tips, there is no need to physically visit a bank branch for most of the banking services. Banks have to implement these new technology and business practices to remain competitive. Banking regulators on the other hand, have to focus on achieving a balance between promoting innovation and applying a proper supervisory and regulatory framework. That means the future of the banking will not be a continuation of the past.
3. *Digital Disruptions* : Rapid digitalization of financial services in India. Globally, banks are facing increasing competition from non tradition players, which are taking advantage of digital innovation. Banks are not only facing competition from fintech companies but also for large technology companies (Big Tech) which are entering into financial services industry in a big way. In the light of these development, convention banking is making way for next generation banking with a focus on digitization and modernisation.

Addressing the issue of NPAs:

The sector specific pockets of NPA stress need policy attention. At the same time, proper due diligence and risk pricing on lending is of prime importance so that the health of the banking sector is not compromised while ensuring adequate flow of credit to productive section of the economy.

Timely mitigation measures like faster resolution, better recovery etc., need to be continues to bring down the Gross Non-Performing Assets (GNPAs) ratios of all scheduled Commercial Banks (SCBs). While lower rate of credit growth limits the size of the denominator for measuring GNPA, risk arising out of the global and domestic economic conditions and geo-political development persist.

Answer 1(iii)

Technology has played a vital role in the proliferation of financial services. Cheques, Wire Transfers, ATMs and Credit Cards were important innovation so such nature. Fast payment systems, such as immediate Mobile Payment Services (IMPS) and unified Payment Interface (UPI) have emerged as an application of technology.

In India, the initiative undertaken by the Government, The Reserve Bank and the liquidity have led to a radical shift towards ubiquitous digitization, which has provided an impetus to adoption of technology. There is a unique confluence of several positives like demographic dividend, JAM trinity, etc. that would further support rapid digitalization of financial services in India. Globally banks are facing increasing competition from on tradition players, which are taking advantage of digital innovation.

The movement towards digital payment has also been facilitated by introduction of fast payment systems, such as IMPS and UPI which provides immediate credit to beneficiaries and are available round the clock. The extent of digital penetration can be gauged from the fact that each day on an average the payment system in India process more than 10 crore transaction of nearly INR 6 Lakh crore. Today digital payment account for around 97% of daily payment system transactions in term of volume. This has been made possible with an accelerated growth of over 80% in the volume of digital payment transaction in the last five years.

There is evidence that fintech companies are acting as enablers in the banking ecosystem. In various areas of banking the numerous fintech startups have entered with many potential benefits. They have entered into the payments and remittance space, in the space of peer-to-peer lending, crowd lending, trade finance, insurance, account aggregation and wealth management. Building on the advantages of reinforcing nature of their data-network activities, some Big Techs are venturing into payments, money management, insurance and lending activities. With inroads into their traditional businesses, banks are expanding into newer areas such as insurance, asset management, brokerage and other services. Given size and reach of Fintech startups and Big Techs can assess the business of borrowers, reducing the need for collateral. Hence their low cost structure business can easily be scaled up to provide basic financial services the unbanked population. Banks are relying on the number of strategies to embrace technological innovations, ranging from investing in fintech subsidiaries, to collaborating with fintech companies. Banks and non-banks are partnering to offer the combination of trust and innovation to the Indian consumer. This "best of both worlds" approach has resulted in tremendous growth in nature of digital payments, which is expected to continue. These strategies can effectively ensure that banks retain market share on customer increasingly value more efficient and cost effect service.

Answer 1(iv)

In the near future, this is likely to be a very different banking sector in terms of structure and business model.

- The first segment may consist of large India banks with domestic and international presence. These process will be augmented by the merger of Public Sector Banks (PSBs).
- The second segment likely to comprise several mid-sized banking institutions including niche banks with economy wide present.
- The third segment may encompass smaller private sector banks, small finance banks, regional rural banks and co-operative banks, which may specifically cater to the credit requirements of small borrowers in the unorganised sector in rural/local areas.
- The forth segment may consist of digital players who may act as service providers directly to customers or through banks by action as their agents or associates.

The reoriented banking system will of course be characterised by a continuum of banks. The banking space would also include both traditional players with strong customer base and new technology led players.

Consolidation of Public Sector Banks:

In the content of the emerging scenario, a properly worked out consolidation of Public Sector Banks can generate synergies in allocation of workforce and branches as well as streamlining of operations to meet the future challenges. The focus has to be on enhancing in significant improvement in efficiency and rationalisation of share capita to meet the capital adequacy requirements. Investment in technology and skill building has to be stepped up. Bigger and agile banks may be able to reposition themselves with better branding exercises backed by improved technology, skills and business models.

Answer 1(v)

The challenges before banks is to make the best use of technology and innovations to bring down intermediation costs while protecting their bottom lines. Further Artificial Intelligence (AI), Machine Learning (ML) and Big Data are becoming central to financial services innovation. They can do help in fraud detection and in identifying better ways of monitoring use of funds by borrowers, track suspicious transactions etc. by processing large data base.

One of the challenges for policy makers, especially in countries like India, is to ensure that new innovations in banking sectors serve the customer by reducing the cost of financial serves and enhancing the range and access to products in a manner that is safe. Advanced analytics and real time monitoring of emerging cyber security risks will be critical in detecting potential threats and enabling pre-emptive action.

As the Indian banking sector is propelled forward to a higher orbit, banks would have to strive hard to remain relevant in the changed economic environment. These can be done by reviewing their business strategies, designing, products with the customers in mind and focussing an improving the efficiency of their services. The possibilities are enormous. There is need to seize of the issues and act in time.

Question 2

- (i) *The Rimjhim Traders, an Indian Importer Company has to settle an import bill of \$ 1,30,000. The exporter has given two options to the importer :*

Pay immediately without any interest charges, or

Pay after three months with interest @ 5% per annum.

The importer's bank charges : 15% per annum on overdraft.

The exchange rates in the market are as follows :

Spot rate for \$ 1 : ₹48.35/48.36

3-Months forward rate for \$ 1 : ₹48.81/48.83

The importer company seeks your advice. Give your advice with reasons.

(10 marks)

- (ii) *Explain the terms Spot Rate, Forward Rate and Cross Rate with reference to foreign exchange.* *(10 marks)*

- (iii) (a) *What is hedging ? What purpose does it serve ?*

(b) Name some instruments for containing risk in foreign exchange transactions.
(5+5=10 marks)

Answer 2(i)

Evaluation of two options offered by exporters for settlement of payment:

Option 1: Pay immediately without any interest charges:	
Bill value converted to Indian Rupee ($\$1,30,000 \times 48.36$)	Rs. 62,86,800
Add: Interest on overdraft @ 15% p. a. for 3 months (Rs. 62,86,800 \times 15% \times 3/12)	Rs. 2,35,755
Total	Rs. 65,22,555
Option II Pay after 3 months with interest @ 5% p.a.:	
Bill Value	\$ 1,30,000
Add: Interest @ 5% p.a. for 3 months	\$ 1,625
Total	\$ 1,31,625
Therefore amount to be paid under forward purchase contract: (\$1,31,625 \times 48.83)	Rs. 64,27,249

The Difference in outflow in option I and Option II: Rs. 65,22,555 – Rs. 64,27,249 = Rs. 95,306

Advice : It is advisable to settle bill after 3 months (under option II) since rupee outflow is less by Rs. 95,306

Answer 2(ii)

Spot Rate - Spot Rate is a rate at which currencies are being traded for delivery on the same day. It is a price for a transaction that is happening immediately. It is the current market value of an asset available for immediate delivery at the moment of the quote. For example, an Indian Importer may need United States dollar to pay for the shipment that has just arrived. He will have to purchase the dollar (\$) in the market to make payment for the import.

The rate at which he will buy the dollar (\$) in the market is known as the spot exchange rate. He will make the payment in terms of 'and gets in turn the United States dollar which will be paid to the foreign exporter. The spot exchange rate therefore, for a currency is the current rate at which one currency can be immediately converted into another currency. For example, a spot rate of \$0.99/Euro indicates that one Euro can be converted into \$0.99 in the market place at present. In most of the cases, the spot exchange rates are set by the demand and supply forces in the foreign exchange market.

Forward Rate - It is the settlement price if a transaction that will not take place until a predetermined date. Imagine a New York City firm exports its products to a German company. The business transaction will be settled in dollars so the American firm obtains revenue in its own currency and can pay its employees' salaries in dollars. If the payment

by the German company is coming 6 months later, it introduces the risk that the amount of dollars they would receive for a certain amount of euros today will not be the same in 6 months' time. A company may want to limit, or hedge, this exchange rate risk by immediately converting their euro into dollars, or by purchasing forward contracts in the foreign exchange market. A forward contract is a contract to convert euros into dollars at a future date at a set price.

In this way, the forward rate is a price quotation to deliver the currency in future. The exchange rate is determined at the time of concluding the contract, but payment and delivery are not required till maturity. Foreign exchange dealers and banks give the forward rate quotations for delivery in future according to the requirements of their clients. Generally, the forward quotations are given for delivery in 30 days, 90 days, and 180 days, but, the quotations may be given up to 2 years. Sometimes, forward contracts with maturities exceeding two years are also arranged by the dealers to meet specific requirements of their clients. Quotations are normally given for major currencies, but dealers also provide forward quotations for other currencies on the specific request of their clients.

The forward rate for a currency may be higher or lower than the spot rate. Forward rate may be higher than the spot rate if the market participants expect the currency to appreciate *vis-à-vis* the other currency, say US dollar. The currency, in such case is called trading at a forward premium. If the forward rate is lower than the spot rate, the participants expect the currency to depreciate *vis-à-vis* the US dollar. The currency in this case, is said to be 'trading at forward discount'.

Cross Rate - Cross Rate is an exchange rate between two currencies computed by reference to third currency, usually the US Dollar. Cross rates are the relation of two currencies against each other based on the rate of each of them against a third currency.

For example:

If X, Y and Z are three different currencies and quotes are given in terms of:

X/Y

Z/Y

Then the computation of X/Z is given by:

X/Y

Z/Y

Thus attaining

X/Z

Thus the X/Z rate derived from the Y/X and Y/Z is called the cross rate.

Answer 2(iii)(a)

Hedging - Hedging is a process of risk management under which the risks emanating from a transaction are covered or mitigated.

This refers to a risk management strategy used in limiting or offsetting probability of

loss from fluctuations in the prices of commodities, currencies, or securities. In effect, hedging is a transfer of risk without buying insurance policies . (a risk management strategy employed to offset losses in investments by taking an opposite position in related asset. It obviously results in potential profits. Hedging strategies typically involve derivatives such as options and futures contracts).

The best example to hedge the foreign currency exposure is forward Contract.

Answer 2(iii)(b)

Foreign Exchange Transactions refers to the sale and purchase of foreign currencies. Simply, the foreign exchange transaction is an agreement of exchange of currencies of one country for another at an agreed exchange rate on a definite date. Some of the instruments for containing risk in foreign exchange transactions are:

- (i) Exchange-traded fund,
- (ii) Forward,
- (iii) Future,
- (iv) Option,
- (v) Spot,
- (vi) Swap etc.

Question 3

Elaborate the role of the Board of Directors, Chairman and/or CEO and committees of the Board in Governance matters. List some of the important Committees of the Board constituted in banks for governance. (5 marks)

Answer 3

Role of the Board of Directors, Chairman and/or CEO and Committees of the Board in Governance:

Role of the Board of Directors

1. The Board of Directors of the bank should meet regularly and to provide effect leadership and insights in business and functional areas. They also should monitor Bank's performance.
2. Setting up of a framework of strategic control and continuously reviewing it's efficacy.
3. Implementation, review and monitoring the integrity of it's business and control mechanisms.
4. Overseeing the risk profile of the Bank.
5. Ensuring expert management and decision makings internal control and reporting requirements.
6. Maximising the interests of its stakeholders.

Role of Chairman and/or CEO : They have the responsibilities for all aspects of executive management and are accountable to the Board for the ultimate performance of the Bank and implementation of the policies laid down by the board.

Committees of the Board:

Important board level committees are framed to assist the Board of Directors to functional effectively. These committees provide effective professional support in the conduct of Board level business in key areas. Some of the important committees of the Board constitutes in banks for governance are:

1. Audit Committee of Board.
2. Risk Management Committee.
3. Stakeholders Relationship Committee.
4. Fraud Review and Monitoring Committee.
5. Customer Service Committee.
6. IT Strategy Committee.
7. Remuneration and Nomination Committee etc.
8. Corporate Social Responsibility Committee.

Question 4

*State that in what forms the working capital finance may be granted by the Banks ?
(5 marks)*

Answer 4

Working capital finance (requirement of certain minimum level of current assets) is granted by banks in the form of Cash Credit (CC), Overdraft (OD), Bills – purchased in case of demand bills/ discounted in case of usance bills, pre shipment and post shipment and Working Capital Term Loan.

Cash Credit is given against hypothecation/pledge of stock/movable assets for various purposes. While granting cash credit limit, the bank requires the borrower to contribute the margin say 25% of the value of assets (pledged/hypothecated). Bank allows the customer to draw down subject to margin which is called the drawing power. If the limit is Rs. 100 lakh and with the margin of 25% the drawing power subject to the security (paid stock/value of assets pledged/Hypothecated) would be Rs. 75 lakh or less.

In case of OD accounts also the drawn down of funds would be subject to margin and drawing power of the borrower.

Invariably CC is given against movable goods/assets, and the OD is given against financial securities like bills of exchange (financing of debtors), fixed deposit receipts, shares and tradable market instruments and book debts.

Question 5

*Enumerate the important facilitators in the primary market issues ? What is the role of Foreign Institutional Investors (FIIs) and Qualified Institutional Buyers (QIBs) in the financial markets ?
(5 marks)*

Answer 5**Important facilitators in the primary market issues are:**

Three entities involved – a company, investors and underwriter.

1. Merchant bankers to the issue or Book Running Lead Managers (BLRMs).
2. Syndicate members.
3. Registrar to the issue.
4. Bankers to the issue.
5. Underwriters to the issue.
6. Auditors to the company.
7. Solicitors.

Foreign Institutional Investors (FIIs) : An investor or investment fund investing in a country outside of the one in which it is registered or headquartered, (outside entities investing in the nation's financial market) they can include hedge funds, insurance companies, investment banks and mutual funds. As per SEBI Regulations, Foreign Institutional Investor means an institute established or incorporated outside India which proposes to make investments in India in securities. FIIs need to be registered with SEBI to invest in the Indian Equity and debt market.

Qualified Institutional Buyers (QIBs) : Qualified Institutional Buyers (QIBs) means Financial Institution, insurance company, bank, state Industrial development corporation etc. registered under SEBI Regulation. QIBs are those institutional investors who are generally perceived to possess expertise and the financial muscle to evaluate and invest into the capital markets. A class of investor that can safely be assumed to be a sophisticated investor and hence does not require the regulatory protection. They are institutional investors that own or manage on a discretionary basis at least 100 million USD worth of securities.

Their role in the financial market is – Liquidity, Volatility, Reduction in cost of equity, Knowledge flow and improving market efficiency.

Question 6

State the legal framework enacted for different categories of banks in India.

(5 marks)

Answer 6

RBI regulates banks in terms of powers it derives from The Reserve Bank of India Act, 1934 and The Banking Regulation Act, 1949 (BR Act). The RBI act confers power to RBI in the matter of managing itself as well as discharging its supervisory duties vis-a-vis other banks as well as powers to function as monetary control authority. The Act confers vast power to RBI vis-a-vis banks such as issuing directions to banks in the area of deposit accounts, interest rates, advances, foreign exchange, CRR/SLR etc. It also regulates credit in India. Apart from RBI, banks are also regulated by other regulator such as Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority (IRDA), Registrar of Companies (ROC) etc.

There is various type of banks set up under different acts passed by the Central Government and State Governments. Their legal framework is as follows:

<i>Bank Category</i>	<i>Legal Framework</i>
State Bank of India	State bank of India Act, 1955
Nationalised Bank 1969	Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970
Nationalised Bank 1980	Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980
Regional Rural Banks	Regional Rural Banks, 1976
Private Sector Banks	Indian Companies Act
Co-operative Banks	Co-operative Societies Acts (State/Central) and Banking laws (Applicable to Cooperative Societies) Act, 1965, Multistate Co-operative Societies Act, 2002

All the above types of banks are required to follow the relevant provisions of RBI Act, 1934, Banking Regulation Act, 1949 and Prevention of Money Laundering Act, 2002 besides the provisions of the specific Act under which the said bank has been incorporated.

CAPITAL, COMMODITY AND MONEY MARKET
(Elective Paper 9.2)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

- (a) ABC Ltd. is planning to borrow a sum of ₹100 crore after 3 months. To hedge itself against the risk of increase in 91-days interest rate (which is currently 5.25%), the Company decided to trade in 91-Day Government of India (GOI) Treasury Bill Future which is currently available at ₹95. The specification relating to these Future

Contract are as follows:

Unit of Trading	Face value ₹ 2,00,000
Underlying	91-Day GOI Treasury Bill
Contract Size	₹ 2,00,000
Settlement	At Weighted Average Discount Yield obtained from weekly auction of 91-day T-Bill conducted

You are required to :

- (i) State the position to be taken by ABC Ltd. in the Future Market to hedge itself against interest rate risk on the loan to be taken with reasons thereon. (5 marks)
- (ii) Calculate the Number of Future Contracts (rounded off on lower side) needs to be traded to hedge the risk on the loan to be taken. Also calculate the amount of loan left exposed to risk even after taking Future Contracts. (15 marks)
- (iii) Calculate the effective cost of funds to ABC Ltd.
 - (1) If on the day of settlement 91-Day Interest Rate rises to 6% and the Weighted Average Discount Yield obtained from weekly auction of 91-day T-Bill conducted by RBI comes out to be 5.95%. (5 marks)
 - (2) If on the day of settlement 91-Day Interest Rate falls to 4.75% and the Weighted Average Discount Yield obtained from weekly auction of 91-day T-Bill conducted by RBI comes out 4.70%. (5 marks)
- (iv) Comment on the use of Interest Rate Futures to hedge the cost of borrowing by ABC Ltd. (5 marks)

Notes : (1) Use simple compounding in the calculations.

(2) Assume 365 days a year.

(3) Round off the Contract Value/Price (i.e. no decimal points).

(4) Use Weighted Average Discount Yield for settlement of Future Contracts traded.

(b) Hari and his Persons Acting in Concert (PAC) holding 15% Equity Shares in XYZ Ltd. They purchased another 20% equity shares at a negotiated price of ₹120. The data pertaining to acquisition of shares by Hari and PAC in the period previous to this announcement are as follows

Date	Price of Share (₹)	No. of Shares Acquired
09.10.2018	94.55	5,000
19.11.2018	103.40	10,110
13.12.2018	107.50	12,124
28.12.2018	70.15	27,120
31.12.2018	72.50	30,150
03.01.2019	82.15	32,120
09.01.2019	87.10	29,750
07.02.2019	91.20	23,270
15.02.2019	75.50	32,330
07.03.2019	82.10	27,220
11.04.2019	85.10	22,110
09.05.2019	91.50	18,240
20.06.2019	92.70	20,000
19.07.2019	87.60	15,170
21.08.2019	82.70	12,714
19.09.2019	83.75	13,115
15.10.2019	93.70	37,111
14.11.2019	94.20	30,240
21.11.2019	101.70	29,999
10.12.2019	85.00	31,147
20.12.2019	95.60	30,960

Further the Volume Weighted Average Market Price for 60 trading days prior to announcement made is ₹110 per share.

From the above information :

(i) State the meaning of triggering of take over code with defined percentages.
(3 marks)

- (ii) What are the obligations of Acquirers on triggering of takeover code with details ? (3 marks)
- (iii) In case an open offer is to be made to acquire shares, what shall be the quantum and the procedure involved. (3 marks)
- (iv) Determine the 'Offer Price' at which the open offer shall be made with calculations. (3 marks)
- (v) As an investor, how one can tender shares in the open offer. (1 mark)
- (vi) Is there any reservation for the small shareholders ? (1 mark)
- (vii) Discuss the situation wherein the price of the share in stock market goes beyond the offer price. (1 mark)

Answer 1(a)(i)

ABC Ltd. has to borrow funds after 3 Months. Interest rates may change after 3 months. In order to protect itself from the fluctuations of interest rate the company has to buy interest future in any shape.

In case there is an increase in interest rate at the time of borrowing, it shall be compensated by selling of interest future which it has purchased at lower rate earlier. same is the situation Vice-versa.

Answer 1(a)(ii)

No. of Future Contract needed to Hedge its Position and unexposed amount

$$\begin{aligned} \text{Price of Future Contract} &= 2000 (100 - 5.00 \times 91 / 365). \\ &= 197507 \end{aligned}$$

$$\text{No. of Contracts to be Sold} = \frac{\text{Rs. } 1,00,000,000}{197507} = 5063.11 \text{ i.e. } 5063$$

Amount left exposed to risk

$$\begin{aligned} &= ₹1,00,00,00,000 - 5063 \times ₹197507 \\ &= ₹1,00,00,00,000 - ₹99,99,77,941 = ₹22,059 \end{aligned}$$

Alternative Solution

$$\text{Price of Future Contract} = \frac{\text{Rs. } 2000 \times 100}{1 + 0.05 \times \frac{91}{365}} = 197537$$

$$\text{No. of Contracts to be Sold} = 1,00,00,00,000 / 197537 = 5062.34 \text{ i.e. } 5062$$

Amount left exposed to risk

$$\begin{aligned} &= ₹1,00,00,00,000 - 5062 \times ₹197537 \\ &= ₹1,00,00,00,000 - ₹99,99,32,294 \\ &= ₹67,706 \end{aligned}$$

Answer 1(a)(iii)(1)

If interest rate rise to 6% and settlement price for Future Contract comes to 5.95%.

The settlement value of Future Contract:

$$= 2000 \left(100 - 5.95 \times \frac{91}{365} \right) = ₹1,97,033$$

To close out the position ABC Ltd. will buy contract at ₹1,97,033 against sold earlier at ₹1,97,507. Hence overall profit shall be: 5063 (₹1,97,507 - ₹1,97,033) = ₹23,99,862

Thus, amount to be borrowed shall be:

Total amount required	₹1,00,00,00,000
Less : Amt, of Profit on Future Contract	₹23,99,862
	₹99,76,00,138

Amount repayable after 91 days:

$$= ₹99,76,00,138 \left(1 + 0.06 \times \frac{91}{365} \right)$$

$$= ₹99,76,00,138 (1.01496)$$

$$= ₹1,01,25,24,236$$

Effective Interest Rate

$$\left(\frac{1,01,25,24,236}{1,00,00,00,000} \right) \times \frac{365}{91} \times 100 = 5.02\%$$

Alternative Solution

The settlement value of Future Contract:

$$= \frac{\text{Rs. } 2000 \times 100}{1 + 0.0595 \times \frac{91}{365}} = ₹1,97,077$$

To close out the position ABC Ltd. will buy contract at ₹1,97,077 against sold earlier at ₹197537 Hence overall profit shall be:

$$5062 (\text{₹}197537 - \text{₹}1,97,077) = ₹23,28,520$$

Thus, amount to be borrowed shall be:

Total amount required	₹1,00,00,00,000
Less : Amt. of Profit on Future Contract	₹23,28,520
	₹99,76,71,480

Amount repayable after 91 days:

$$= ₹99,76,71,480 \left(1 + 0.06 \times \frac{91}{365} \right)$$

$$= ₹99,76,71,480 (1.01496)$$

$$= ₹1,01,25,96,645 ;$$

Effective Interest Rate

$$\left(\frac{1,01,25,24,645}{1,00,00,00,000} \right) \frac{365}{91} \times 100 = 5.05\%$$

Answer 1(a)(iii)(2)

If interest rate falls to 4.75% and settlement price for Future Contract comes to 4.70%.

The settlement value of Future Contract:

$$= 2000 \left(100 - 4.70 \times \frac{91}{365} \right) = ₹1,97,656$$

To close out the position ABC Ltd. will buy contract at ₹1,97,656 against sold earlier at 1,97,507. Hence overall loss shall be:

$$5063 (₹1,97,507 - ₹1,97,656) = ₹7,54,387$$

Thus, amount to be borrowed shall be:

Total amount required	₹ 1,00,00,00,000
Add: Amt. of Loss on Future Contract	₹ 7,54,387
	₹ 1,00,07,54,387

Amount repayable after 91 days:

$$= ₹1,00,07,54,387 \left(1 + 0.0475 \times \frac{91}{365} \right)$$

$$= ₹1,00,07,54,387 (1.01184)$$

$$= ₹1,01,26,03,319$$

Effective Interest Rate

$$\left(\frac{1,01,26,03,319}{1,00,00,00,000} - 1 \right) \times \frac{365}{91} \times 100 = 5.06\%$$

Alternative Solution

The settlement value of Future Contract:

$$= \frac{\text{Rs. } 2000 \times 100}{1 + 0.0470 \times \frac{91}{365}} = ₹1.97,683$$

To close out the position ABC Ltd. will buy contract at ₹1,97,683 against sold earlier at ₹1,97,537, Hence overall loss shall be:

$$5062 (\text{₹}191537 - \text{₹}1,97,683) = ₹739052$$

Thus, amount to be borrowed shall be:

Total amount required	₹1,00,00,00,000
Add : Amt, of Loss on Future Contract	₹7,39,052
	₹1,00,07,39,052

Amount repayable after 91 days:

$$= ₹1,00,07,39,052 \left(1 + 0.0475 \times \frac{91}{365}\right)$$

$$= ₹1,00,07,39,052 (1.01184)$$

$$= ₹1,01,25,87,802$$

Effective Interest Rate

$$\left(\frac{1,01,25,87,802}{1,00,00,00,000} - 1\right) \times 365 / 91 \times 100 = 5.05\%$$

Answer 1(a)(iv)

By using Interest Rate Future ABC Ltd. has locked the interest rate somewhere near to 5% i.e. the rate at which Interest Future Contract are trading in April 2019.

Answer 1(b)(i)

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 provides a threshold for mandatory open offer. Whenever an acquirer acquires the shares in excess of the threshold Limit which at present is 25% the acquirer is refused to make a public Announcement of offer to the Shareholders of the Target Company:

It means as soon as thrash hold Limit crosses 25% the take-over Code is triggered.

Answer 1(b)(ii)

On triggering of takeover Code the acquirer has to make public announcement by way of advertisement in a newspaper providing all the details required by the provisions of relevant Laws.

The Acquirer has to appoint a merchant Banker.

The acquirer has to open an escrow account wherein it has to deposit 25% of First ₹500 Crore and by of the balance amount,

It has to submit Draft letter of offer into SEBI for Comments

Finalise due dates as per legal permissions and send the letter of offer.

After receipt of shares finalise the acceptance and make the payment.

Answer 1(b)(iii)

The acquirer has to make open offer for 26% of the equity share capital of the company. It has to send Letter of Offer to all the Shareholders through email. This information is also to be sent to all the stock brokers. The stock brokers will transfer shares of investor to the depository assigned by the acquirer.

The acquirer on receipt will finalize the acquirer and make payment. The acquirer on finalization shall return the unaccepted shares to the depositories account of investors.

Answer 1(b)(iv)

To determine the Offer Price at which open offer shall be made we need to compute following two more prices:

(A) Volume Weighted **Average Price for Acquisition made during 52 weeks** preceding the date of Public Announcement:

<i>Date of Acquisition</i>	<i>Price Per Share (₹)</i>	<i>No. of Shares Acquired</i>	<i>Consideration (₹)</i>
28.12.2018	70.15	27120	19,02,468
31.12.2018	72.50	30150	21,85,875
03.01.2019	82.15,	32120	26,38,658
09.01.2019	87.10	29750	25,91,225
07.02.2019	91.20	23270	21,22,224
15.02.2019	75.50	32330	24,40,915
07.03.2019	82.10	27220	22,34,762
11.04.2019	85.10	22110	18,81,561
09.05.2019	91.50	18240	16,68,960
20.06.2019	92.70	20000	18,54,000
19.07.2019	87.60	15170	13,28,892
21.08.2019	82.70	12,714	10,51,448
19.09.2019	83.75	13115	10,98,381

PP-CC&MM-December 2021		68	
15.10.2019	93.70	37111	34,77,301
14.11.2019	94.20	30240	28,48,608
21.11.2019	101.70	29,999	30,50,898
10.12.2019	85.00	31147	26,47,495
20.12.2019	95.60	30960	29,59,776
		4,62,766	3,99,83,447

Volume Weighted Average Price:

$$\text{Rs. } \frac{3,99,83,447}{4,62,766} = 86.40$$

(B) Highest price paid for acquisition made during the 26 weeks preceding date of Public Announcement:

<i>Date of Acquisition</i>	<i>Price Per Share (₹)</i>
19.07.2019	87.60
21.08.2019	82.70
19.09.2019	83.75
15.10.2019	93.70
14.11.2019	94.20
21.11.2019	101.70
10.12.2019	85.00
20.12.2019	95.60

Thus, Highest Price paid for acquisition is ₹101.70

Accordingly, the minimum open offer price for acquisition of shares shall be highest of the following:

- Highest negotiated price per share under the share purchase agreement ("SPA") triggering the offer; i.e. ₹120 - Volume weighted average price of shares acquired by the acquirer during 52 weeks preceding the public announcement ("PA") i.e. ₹86.40
- Highest price paid for any acquisition by the acquirer during 26 weeks immediately preceding the PA; i.e. ₹101.70
- Volume weighted average market price for sixty trading days preceding the PA; i.e. 110

Since the highest of the above prices is ₹120 the minimum price at which offer shall be made is 120.

Answer 1(b)(v)

The investor has to contact his stock broker by any combination as provided by the stock broker.

The stock broker on behalf of investor transfer shares to the designated account of Acquirer.

On finalization the account shall credit the Bank account of the investor the shares accepted.

X offer price. The Shares which are Unaccepted shall also be transferred by the acquirer to the depository account of the investors

Answer 1(b)(vi)

There is no reservation for the small Shareholders under buy back pertaining to take over Case.

Answer 1(b)(vii)

There is no change. However, in case the acquirer desires it can raise the offer price. No other action is needed in this case. However, in such cases the share which are submitted by investor gets reduced significantly.

Question 2

- (a) *DEF Ltd. was established 10 years ago and is in the business of manufacturing Electronic Chips which are used in electronic toys for the children. The Company listed in NSE and BSE, was the main buyer consisting of about 90% of DEF Ltd.'s total sale.*

LMN Ltd. uses one customized Chip manufactured by DEF Ltd. mainly for the production of one model of toy called 'Teletotto'.

It came to the notice of Ministry of Information and Technology, Government of India that the toy 'Teletotto' poses a threat to national security and accordingly ordered the stoppage the production and sale of the same toy and also instructed the company to deactivate the Chip in the toys already sold.

As a Company Secretary of DEF Ltd., comment on:

- (i) *Whether any disclosure was required before the order of Ministry of Information and Technology ? (5 marks)*
 - (ii) *What kind of disclosure are required after the notice of Ministry of Information and Technology ? (5 marks)*
 - (iii) *An employee of Ministry of Information and Technology who was holding 10,000 shares of DEF Ltd. and was aware of the impending order sold the shares in the stock market before the order was issued by the Ministry. Whether the action of the employee of the Ministry is morally and legally correct ? (5 marks)*
- (b) *NBP Bank Ltd. (a banking company) approaches you to develop a framework for the identification of 'Suspicious Transactions' in the bank.*

As a Company Secretary in practice you are required to provide some examples helping the bank in identification of 'Suspicious Transactions'. (5 marks)

(c) MLK Ltd. is planning to expand its business both at domestic level and global level and therefore its Board has decided to:

(a) enter into joint venture with TMK GmbH of Germany. This proposal will have an investment of Euro 40 Million.

(b) acquisition of majority of shares of a PSU company under GOI disinvestment programme. This proposal shall involve an outlay of ₹5600 Million.

As a Company Secretary of the company answer the following questions :

(i) Whether company can adopt the route of External Commercial Borrowings (ECBs) to finance the proposed expansion plans ?

(ii) If the floatation cost of financing from ECBs route is US\$ 2 Million, what will be the amount of ECB to be raised in US\$ if spot rates of Foreign Exchange are follows :

1 US\$ = ₹70 and 1 Euro = US\$ 1.25

Assume that company will be not be affected by the changes in exchange rates as it will hedge its position. (10 marks)

Answer 2(a)

- (i) As per Section 134(3) of the Companies Act 2013, a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company. This has to form part of Director's Report.
- (ii) Since in the given case 90% of sales is from the LMN Ltd. and that too from one product. Accordingly, with the ban on the toy the same product of DEF Ltd. is used posing threat a threat to the existence of the company and hence same be clearly disclosed in the Board's Report. The company has to send information to stock exchange also because it is a price sensitive information.
- (iii) This shall be considered as insider trading. The employed has primer information which is not public at the time of selling of shares. Not any morally but legally also the employed of the ministry had committed an offence. This is a serious offence which may cause, loss of job, heavy penalty, imprisonment etc.

Answer 2(b)

Broad categories of reason for suspicion and examples of suspicious transactions for a banking company are indicated as under:

1. Identity of client
 - False identification documents
 - Identification documents which could not be verified within reasonable time

- Accounts opened with names very close to other established business entities

2. Background of client

- Suspicious background or links with known criminals' Multiple accounts
- Large number of accounts having either a common account holder, introducer, or Authorised Signatory.

3. Signatory with no rationale

- Unexplained transfers between multiple accounts with no rationale

4. Activity in accounts

- Unusual activity compared with past transactions
- Sudden activity in dormant accounts
- Activity inconsistent with what would be expected from declared business

5. Nature of transactions

- Unusual or unjustified complexity
- No economic rationale or bonafide purpose
- Frequent purchases of drafts or other negotiable instruments with cash
- Nature of transactions inconsistent with what would be expected from declared business

6. Value of transactions

- Value just under the reporting threshold amount in an apparent attempt to avoid reporting
- Value inconsistent with the client's apparent financial standing

Answer 2(c)

- (i) External Commercial Borrowings (ECB) proceeds can be utilised for capital expenditure in the form of:
 - Import of capital goods including payment towards import of services, technical know-how and license fees, provided the same are part of these capital goods;
 - Local sourcing of capital goods;
 - New project;
 - Modernization /expansion of existing units;
 - Overseas direct investment in Joint ventures (JV)/ Wholly owned subsidiaries (WOS);
 - Acquisition of shares of public sector undertakings at any stage of

disinvestment under the disinvestment programme of the Government of India;

- Refinancing of existing trade credit raised for import of capital goods
- Payment of capital goods already shipped / imported but unpaid;
- Refinancing of existing ECB provided the residual maturity is not reduced.

Since in the given case MLK Ltd. Is planning to use the proceeds for entering into JV and acquisition of shares of Public Sector Undertaking, it can adopt the route of ECB.

(ii) The amount to be raised through the route of ECB

Amt. required for acquisition of PSU	₹5600
Million Shares Applicable Rate of US\$	₹70/\$
Amt. in US\$ for acquisition of PSU Shares (A)	US\$ 80 Million
Amt. required for Joint Venture in Euros	€ 40 Million
Applicable Rate for €	US\$ 1.25/€
Amt. required for Joint Venture in US\$ (B)	US\$ 50 Million
Floatation Cost (C)	US\$ 2 Million

Amount to be raised through,

ECB (A)+(B) +(C)= US\$ 132 Million

Question 3

XYZ Ltd. is manufacturing electric wires. To ensure smooth production it buys and hold the inventory of copper.

*Explain what types of risk XYZ Ltd. is exposed to and how it can hedge these risks.
(5 marks)*

Answer 3

If XYZ Ltd. buys and keeps copper as inventory, it takes the following risks:

Price risk : Copper prices may go up or down due to any specific reasons, If it goes down, value of our inventory goes down.

Liquidity risk : If our position is very large, we may not be able to cover our position at the prevailing price (called impact cost). Liquidating the position may cause loss in value as price goes down.

Counterparty (credit risk) : It may happen that after negotiating the deal and receiving the prices, the supplier goes bankrupt or even after the delivery, we realize that the quality is significantly different.

Once it has the physical copper with it, it can hedge by going short on the copper futures. The credit risk will be absorbed by the exchange in this case. In the case of a hedger seeking to offset the price risk on his holding of inventory of commodities by selling futures in the copper.

But what in real markets do not happen is the quantity matching. There is always a gap between expected and actual output. This is defined as a quantity risk. If the output on the maturity is lesser, the quality mismatch may affect the hedge. Besides, it will also affect the final revenue that the producer generates. Even with the hedging plan using futures contract, the producer is not able to cover the losses. But unfortunately, such risk cannot be hedged using the commodity derivative.

Question 4

Rakesh, a commodity trader borrowed a sum of 1,00,00,000 (Rupees One Crore) @ 10% p.a. for a period of 3 months.

This fund was used to buy 2 kg gold @ 4,400 per gram and due amount was paid.

Rakesh sold 2 kg gold in future of 3 months in the Commodity Exchange @ 4,500 per gram.

The Trader paid 10,00,000 to the broker towards margin as well as maintenance margin for this transaction.

After 3 months Rakesh squared off the future transaction of gold @ ₹4,500 per gram.

The broker charged ₹8,000 as commission all-inclusive for this transaction.

Rakesh sold the physical gold @ ₹4,500 per gram.

Calculate the Net gain/Loss made by Rakesh.

(5 marks)

Answer 4

Total sum Borrowed	₹1,00,00,000
Interest for 3 months @ 10% PA	2,50,000
Amount spent on purchase of gold 2 kg @ 4,400	₹88,00,000
Balance left	₹12,00,000
Margin paid to broker	10,00,000
Sale of gold in commodity market 4500 x 2000 gm (2kg)	90,00,000
After 3 months:-	
Future transactions squared of :-	
4500 x 2000 gms (2kg)	90,00,000
Loss / profit in future -	NIL
Commission paid to broker	8000
Physical gold	
Sale of gold – 4500 x 2000 gms (2kg)	90,00,000
Purchase cost - 440x 2000 gms (2kg)	88,00,000
Profit / gain	2,00,000
Less purchase paid	8000
Interest paid	-250000
Net loss	58,000

Question 5

B Ltd. has an issued capital of 5 Crore equity shares of ₹10 each. The company has free reserves of ₹300 Crore. The stock price quoted in stock market is ₹300. The promotor holds 70% of the equity capital in the company. B Ltd. has decided to distribute part of its surplus cash to its shareholders. The company short-listed two options:

- (i) *Declare a dividend of 160 percent.*
 (ii) *Buy-back 2,00,000 equity shares @ ₹400 per share by way of Tender Route.*

Comment on the following aspects :

- (a) *Out of above two options which are more beneficial to the promotor for the purpose of taxation. (2 marks)*
 (b) *Will there be any difference in outgo of funds for the company ? (2 marks)*
 (c) *In case of buy-back by way a tender route and it is fully subscribed and the promoters also tender shares as per their entitlement, what will be the impact on the promotor's holding ? (1 mark)*

Answer 5

- (a) The Promoter holds 70% of 5 crore equity sources of ₹10 each i.e. 3,50,000 equity shares (3.5 crore)

Dividend receivable ₹16 per share on 3.5 crore share	56 crore
Proportionate Buy-back amount 70% of 2,00,0000 equity share	56 crore

Although amount is some but the dividend is taxable in the hands of Promotor while there is no tax an buy back of Shares. As such buy-back is more beneficial to the Promotor.

- (b) Yes there will be difference in total out-go of funds for the Company

There is no tax an dividend distribution. Hence total outgo shall be ₹80 crore i.e. 5 crore x 16 per share

In case of buy-back, the company has to pay a tax of 20% on the amount bought back by the company. As such the total outgo shall be ₹96 crore [Rs. 80 crore + 16 crore (tax)].

In the buyback paid up capital of the company will get reduced after buy back

- (c) Since the buy back is on Proportionate basis, in terms of percentage there shall not be any change in the promoters holding in terms of percentage.

Question 6

- (i) *What is the difference between Exchange Traded Fund (ETF) and other schemes of the Mutual Fund? (2 marks)*
 (ii) *What is the role of Mutual Fund Manager in these schemes ? (2 marks)*

- (iii) *Mutual Fund charges a fee for maintenance of these schemes to meet its various expenditures such as Salaries, Research, Maintenance of records etc. Is there any difference in the expenses charged by Mutual Fund on maintenance of both these Schemes?* (1 mark)

Answer 6(i)

Exchange traded funds are based on index. Such as Nifty, Sensex, bank index etc. These index comprises of fixed securities. The amount has to be invested in ETF is based on Market capitalization of these securities in the same proportionate. In other mutual funds scheme it is the decision of investment manager to buy or sell the stocks with the promoter set for the scheme.

Answer 6(ii)

For the manager of ETF mutual fund, the parameters are fixed and the fund manager balances the portfolio, so that it truly reflects the index.

Answer 6 (iii)

Yes there is difference in the amount charged by the mutual fund for different categories. In ETF charges are done because mutual fund has just to rebalance the portfolio to provide true reflection of the index. In other schemes research and investment decisions are involved resulting into higher cost.

INSURANCE LAW AND PRACTICE
(Elective Paper 9.3)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Answer the following questions as per the given situation :

- (a) Mr. Vikrant, as a sole proprietor of rice mill running under the head and style of "M/s. Vikrant Enterprises", at village H in Tehsil B, District S, which was financed by PBZ Bank. Mr. Vikrant is also a depot holder and authorised to distribute kerosene oil (highly flammable) in the nearby areas to poor villagers as per requirement. Sometimes, the excess stock of oil is also stored in the premises of rice mill.

As per the terms and conditions of the financial assistance, M/s. Vikrant Enterprises got the building, plant, machinery and stock insured with the ULP Insurance Company Limited, covering the risk of earthquake, fire and floods, for which two separate insurance policies were taken, one in respect of the building, plant and machinery and another in respect of stocks of paddy, rice, rice bran, rice husk and bardana etc., lying in the factory premises. The total risk covered was for ₹500 lakh. The terms and conditions of the policy were explained to Mr. Vikrant and he agreed in totality. The period of validity of such insurance policies was w.e.f. 24th September, 2019 to 23rd September, 2020.

During the intervening night of 16th/17th January, 2020, the factory premises gutted into fire. On account of devastation of fire, stock to the tune of ₹150 lakh got destroyed. Its information was given to the Insurance Company and the necessary claim was lodged. After carrying out the survey, the company decided not to pay the claim. Mr. Vikrant filed an appeal with State Commission and lost it

- (i) In your opinion, what are the considerations which led the insurance company and the State Commission not to settle the claim ? Also list some examples of such type under which insurance companies can take shelter to rebut a claim. (10 marks)
- (ii) What are the implications of concealment of information by the insured and by the insurer ? (10 marks)
- (b) TLP Ltd. is engaged in the business of manufacturing of garments and has been in this business since 1995. The Company has recently got its new building constructed and inaugurated the same. TLP Ltd has borrowed working capital from BBB Bank Ltd. As per terms and conditions of sanction, the company was required to insure all its primary and collateral security. Accordingly the insurance policy was obtained from an insurance company and bankers/financier's name

duly incorporated in it. As per routine requirements, bank appointed Mr. D as stock auditor. The Stock auditor visited the factory premises and carried out the stock audit. Everything went well except the following observation of the stock auditor :

The Fire extinguishers installed by the company are not up to the mark and Employees are not well trained to handle the same. He further stated that, tomorrow if something unwanted happens, insurance company will be well within its right to reject the claim.

Management of the company fails to understand as to how the said observation can affect them.

Discuss the observation of the stock auditor in reference to insurance laws.

(5 marks)

- (c) *Commencing operations in 2006 as Standalone Health Insurance provider, HK Insurance Co. Ltd is providing Insurance services in Health, Personal Accident and Overseas Travel Insurance etc. HK Insurance Co. Ltd has underwritten an average gross written premium of ₹ 5,000 crore during the last three financial years and has built up a promising path with an appreciable net worth of ₹ 500 crore as on 31st March 2020.*

Company has products to cater to everybody, be it individuals, families or corporates and work directly as well as through various channels like agents, brokers, online etc., and is also into bancassurance having long standing relationship with various Banks. Currently Company has 12800+ employees and 640+ branch offices all over India. The company has set up a target of achieving premium income of ₹ 6,000 crore and increase in net profit by at least 10 basis points. Accordingly the target was given to everybody involved. But to its surprise, the financial parameters for the current financial year were showing downward trend and the fall in premium income has been observed. Also the increase in customer complaints, returning of policies (reason being false selling of policies), and filing of complaints with insurance ombudsman (delay/rejection of claims) has become the normal routine. Management of the Company fails to understand the reason behind the same. After Investigation, it was pointed out that company is not handling the customers carefully, agents are selling the policies without understanding, the requirements of customer and even in some cases, problems and delays in settling the claims, timely intimation of renewal premiums and consequently there is a need to improve the image and reputation of the company.

The Consultants involved in guiding the management suggested them to implement some code/principle which must be followed under all circumstances and ensure that changes will benefit consumers and increase their confidence in the company. Guide the management in devising such code and list some areas where it can deliver the required results.

(10 marks)

- (d) *Mr. Deep, resident of Ambala, Haryana, after getting his first job bought new car on 1st Dec. 2020 for ₹ 10 lakh. He got the same insured from the leading insurer after satisfying himself about the claim settlement ratio and other factors.*

After one year, renewal premium was paid on time for continuing the policy. One fine evening after returning from office parked the car in front of his house and went inside. His kids were waiting for him to come and take them for a ride. When the happy family came outside the house, they were shocked to see that the car was not there. Everything kept in the car like mobile cover, toys of kids, important documents, duplicate keys of house and car, driving licence etc. also went missing. Immediately they informed the local police station and started searching nearby areas and enquiring from neighbours to get some information. But all in vain and the happiness got converted into sadness. Mr. Deep filed the first information report and informed the insurance company about the car lost. Insurance Company asked Mr. Deep to submit all the documents for claim processing. Considering the given circumstances :

- (i) Mention the process/documents which need to be submitted by Mr. Deep. (5 marks)
 - (ii) Discuss the Admissibility of the claim. (2 marks)
 - (iii) In case any dispute arises, how the same can be resolved ? (3 marks)
- (e) M, 30, is an accountant earning ₹ 60,000 a year. He's married to S, 29, and they have two children aged four and two. S currently stays at home caring for the children. M and S have ₹1,40,000 mortgage, ₹40,000 owing on credit cards, and a car loan of ₹6,00,000. M's superannuation includes ₹5,00,000 of life insurance cover. M is worried that if something happened to him, his family would be in financial difficulty.

After speaking to his financial adviser, M decides to take out ₹10,00,000 life insurance policy and ₹2,00,000 trauma and disability insurance. When combined with the existing life insurance he has under superannuation, if M dies unexpectedly S and the children will have sufficient amount to live on after all debts are paid. Also, if M was to suffer from one of the medical conditions specified in his trauma insurance policy or suffer a total and permanent disability, the lump sum he receives would help meet his medical treatment costs, hopefully without the need to dip into the family's savings or go further into debt. So he bought the policy. But after receiving the policy documents, he observed that conditions in policy are different as compared to conditions informed by the agent of the insurance company. So he filed a complaint with Grievance officer designated by the insurance company on 01.01.2020. The company rejected the customer grievance on 15.01.2020 (intimating him on 20.01.2020) and closed the complaint on 31.01.2020.

- (i) What conditions need to be fulfilled so that grievance can be considered closed as per insurance regulations ? (4 marks)
- (ii) Do you think the company did the right thing by closing the grievance in the given circumstances ? (1 mark)

Answer 1(a)(i)

The principle of *Uberrimae fidei* applies to all types of insurance contracts and is a very basic and primary principle of insurance. According to this principle, the insurance

contract must be signed by both parties (i.e. insurer and insured) in absolute good faith or belief or trust. The person getting insured must willingly disclose and surrender to the insurer all relevant complete true information regarding the subject matter of insurance. The insurer's liability is voidable (i.e. legally revoked or cancelled) if any facts, about the subject matter of insurance are either omitted, hidden, falsified or presented in a wrong manner by the insured

The principle forbids either party to an insurance contract, by non-disclosure or misrepresentation of a material fact. Material fact is every circumstance or information, which would influence the judgment of a prudent insurer in assessing the risk.

Facts, Which Must Be Disclosed:

- (i) Facts, which show that a risk represents a greater exposure than would be expected from its nature e.g., the fact that a part of the building is being used for storage of inflammable materials.
- (ii) External factors that make the risk greater than normal e.g., the building is located next to a warehouse storing explosive material.
- (iii) Facts, which would make the amount of loss greater than that normally expected e.g., there is no segregation of hazardous goods from non-hazardous goods in the storage facility.
- (iv) History of Insurance (a) Details of previous losses and claims (b) if any other Insurance Company has earlier declined to insure the property and the special condition imposed by the other insurers; if any.
- (v) The existence of other insurances.
- (vi) Full facts relating to the description of the subject matter of Insurance.

Thus failure to disclose storage of hazardous substances along with non-hazardous substances has led to non-disclosure of material fact in given case. Insurance company did not accept the claim.

Answer 1(a)(ii)

It may turn out from the representations furnished by the customer that the details are incomplete or any important information is concealed or is misleading. In such circumstances it is the choice of the insurer whether to:

1. Incorporate the required changes in the contract and charge a different premium.
2. Accept the policy and pay compensation especially if the facts have negligible importance.
3. Avoid any obligation on its part as per the policy.

It has to be proved by the insurer that the non-disclosure or misrepresentation was intentional on the part of the insured to commit fraud and deceive the insurer before it can stop payment of compensation.

Non-disclosure may be unintentional on the part of the insured. Even so such a contract is rendered voidable at the insurer's option and it can refuse any compensation.

Any concealment of material facts is considered intentional. In this case also the policy is considered void.

It is true that in a contract of insurance the insured has to furnish more information about him. But there are certain covenants in a contract, which have to be thoroughly elaborated to the insured. These relate to the conditions in which the insurance company may or may not perform its promises. It has to be noted that it is the duty of both the insurance agent and the company authorities that this particular aspect is looked into. Any laxity at this point may tilt the judgments in favour of the insured in case of a dispute.

Answer 1(b)

Principle of Loss Minimization is Applicable

Under this principle it is the duty of the insured to take all possible steps to minimize the loss to the insured property on the happening of uncertain event. According to the Principle of Loss Minimization, insured must always try his level best to minimize the loss of his insured property, in case of uncertain events like a fire outbreak or blast, etc. The insured must take all possible measures and necessary steps to control and reduce the losses in such a scenario. The insured must not neglect and behave irresponsibly during such events just because the property is insured. Hence, it is a responsibility of the insured to protect his insured property and avoid further losses.

Thus old/expired fire extinguishers and lack of training to employees means this principle is getting violated. Insurance company may take the shelter of this principle and reject the claim, if filed.

Answer 1(c)

Company may implement the principle of Treating Customers Fairly (TCF)

The Treating Customers Fairly (TCF) principle aims to raise standards in the way financial institutions carry on their business by introducing changes that will benefit consumers and increase their confidence in the financial services industry. This is a customer centric initiative aimed at improving the image and reputation of financial institutions by recognising the customers as one of the key stakeholders carefully and giving them the deserved treatment. This assumes most importance in the financial services industry keeping in mind that the customers park their hard earned money with them and depend on them based on the expected level of servicing. Moreover, a small dissatisfaction could lead to an irreparable damage to the institutions as well.

The firms adopt TCF to deliver the following outcomes:

Outcome 1 : Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture (RIGHT CULTURE).

Outcome 2 : Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly (RIGHT TARGET).

Outcome 3 : Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale (RIGHT INFORMATION).

Outcome 4 : Where consumers receive advice, the advice is suitable and takes account of their circumstances (RIGHT ADVICE).

Outcome 5 : Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect (RIGHT GUIDANCE).

Outcome 6 : Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint (RIGHT AFTER SALES SERVICE).

Answer 1(d)(i)

In the event of theft of vehicle:

- The insured should lodge the First Information Report (FIR) with a police station immediately, inform the insurance company and provide them with a copy of the FIR.
- He should also submit the Final Police Report to the insurance company as soon as it is received and extend full cooperation to the surveyor or investigator appointed by the company.
- After the claim is approved, the Registration Certificate (RC) of the stolen vehicle has to be transferred in the name of the company and the insured needs to submit the duplicate keys of the vehicle along with a letter of subrogation and an indemnity on stamp paper (duly notarized) to the insurance company.

Answer 1(d)(ii)

Admissibility of the claim : In given case Mr. Deep cannot submit the duplicate keys as it is also lost with car, so claim will not be admissible.

Answer 1(d)(iii)

Settlement of claim in case of dispute : The most common form of dispute that arises between the insured and the insurer is about admission of liability or the size of the claim. Disputes regarding claim amounts, where the insurer has agreed to cover the claim under the policy, are referred to an arbitrator. If the decision of the arbitrator is disputed by either party, the Consumer Forum or the Civil Court could be approached.

Answer 1(e)(i)

A grievance can be closed only if the following conditions are satisfied:

- Where the insurance company has acceded to customer's grievance, upon acceding to the request of the customer.
- Where the insurance company rejects the customer's grievance, upon receipt of a communication from customer accepting the company's resolution.
- Where the insurance company rejects the customer's grievance and the customer does not respond within 8 weeks of receipt of resolution, upon completion of the 8 weeks.

- In all the above instances, the Grievance Redressal Officer shall certify that the Insurance Company has discharged its contractual, statutory or regulatory obligations.

Answer 1(e)(ii)

As can be seen from above, where the insurance company rejects the customer's grievance and the customer does not respond within 8 weeks of receipt of resolution, company can close the grievance only upon completion of the 8 weeks, thus the closure of grievance is not considered valid.

Question 2

- (a) *GN Ltd. is engaged in the manufacture and sale of metalized and coated films and papers. Company is planning to start new manufacturing facility for which project planning has already begun. Project team is working day and night to procure land, financial arrangements, procuring orders and procurement of machinery from various places, storing machineries purchased and delivered etc.*

The company agreed to purchase one Machinery from M/s VG Limited, England for a total value of £ 5 lakh. The machinery purchased was to be installed at the company's Plant at Jammu and in order to ensure, secured and safe delivery, the company took a marine cargo (Specific Voyage Policy) for a total assured sum of ₹500 lakh against any loss/damage occurring to the machinery during transit from Port to Jammu. The company paid the insurance premium due, to complete the contract.

GN Ltd. bought the same policy from other insurer also for the same sum insured and on almost the same terms and conditions. The machinery had arrived at Mumbai Port and was delivered at the petitioner's warehouse at Jammu. However, on opening the packed cases, it transpired that the machinery had got damaged during the course of transit. Both the diffusion pumps of the vacuum metallizer had cracked and the elbow of one of the pumps had bent and was damaged beyond repair. Consequently, insurers were informed about the damage and also sought for conducting a survey for assessment of loss estimated at ₹50 lakhs.

Answer the following questions considering the above :

- (i) *Is it possible that GN Ltd. can take multiple marine insurance policies for the same cargo ? In insurance terminology, what do we call GN Ltd. ?*
(4 marks)
- (ii) *Discuss about the admissibility of claim and which insurer will bear the loss?*
(6 marks)
- (iii) *Do you think any insurance product covers the project before it starts operations ? Discuss.*
(5 marks)
- (b) *True Ltd. is engaged in the business of manufacturing of garments and has its office in New Delhi. The company is operating from rented premises. Management of the company decided to have its own building/premises considering the requirement of more space and also to reduce the fixed expenses in the future.*

Accordingly the plan was made and fund arranging exercise begun. The funds available with the company were enough considering the current cost of construction. But management fears that construction cost will rise in the times to come and then company may face financial crunch. Management of the company seeks your guidance as to whether there is any way out that the risk of future price rise in construction cost can be handled/mitigated. Guide them suitably. (5 marks)

- (c) *Rohit proposed to purchase Life Insurance Policy (Unit Linked) from XYZ Insurance Co. Ltd. The company asked him to get his medical done for which expenses were borne by the proposed insurer. After receiving the medical reports, the insurer accepted the proposal and consequently the policy documents issued. Policy documents contained some wrong information like the name of insured, date of birth, details of the riders attaching to the property. Rohit got annoyed and decided to cancel the policy and claim the refund of premium paid by him.*

(i) *List the rules of Interpretation of a policy.* (5 marks)

(ii) *Calculate the refund amount considering the given information :*

Sum Insured : ₹100.00 lakh

Premium Paid : ₹1,00,000.00

Units allotted at the time of Policy Issuance : 8,000 @ ₹10.00 per unit

Medical Expenses : ₹5,500

Proportionate Risk premium for the cover period : ₹12,500

Stamp Duty Charges : ₹800

Fund Manager Charges : ₹1,200

Unit Price as on the date of cancellation : ₹9.50 per unit.

(5 marks)

Answer 2(a)(i)

It is possible that the Policyholder can take multiple marine insurance policies for the same cargo or freight with different insurers. Under such circumstances, where two or more policies are effected by or on behalf of the same assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by Marine Insurance Act, 1963, the assured is said to be over-insured by double insurance. GN Ltd. called as insured as GN Ltd. procures the policy or becomes the beneficiary through the insurance contract.

Answer 2(a)(ii)

Claim is admissible and where the assured is over-insured by double insurance:

- (a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit. However, he is not entitled to receive any sum in excess of the indemnity allowed by this Act.
- (b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation, for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured.

- (c) where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy.
- (d) where the assured receives any sum in excess of the indemnity allowed by Marine Insurance Act, 1963, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

Answer 2(a)(iii)

Before an industry is set up, it involves project planning, financing, procurement of land, land levelling and earthwork, excavation of land, placing orders and procurement of machineries from various places, storing these machineries and other equipments connected with the project in safe conditions, erecting the equipments as per a planned schedule and finally testing and commissioning the erected plant and machinery for their rated capacity. So the project can be insured.

The engineering policies, recommended at the project stage can be any one of the following three covers:

1. Erection All Risks (also known as Storage Cum Erection Insurance),
2. Contractors (Construction) All Risks Insurance,
3. Contractor's Plant and Machinery Insurance.

Answer 2(b)

Risk transfer is another technique for handling risk. Risks can be transferred by several methods. Some of the methods are: (i) Transfer of Risk by Contracts; (ii) Hedging Price Risks; and (iii) Conversion to Public Limited Company.

In the given case, Transfer of Risk by Contract can be suggested.

Unwanted risks can be transferred by contracts. For example, the risk of a defective television or stereo set can be transferred to the retailer by purchasing a service contract, which makes the retailer responsible for all repairs after the warranty expires. The risk of a substantial increase in rent can be transferred to the landlord by a long-term lease. The risk of a substantial price increase in construction costs can be transferred to the builder by having a firm price in the contract rather than a cost-plus contract.

Answer 2(c)(i)

The following rules of Interpretation of a policy are applied:

- Printed and written portion of the policy is to be construed together as far as possible.
- In case of contradiction, the written portion over-rides the printed portion.
- The policy is to be interpreted as a whole.
- The words in the policy are to be given their plain, ordinary and popular meaning.
- Technical words are to be given their strict technical meaning.
- The ordinary rules of grammar shall apply.

Answer 2(c)(ii)

Refund Amount Calculation in case of ULIP Policy where the insured disagrees to any of the terms or conditions, he has the option to return the policy stating the reasons for his objection, when he shall be entitled to a refund of the premium paid, subject only to a deduction of a proportionate risk premium for the period on cover and the expenses incurred by the insurer on medical examination of the proposer and stamp duty charges. In respect of a unit linked policy, in addition to the deductions under sub-regulation (2) of this regulation, the insurer shall also be entitled to repurchase the unit at the price of the units on the date of cancellation.

$$\begin{aligned} \text{Premium Amount} &= \text{Unit Value as on the date of Cancellation} \times \text{Number of units} \\ &= ₹ 9.5 \times 8,000 = ₹76,000 \end{aligned}$$

$$\begin{aligned} \text{Less : Sum of Medical Expenses + Proportionate Risk Premium + Fund Manager} \\ \text{charges and Stamp duty Charges} \\ = 5,500+12,500 + 800+1,200 = ₹20,000 \end{aligned}$$

$$\text{Amount Refundable} = 76,000 - 20,000 = ₹56,000$$

Question 3

Give brief notes on :

- (i) *Actual Total Loss*
- (ii) *Constructive total loss*
- (iii) *General average*
- (iv) *Particular average*
- (v) *Hit and Run motor accident.* (5 marks)

Answer 3

- (i) *Actual Total Loss* : In actual total loss, the subject matter is completely destroyed or so damaged that it ceases to be a thing of the kind insured. For example, sinking of ship, completely destruction of cargo by fire etc.
- (ii) *Constructive Total Loss* : In the case of constructive total loss, the ship or cargo insured is not completely destroyed but is so badly damaged that the cost of repair or recovery would be greater than the value of the property saved. For example when a vessel sinks in the deep ocean and the act of retrieving the ship back from the water is so costlier than the cost of ship itself. Then the ship is left to rest and is taken as constructive total loss.
- (iii) *General Average* : It refers to the sacrifice made during extreme circumstances for the safety of the ship and the cargo. The loss has to be borne by all the parties who have an interest in the marine adventure. For example, a loss caused by throwing overboard of goods in order to prevent the ship from sinking, is a general average and must be shared by various parties.
- (iv) *Particular Average* : Particular Average may be defined as a loss arising from

damage accidentally caused by the perils insured against. Such a loss is borne by the underwriter who insured the object damaged. For example, if a ship is damaged due to bad weather, the loss incurred is a particular average loss.

- (v) *Hit and Run motor accident* : Hit and run motor accident is accident arising out of a motor vehicle or motor vehicles the identity of whereof cannot be ascertained in spite of reasonable efforts for the purpose.

Question 4

ABC Insurance Co. Ltd. appointed Mr. X, CEO of the company, as a member of the audit committee. Do you think it is allowed ? Also inform the various functions to be performed by Insurance Co.'s audit committee. (5 marks)

Answer 4

The Chairperson of the Audit Committee should be an Independent Director of the Board with an accounting/finance/audit experience and may be a Chartered Accountant or a person with a strong financial analysis background. The association of the CEO in the Audit Committee should be limited to occasions where the Audit Committee requires eliciting any specific information concerning audit findings. As required under Section 177 of the Companies Act, 2013, the Audit Committee shall comprise of a minimum of three directors, majority of whom shall be Independent Directors.

Various functions to be performed by an Insurance Company's Audit Committee are as follows:

- (i) The Committee shall oversee the financial statements, financial reporting, statement of cash flow and disclosure processes both on an annual and quarterly basis. It shall set-up procedures and processes to address all concerns relating to adequacy of checks and control mechanisms.
- (ii) The Audit Committee will oversee the efficient functioning of the internal audit department and review its reports. The Committee will additionally monitor the progress made in rectification of irregularities and changes in processes wherever deficiencies have come to notice.
- (iii) The Audit Committee shall be directly responsible for the recommendation of the appointment, remuneration, performance and oversight of the work of the auditors (internal/statutory/Concurrent) Audit Committee is primarily responsible for periodic review of financial statements, at least once in a quarter.
- (iv) The Audit Committee shall have the oversight on the procedures and processes established to attend to issues relating to maintenance of books of account, administration procedures, transactions and other matters having a bearing on the financial position of the insurer, whether raised by the auditors or by any other person.
- (v) The Audit Committee shall discuss with the statutory auditors before the audit commences, about the nature and scope of audit as well as have post-audit discussions to address areas of concern.
- (vi) The Audit Committee act as a Compliance Committee to discuss the level of

compliance in the Company and any associated risks and to monitor and report to the Board on any significant compliance breaches.

Question 5

List out the circumstances under which the life insurer may apply, to pay the amount into the court to obtain a satisfactory discharge for the payment of amount payable under the terms of the policy or otherwise. (5 marks)

Answer 5

Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, the insurer may, apply to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise. This happens under the following circumstances:

1. Absence of nomination by the policyholder;
2. Registration of an assignment;
3. Multiple claimants with conflicting claims with insufficient proof of title;
4. Where the claimant has approached the Court for settlement of property disputes including insurance claims;
5. Circumstances where it is impossible for the Insurer to obtain a satisfactory discharge from the claimant.

Question 6

- (i) *What are various courses of action available to the underwriter when a proposal for insurance is received ? Whether underwriter can make any modifications while accepting a proposal of insurance ? (3 marks)*
- (ii) *If a person wants to assign the policy to another person without a valid consideration, what conditions must be fulfilled for an assignment to be valid ? (2 marks)*

Answer 6(i)

When a proposal for insurance is received, the underwriter has four possible courses of action:

- Accept the risk at standard rates;
- Charge extra premium depending on the risk factor;
- Impose special conditions;
- Reject the risk.

The underwriter can accept a proposal, reject it or accept it with certain modifications. Some of the modifications that can be made are:

- Hazard incidence can be reduced: For loss prevention and minimisation,

underwriters can recommend certain changes that will safeguard against physical hazards. For example, installing sprinkler systems and better fire-fighting equipment in offices will reduce damages in case of fire.

- Changing rating plans and policy terms: Sometimes a proposal that seems unacceptable at one rate may become a desirable business under another rating plan or with special conditions such as compulsory excess.

Answer 6(ii)

Assignments are transfer of insurance policies from Policyholder to another with or without a valid consideration. Any assignment to be valid must satisfy the following conditions:

- (a) Endorsement for assignment upon the policy document or by a separate instrument signed in either case by the transferor or his duly authorized agent and attested by one witness.
- (b) Notice of assignment to be given to the insurer and the endorsement or instrument itself or a copy thereof certified to be correct both by transferor and transferee or their duly authorized agents have been delivered to the insurer.
- (c) Registration of assignment by the insurer in their records after receiving the above document and effecting an endorsement upon the policy document.

INTELLECTUAL PROPERTY RIGHTS – LAW AND PRACTICE
(Elective Paper 9.4)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Read the case law and answer the questions given at the end :

DDD is a compound patented by a company called CCC, a renowned USA based developer and manufacturer of innovative drugs. It is marketed as DDD Drug (“the Drug”) and is used in the treatment of advanced stages of kidney cancer and liver cancer. The drug is life-extending drug and not a life-saving drug. It can increase the life of a kidney cancer patient by 4-5 years and that of a liver cancer patient by 6-8 months.

CCC was granted a patent as well as regulatory approval for importing and marketing the Drug in India in the year 2008. CCC does not hold a manufacturing approval in India, but has only a marketing and import licence.

NNN filed an application in 2011 under section 84(1) of the Indian Patents Act for grant of Compulsory Licence (CL) in respect of DDD covered under CCC's patent. In its application, NNN proposed to sell the drug at a price of ₹8,800/-, (about USD 175) for one month therapy as against CCC's ₹2,80,428/- (about USD 5,600) for one month therapy.

The Controller of Patents (Controller), upon noting that 3 years had elapsed since the grant of patent and being satisfied that a prima facie case existed, issued an order for publishing the CL application in the official journal. Upon this, CCC filed its opposition to the CL application. Each party filed its respective evidence. The parties were given a hearing by the Controller.

NNN argued that as per GLOBOCAN 2008, there were 20,000 patients of liver cancer and 8,900 cases of kidney cancer in India. Assuming 80% of patients needed the Drug treatment, approximately 23,000 patients required the Drug. According to the Form 27 (statement of working of Patents) filed by CCC, the number of imported units in 2008, 2009, 2010 were zero, 200 and zero, respectively. Hence, the reasonable demand or requirement of the public was not being met. NNN argued that CCC did not manufacture the Drug in

India, but imported it and that it was exorbitantly priced and usually out of stock and available only in pharmacies attached to a few hospitals in metro cities. CCC launched the product worldwide in 2006 and made thumping sales to the tune of 2,454 million dollars. Thus, the insignificant number of bottles imported in India showed CCC's neglectful conduct.

CCC responded by demonstrating that the actual number of patients of kidney and

liver cancer requiring treatment was 8,842 and not 23,000. The Drug was being made available by CCC to all cancer treatment centres in India. This objection was dismissed by the Controller on the basis that as per Form 27 filed by CCC at the Patent Office, importing inadequate quantity of the patented drug in the previous 3 years was an ample material for a prima facie case to be made out. Furthermore, the Controller observed that the number of patients needing the Drug would be much higher than 8,842 and that as per CCC's own numbers they had been able to supply the Drug to only 200 patients which is a mere 20% of the 8,842 patients in need of drug. The Controller further stated that CCC's conduct was not justifiable as it was marketing the drug worldwide since 2006.

The next argument advanced by NNN was that the price of the patented product was too high and that therefore the patented invention was not available to the public at reasonably affordable prices. The exorbitant pricing was an abuse of its monopolistic rights and amounted to unfair and anti-competitive practice. CCC countered this by contending that innovative drugs cost significantly more than generics since the innovator's costs included R&D expenses which generics did not incur as they merely copied the drugs. The higher price included the costs of failed projects which accounted for nearly 75% of total R & D cost. According to CCC, it took an investment of more than €2 billion to bring a new medical entity (NME) to the market. Also, the price being charged by CCC was comparable to other oncology drugs of innovation-based companies. Replacing innovative drugs with generics would damage patients in the long run as originators provides for the education of doctors and pharmaco vigilance which generics did not provide. Only the patentee, being the innovator and having invested in the R&D would be able to determine what would constitute a "reasonably affordable price" for the Drug. The term reasonable should be construed as to mean reasonable for both the patients and the patentee.

CCC argued that "public" denoted different sections of public - rich class, middle class and poor class. A blanket CL which provide the patented product at the same price to all sections of the public was not reasonable, amounted to treating 'unequal as equal' and was discriminatory. A, CL would lower the price of a patented product even for people who could pay, which could not be the intention of the Legislature. One of the ways by which people afforded medical treatment was medical insurance. "Affordability" should be determined by asking whether the patient could afford insurance cover or not.

The Controller in his decision agreed with CCC that public included different sections of the public, but also observed, that CCC was free to have offered differential pricing to different classes, but chose not to. The Controller partially disagreed with CCC that in determining reasonableness, both the Patentee and the public is to be taken into consideration but observed that "reasonably affordable price has to be construed predominantly with reference to the "Public". The Controller added that the sales by CCC during previous 4 years constituted only a fraction of the requirement of the public and came to the conclusion that lower sales had been due to high price of the patented product. Therefore, the Controller held that the Drug was not available to the public at a reasonably affordable price.

NNN advanced another argument that patented invention was not worked by CCC in the territory of India. It pointed out to the Controller that since the Drug was being

imported, it was not being commercially worked in India. CCC responded by contending that the 'working' requirement of section 84 (l) (c) of the Indian Patent Act did not mean that the patented product had to be locally manufactured. According to CCC, 'working' of a patent would mean that there should be a supply of the patented product in the territory of India. CCC also argued that it had centralized its manufacturing in Germany for reasons of economies of scale and for maintaining high quality

The Controller relied on Paris Convention, TRIPS, the unamended Patents Act of 1970 and in particular sections 84 (7), 83 (b) and 90(2) thereof to come to the conclusion that importation would not amount to working of a patented product. He observed that the term 'work the invention' did not include imports as a CL holder had to necessarily work the patent by manufacturing the patented invention in India.

The Controller granted a non-exclusive and non-assignable CL to NNN, solely for the purpose of making, using, offering to sell and selling the Drug for the purpose of treating kidney and liver cancer patients within the territory of India, adding that the Drug would have to be manufactured by NNN in its own manufacturing facility only and not outsourced.

Thereafter, CCC filed an appeal challenging the order of the Controller before the Intellectual Property Appellate Board (IPAB). The IPAB, in March 2013, dismissed the appeal and upheld the decision of the Controller. In the order IPAB raised the rate of royalty to be paid by NNN to CCC from 6% to 7%.

CCC challenged IPAB's order before the High Court of Bombay by way of a writ petition.

The HC examined the relevant provisions of the Act and upheld IPAB's Order and ruled that in respect of medicine the adequate extent for meeting the demand of the drug should be 100%. It further held that dual pricing could be applied to meet the requirement of the public. The IPAB noted the following:

The creative work of the human mind is protected through several measures and the main motivation for the same is that such protection is a definitive measure of encouragement for the creative activity.

The exciting developments in the domain of biotechnology have resulted in intensive R&D activities all over the world including India. After information technology, biotechnology is increasingly recognized as the next wave in the knowledge base economy. Biotechnology has been at the core of a number of important developmental sectors. In particular, progress in the field of molecular biology, biotechnology and molecular medicine has highlighted the potential of biotechnology for the pharmaceutical industry. This has led to the inventions of New Chemical Entity in the pharma sector for the new generation diseases. On the other hand, the darker side of this development is the Intellectual Property Rights Issue. The pharma companies are protecting their inventions through patents. Generally, patent is a monopoly grant and it enables the inventor to control the output and within the limits set by demand, the price of the patented products. But the greed of the Multinational company is escalating, they want to have the maximum profit for their patented product, without taking into consideration the socio-economic factor. We have borne

in mind the object which the Patents Act wanted to achieve namely, to prevent ever greening, to provide easy access to the citizens of the country to life saving drugs and to discharge their constitutional obligation of providing good health care to its citizens.

The provisions for compulsory licenses are made to prevent the abuse of patent as a monopoly and to make the way for commercial exploitation of the invention by an interested person.

The patent grant do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socioeconomic and technological development of India.

In the light of the aforesaid case and the relevant provisions of the Indian Patent Act (as amended), answer the following :

Questions:

- (a) Under what circumstances can CL be granted ? (5 marks)*
- (b) In considering the application for CL, what factors are required to be taken into account by the Controller ? (10 marks)*
- (c) While settling the terms and conditions of a CL, what factors are to be taken into account by the Controller ? (15 marks)*
- (d) Is manufacture in India, the sole method of working a patent in the territory of India ? Do you agree with the Controller's decision on this question ? (10 marks)*
- (e) Under what exceptional circumstances can CL be granted for export of patented pharmaceutical products ? (10 marks)*

Answer 1(a)

The provisions for compulsory licenses are made to prevent the abuse of patent as a monopoly and to make the way for commercial exploitation of the invention by an interested person. According to section 84 of the Patents Act, 1970, any person interested can make an application for grant of compulsory license for a patent after three years from the date patent on any of the following grounds —

- (a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- (b) that the patented invention is not available to the public at a reasonably affordable price, or
- (c) that the patented invention is not worked in the territory of India.

An application for compulsory licence may be made by any person notwithstanding that he is already the holder of a licence under the patent. The Controller on being satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or the patented invention is not worked in the territory of India or the patented invention is not available to the public at a reasonably affordable price, may grant a licence upon such terms as he may deem fit.

As per Section 84, any person who is interested or already the holder of the license under the Patent can make a request to the Controller for grant of compulsory license on expiry of the three years, when the above conditions are fulfilled.

However compulsory licenses may also be granted, when –

1. Section 92 A- For exports, under exceptional circumstances.
2. Section 92A- In case of national emergency, extreme urgency of public non-commercial use by notification of the Central Government
3. Section 92 A (1) – To a country which has insufficient or no manufacturing power in the pharmaceutical sector to address public health.

Answer 1(b)

The purpose of compulsory licensing can be understood via a combined reading of section 89[2], 83(b)[3], and 83(f)[4] of the Act. The purpose of the practice is to prevent monopolistic control over importation and exploitation of rights derived from the patent in lieu of anti-competitive practice. The controller grants the license in order to promote the growth on a commercial scale and that to the fullest extent without any undue delay. This is done in order to meet the public requirement and utilize the patent to its fullest extent.

In certain cases recently, the Indian courts have ruled that the provision against anti-competitive practices in the competition act and the provision of compulsory licensing in the patent act are not in exclusion of each other; in fact they have to be read consonance with each other. The question whether a patentee had adopted anti-competitive practices could also be considered by the Controller. However, if CCI has finally found a patentee's conduct to be anti-competitive and its finding has attained finality, the Controller would also proceed on the said basis and-on the principle akin to issue estoppel-the patentee would be stopped from contending to the contrary.

In considering the application of compulsory licence, the Controller is required to take into account

- (i) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;
- (ii) the ability of the applicant to work the invention to the public advantage;
- (iii) the capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted;
- (iv) as to whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit.

However, the Controller is under no obligation to take into account matters subsequent to the making of the application. It has been clarified that the reasonable period shall be construed as a period not ordinarily exceeding a period of six months.

After considering all the factors, if controller is satisfied than he may grant compulsory

license and if he is not satisfied with the application then he will reject the grant of compulsory license by issuing of a notice which contains the information about same. In this case, applicant may also have some issues regarding this rejection. If yes, then he may request for a hearing with controller thereafter, within one month from the date of issuance of such rejection notice. However, the controller will decide whether the hearing with applicant based on rejection application will held or not.

Answer 1(c)

Section 90 of the Patents Act, 1970 provides that in settling the terms and conditions of a compulsory licence, the Controller shall endeavour to secure that —

- (i) the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;
- (ii) the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;
- (iii) the patented articles are made available to the public at reasonably affordable prices;
- (iv) the licence granted is a non-exclusive licence;
- (v) the right of the licensee is non-assignable;
- (vi) the licence is for the balance term of the patent unless a shorter term is consistent with public interest;
- (vii) the licence is granted with a predominant purpose of supply in the Indian market and the licensee may also export the patented product if need be in accordance with section 84(7)(a)(iii).
- (viii) in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use.
- (ix) in case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted, if need be, to export the patented product.

Section 90(2) of the Act provides that no licence granted by the Controller shall authorise the licensee to import the patented article or an article or substance made by a patented process from abroad where such importation would, but for such authorisation, constitute an infringement of the rights of the patentee.

However in terms of Sub-section (3) the Central Government may direct the Controller to authorise any licensee in respect of a patent to import the patented article or an article or substance made by a patented process from abroad (subject to such conditions as it considers necessary to impose relating among other matters to the royalty and other remuneration, if any, payable to the patentee, the quantum of import, the sale price of the imported article and the period of importation), if it is necessary to do so in public interest and thereupon the Controller shall give effect to the directions.

Once the controller decides to grant the compulsory licence, they will set out the necessary terms and conditions of the compulsory licence. The controller also decides on the royalties or remuneration payable to the patentee based on:

- the patentee's investment in the invention;
- the workability of the patentee's invention by the applicant;
- the selling price of the patented articles (at affordable prices); and
- the term of the licence.

The controller will also clarify the provisions applicable for exporting and importing the patented article, non-exclusivity and non-assignability of the licence, among other things.

Answer 1(d)

This has been an important point in dispute. The Controller is of the view that the patented product will be considered to be worked in India only if the patentee manufactures the patented product in India within reasonable time. But an issue arises as to whether the import of a patented product can also be considered as working the patent in the territory of India.

Article 27 of the TRIPS (Trade Related Aspects of Intellectual Property Rights) provides that there would be no discrimination in respect of patented product whether legally manufactured or imported. The same view is also apparent from Form 27 prescribed under the Act and the Patent Rules. Patentee has to file a statement in Form 27 with the Controller regarding the working of the patent in India. In the aforesaid form the patentee while giving details of working of patented drug in India, has to make declaration of working in India of the patented product under two classifications namely manufacture in India and imported from other countries.

The working a patented invention in the territory of India has to be considered by reading section 83 of the Act which provides for legislative guidelines to predict the meaning of the words "worked in the territory of India". The following guidelines of section 83 are germane to the discussion:

- (a) the patent is not granted to enable the Patentee to enjoy a monopoly for the importation of the patented article;
- (b) the technological knowledge must be transferred and disseminated to the mutual advantage of producers and users of technological knowledge; (f) the patent right should not be abused by the patentee by indulging in activities that unreasonably restrain trade or adversely affect the international transfer of technology.

The goal of granting a monopoly to patentees is to encourage invention and ensure that patented inventions are worked in India on a commercial scale and to the fullest extent reasonably practical without undue delay. In return for a 20-year monopoly over the patented invention for the rights holder, the patent rights should serve to promote technological innovation and enable the dissemination of technology to the advantage of producers and consumers, in a manner that is conducive to their social and economic

welfare. Section 83 also requires that granted patents not impede the protection of public health and nutrition, but rather act as an instrument to promote the public interest; hence, patented inventions must be available to the public at reasonably affordable prices.

Importation of the patented article/product does not amount to working of the Patent in India. Any working of the patent for the production of the patented article or the use of the patent process in the production of any articles for sale to the public would appear to amount to working on a commercial scale. The working on a commercial scale is that the demand for the particular article in India is met at a reasonable price. If the patentee has granted license to company 'A' in Japan to manufacture the patented product in Japan and export and sell them to India, it does not amount to working the patented product in India. Company 'A' is therefore not required to submit information on prescribed form. Accordingly, the patentee has to submit the information. If the patentee provides technical assistance for manufacturing the patented product in India to an Indian based affiliate duly licensed to manufacture the patented product in India, the Indian based affiliate can file Form 27. If the patentee submits the form 27 without mentioning that a license has been issued to the Indian based affiliate, then the patentee is attracted by penalty provisions under section 122(2) of The Patents Act, as the information furnished in Form 27 is knowingly false. The co-owners can submit form either jointly or separately.

Reading the above guidelines, the legal position is that the patentee is required to make some efforts to manufacture the patented product within the territory of India. Manufacture in India is not the sole method of working a patent in India. A patent can be worked in India by importing the patented article in adequate quantity and supplying it by import can be accepted only after the patentee provides satisfying reasons for not manufacturing the patented product in India.

Answer 1(e)

Section 92A of the Patents Act, 1970 postulates compulsory licence for export of patented pharmaceutical products in certain exceptional circumstances. It states that CL shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided CL has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India.

Sub-section (2) authorises the Controller, on receipt of an application in the prescribed manner, to grant, on such terms and conditions as he may specify, a CL solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him. Explanation appended to section 92 A defines the pharmaceutical products as to mean any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems and shall be inclusive of ingredients necessary for their manufacture and diagnostic kits required for their use. Controller General may add some terms and conditions as per the requirement. Patented pharmaceutical products include:

1. Drugs
2. Ingredients necessary for their manufacture

3. Diagnostic kits required for their use

Under TRIPS agreement, Article 31(f) has provided a provision in case of exceptional circumstance and on mutual requirement between the two countries; the compulsory license can be issued. According to the said Article and Section 92A of the Act, the compulsory licence shall be available for manufacture and export of patented pharmaceutical product to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems.

This provision is applicable for countries which allow importation of the patented pharmaceutical products from India. Upon receipt of an application in the prescribed manner, the Controller shall grant a compulsory licence mainly for manufacture and export of the concerned pharmaceutical product(s) to such country under reasonable terms and conditions. Interestingly, this Section is silent on royalty to be given to the Patentee; however, the same totally depends upon the Controller to provide "adequate" remuneration (pursuant to Art 31 [h] of TRIPS) to the patentee.

Question 2

Weekly Television guides are helpful to viewers of TV Channels. TV stations in Bengaluru and Hyderabad published weekly TV guides covering their programmes exclusively and claimed copyright protection. Popular TV Guide wanted to publish a comprehensive guide of TV programmes of both the stations but was prevented by TV stations, Bengaluru and Hyderabad on the ground of copyright infringement. By this prevention, the TV stations sought to ensure that third parties did not reproduce their programme listing. Popular TV Guide complained to the Competition Commission of India (CCI) citing the Indian Competition Act, 2002 and arguing that the TV stations Bengaluru and Hyderabad were indulging in an anti-competitive practice of refusal to deal. The TV stations drew the attention of the CCI to section 3(5) of the Competition Act and argued that the said section did not restrict the right of any person to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting any of the rights conferred upon them under IPR statutes. TV stations Bengaluru and Hyderabad contended that section 3(5) of the Competition Act provided protection of their IPR, namely, Copyright and prayed that the CCI should restrain Popular TV Guide from publishing the comprehensive guide. Popular TV Guide argued that the said anti-competitive practice should not be condoned while providing protection to IPRs, in this case, Copyright.

It prayed that it may be allowed to publish the comprehensive guide in customers' interest and public interest.

Questions:

- (a) *In the light of the facts provided, if you were the CCI, what would be your decision? (10 marks)*
- (b) *Intellectual Property Law and Competition Law both are necessary for efficient operation of marketplace. Comment. (20 marks)*

Answer 2(a)

In terms of section 3(5) of Competition Act, 2002, only those restrictions on freedom of competition inherent in protection of IPR could be permitted. Refusal of the TV stations

based on their reliance on copyright provisions prevents the creation of a new product (Popular TV Guide's comprehensive guide) for which there is customer demand. The TV stations by such refusal to deal excluded competition in the market.

Section 3(5) of the Competition Act, allows only reasonable conditions for protecting IP Rights. If unreasonable conditions exist in a situation, they fall under the ambit of Competition Act and such 'unreasonable conditions cannot be condoned in offering protection of IP rights. Reasonable conditions under section 3(5) elucidate that there must have a logical nexus between the conditions imposed on a third party by an IP owner such as a patentee and the object of preventing infringement of the IP right.

Even though the Act purports to prohibit every restraint of trade, it has been applied to prohibit only unreasonable restrictions on trade. Therefore, it would be correct to say that the reasonable conditions imposed not limited to IPR agreements, but in the usual business, terms are also not considered to be anti-competitive in nature.

Copyright of the TV stations Bengaluru and Hyderabad cannot be protected in the light of their refusal to allow Popular TV Guide to publish the comprehensive guide, which would be in the interests of customers and the public. Consequently, Popular TV Guide should be allowed to publish the comprehensive guide.

Answer 2(b)

Competition and intellectual property are closely linked, as intellectual property law rewards innovation by granting exclusive rights, the competition law ensures that companies do not restrict freedom to compete or exploit market power with anticompetitive consequences. However, from the traditional point of view, the situation may be different for those companies whose IP assets give them a strong position in a given market to the extent enabling them to restrict the competition in that market. But it is now accepted that, since they do not necessarily, or even very often, create legal or economic monopolies, IP law do not necessarily clash with competition laws because the goods and services produced using IP compete in the market place with other closely substituted goods and services.

The connotation of 'competition' in both IPR and competition law are different. The main objective of permitting license in IPR is to encourage competition among the prospective innovators and concurrently restrict the competition in several ways and after a specified period, the rights go to the public domain ending the competition. The primary objective of competition law is to stop the abusive practices in the market, stipulate and encourage competition in the market and make sure that customers get the proper product at an affordable price with improved quality.

The correlation between IP rights and Competition Law seems to be contradictory to each other but in actuality, it is not; but it assists the person to invest in a dynamic competition by restraining the rigid competition. It gives benefits to the holder to make exclusive use of his product within a particular period. During such a particular period the patent owners have monopoly power and are in a position to dominate. Such dominance will not lead to infringement of antitrust law.

The rapid development of commercial environments have resulted in establishing a relationship between competition law and Intellectual Property Rights. As discussed earlier, IPR regulates the exclusive rights that a business or an individual may have

over intangible assets pertaining to a business such as trademarks, innovations, trade secrets and creative works. Competition law, on the other hand, regulates acquisitions and mergers and safeguards commercial environments from anti-competitive practices. Moreover, IP is pro-competitive. This means that IP systems would help consumers make conscious choices with respect to the goods and services among competing brands that are available in the market. IP ensures that each brand is distinctive in nature and without IP enforcement, brands would attempt to copy each other's business models and other aspects. In sum, it can be said that IP ensures that there exists competition in commercial environments. Facilitating competition in commercial environments is also one of the main roles of competition law.

Hence, it can be said that IP and competition law may cumulatively ensure competition among brands in business environments. While both IP and competition law facilitate similar goals, the interface between IP and competition law also poses several issues. For one, when IP laws are enforced upon non-differentiating features of a brand such as patents, trade secrets or other aspects of a business that does not add to the distinctiveness of a business, exclusivity follows. This essentially means that, enforcing IP laws on such features would grant exclusivity or monopoly over them.

Typically, the principles and policies of competition law disagrees with the undue extension and imposition of IP laws on all the facets of a business. At the same time, inadequate IP enforcement can also pose several issues in commercial environments. For instance, inefficient IP enforcement may negatively impact competitiveness among businesses. When the aspects that add to the distinctiveness of a business are not protected with the help of IP laws, duplication and imitation of the same may follow.

The imitation and duplication of the various distinctive aspects that are linked to a business will result in inadequate competition between businesses which inherently goes against the principles of competition law. Thus, an inference can be drawn that there is a need to draw a balance between IP and competition law for both its principles to co-exist. IP is pro-competitive. Hence, IP enforcement that would balance the interests of both competitors as well as inventors and creators will facilitate adequate competition in commercial environments.

Section 3 of the Indian Competition Act, 2002 explains that no enterprise or association of enterprises or person or association of persons can enter into any agreement with respect to the production, supply, distribution, storage, acquisition or control of goods or provision of services that are likely to cause an adverse effect on competition within India. In India, the conflict between IP laws and competition laws can be noted through section 3(5) and section 4 of the Act.

Section 3(5) of the Act deals with a blanket exception on IPR which implies that IP policies and competition laws do not interfere with each other. However, section 4 of the Act elucidates upon the abuse of dominant position which is interlinked to IP rights. IPR and competition laws aim to regulate commercial environments while facilitating a common aim. IP laws ensure that each business is unique in nature while ensuring that the creators are adequately incentivized. Whereas, competition law ensures to strike a balance between the rights of manufacturers and the customers while restricting anti-competitive practices.

It has been noted that IP laws may lead to the monopolization of a particular

innovation or a creation and that this may be contrary to what competition law policies stand for. However, there are laws and agreements in place to regulate this. Thus, it can be concluded that inherently, IP laws and competition laws can coexist in commercial environments.

Question 3

What are the types of IP Audit?

(5 marks)

Answer 3

An intellectual property audit (IP Audit) in simple words refers to the systematic collection, collation, and analysis of all the IP assets owned, acquired, licensed, assigned, used, or unused. It can thus be compared to a comprehensive inventory, which allows an enterprise to review and keep track of its assets. An IP audit helps in identifying threats to the IP assets and helps businesses in developing strategies to foster their growth and competitive standing in the market. Since an IP Audit reviews all the IP assets and the policies associated with the same, it helps in identifying and analyzing an IP infringement.

Generally, there are three types of IP audits: General purpose IP audit, Event driven IP audit and Limited purpose focussed IP audit.

(1) General purpose IP audit

(a) A general or broad IP audit is done in the following types of contexts:

- Before establishing a new company it is always important for a start-up company to be aware of intangible assets it owns or needs to protect. It helps significantly to both the startups and established companies in not only evaluating and safeguarding their IP assets but also identifying opportunities, development needs, and risks.
- When a business is considering implementing new policies, standards, or procedures relating to IP. When a business is considering implementing a new marketing approach or direction, or is planning a major reorganization of the company.
- When a new person becomes responsible for IP management.

(b) Once a comprehensive IP audit has been undertaken, a smaller effort and expense is needed at regular intervals, such as on an annual basis, so that IP assets are reviewed and appropriate decisions taken, depending on the current and emerging needs of a company.

Such audits scrutinise the IP portfolio as a whole to review the businesses' IP management approach, if there is one. If not, general IP audit is a core and fundamental step to develop an IP management approach and an IP-intensive culture within the company.

(2) Event driven IP audit

Event driven IP audit is generally much narrower in scope than a broad or general purpose IP audit. Further, the nature and scope of such an audit is

determined by the event in question, and the time and resources available for doing it. Event driven IP audit is often called “IP due diligence” when done to assess, as objectively as possible, the value and risk of all or a part of a target company’s IP assets. IP due diligence is performed in the following contexts: Merger and acquisition or joint ventures: aiming to provide a basis for

- assessing the risk and value of relevant IP assets in a proposed acquisition or sale of IP Financial transactions: aiming to determine the impact of IP assets on IP related financial transactions such as stock purchasing, security interests,
- initial public offerings, etc. IP assignments and IP licensing: aiming to provide information to the potential assignee or licensor about the IP portfolio, concentrating on verification of the ownership and possible restrictions affecting the use of the IP Launching of a new product or service: aiming to evaluate any possible
- infringement risks or freedom-to-operate issues linked to the new product or service Bankruptcy and layoffs, etc.: aiming to secure the IP rights in case of bankruptcy, employee layoffs, etc.

(3) Limited Purpose Focussed audit

(a) A limited purpose audit is typically much narrower in scope than the other two types and is performed under much constrained time schedules. These audits tend to be situational in nature. They are typically used to justify a certain legal position or the valuation of a particular IP. A limited purpose focused audit is done in the following types of contexts:

- (i) *Personnel turnover* : Before a major personnel turnover of in-house research and develop mentor marketing, especially if it involves disgruntled employees, an IP audit should be done to secure the status of a company’s IP assets.
- (ii) *Foreign IP filings* : Before a company takes up an aggressive program of filing IP applications in other countries, that is, before entering a new market abroad (by way of, say, exporting, or expanding overseas through offshoring/ outsourcing some of its activities, or by licensing, franchising or merchandising) an IP audit helps to sensitize the company to market specific IP laws, rules, customs and practices affecting IP rights.
- (iii) *Using the Internet for business purposes* : Before having an Internet presence, doing an IP audit helps it to identify the needs of e-commerce and registration of appropriate domain names, etc.
- (iv) *Significant changes in IP law and practice* : Where there is a significant change or development in IP case law or statutory law in a relevant market it may necessitate review of existing products for possible infringement of the IP rights of others.
- (v) *Clean room procedures* : The clean room procedure seeks to avoid infringement by ensuring that there is no “access” to copyrighted material

of unrelated parties during software development project. Thus, an audit might be necessary to institute, or to review the adequacy of, clean room procedures used in the development of software products so as to reduce the risk of infringing third party copyright.

- (iv) *Preparing for litigation*: When considering or facing litigation, a company is required to show non-infringement and no access to the work, complete or confirm the chain of title of the underlying IP rights or otherwise complete the documentation of the relevant IP rights.

Question 4

What is the purpose behind section 134(2) of the Trade Marks Act, 1999 ?

(5 marks)

Answer 4

Section 134 of the Trade Marks Act, 1999 reads as under:

"Suit for infringement, etc., to be instituted before District Court

- (1) No suit;
- (a) for the infringement of a registered trade mark; or
 - (b) relating to any right in a registered trade mark; or
 - (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.
- (2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suitor proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.--For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user".

The purpose behind Section 134(2) of the TMA is to allow the plaintiff to file the suit at the place where the plaintiff resides or carries on business without any reference to the place of residence or business of the defendant or the place where the cause of action arises.

In the case of *India Performing Rights Society Limited v. Sanjay Dalia @ Anr.*, section 134 of the Trade Marks Act, 1999 has removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain.

We agree to the aforesaid extent the impediment imposed under section 20 of the

CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where plaintiff is having branch offices etc.

Question 5

What is not a design under the Designs Act, 2000 ? Provide illustrations.

(5 marks)

Answer 5

Design does not include:

- (i) any trademark, as defined in Section 2(zb) of the Trademarks Act, 1999, or
- (ii) any property mark, as defined in Section 479 of the Indian Penal Code, 1860, or
- (iii) any artistic work, as defined in Section 2(c) of the Copyright Act, 1957.

The expression “Artistic Work” in (iii) above means

- (i) a painting, sculpture, drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality.
- (ii) any work of architecture i.e. any building or structure having an artistic character or design or any mode for such building or structure.
- (iii) any work of artistic craftsmanship.

The designs falling under the following category are not eligible for registration;

Not new or original; Disclosed to the public anywhere in India or in any other country by publication or by use or in any other way prior to the date of filing; Not significantly distinguishable from known designs or combination of known designs; Comprises or contains scandalous or obscene matter.

Further to this any article falling in the following categories are also not registrable under the Designs Act,;

- book jackets, calendars, certificates, forms and other documents.
- dress making patterns, greeting cards, leaflets, maps and plan cards.
- post cards, stamps and medals.
- labels, tokens, cards and cartoons
- any principle or mode of construction of an article.
- mere workshop alterations of components of an assembly.
- mere change in size of article.
- flags, emblems or signs of any country.
- layout designs of integrated circuits.

Colors, verbal elements and sounds are examples of what cannot be protected as a design, since they are not part of the ornamentation of a product. On the other hand, they may seek protection under trademark law. The designs whose appearance respond exclusively to the technical function of the product. It is possible that the technical or functional characteristics of these types of designs can be protected through other intellectual property rights (normally through patents or utility models). Designs that go against public order and certain moral standards. As a general rule, designs that reflect or promote violence or discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation will be denied.

Question 6

*What do you understand by ‘Geographical Indications’ ? What is meant by ‘Goods’?
(5 marks)*

Answer 6

Geographical Indication

“Geographical indication” in relation to goods means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

It may be noted that any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be. [Section 2(1) (e)]. In simpler terms, GI is a status accorded to a good which is unique to a particular region or area, and are originated from there. These goods have a reputation for their quality. They are associated with a sense of legitimacy and trust simply because they have the tag of belonging to that region.

For example, Basmati rice is known for its unique aroma and long grains. It is unique to the Indo-Gangetic plains. Seven states of India, after a long drawn legal battle have been accorded with the status of Geographical Indication (GI) in 2016.

The following types of goods are covered under the ambit of GI –

- Agricultural (example, Basmati rice)
- Natural (example, Makrana marble)
- Handicraft or of any industry (example, Kashmiri pashmina)
- Food stuff (example, Dharwad pedha)

Functions of Geographical Indications;

It is a valuable property for a particular region. It is very important for any type of

producers of goods of a particular region. Geographical Indications basically perform three functions.

1. Firstly- they identify the goods as originating in a particular territory, or a region or locality in that territory;
2. Secondly- they suggest the consumers that the goods come from an area where given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin; and
3. Thirdly -they promote goods of particular area, territory or region

Goods

“Goods” mean any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff. [Section 2(f)1

Indication

“Indication” includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies.

INTERNATIONAL BUSINESS – LAWS AND PRACTICES
(Elective Paper 9.5)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Read the following case study and answer the questions given at the end :

In March 2009, Travis Kalanick and Garrett Camp started a set up named Ubercab. By March 2010, the car hailing business took off as an app to register premium cars. In October 2010 the company changed its name to UBER. As the company grew, it faced several hurdles. Despite facing stiff regulatory opposition in many countries, UBER believed that the company had helped strengthen local economics of markets, improved access to transportation and made streets safer. Over the years, UBER grew into a personal car service that had disrupted taxi and transportation companies around the world and became a part of freshly evolved concept of the ride-sharing economy. The company had adapted and enhanced its mobile application and service offerings over time to support international growth. Uber mission statement, "make transportation as reliable as running water, everywhere, for everyone" was focused on making commuting easy for everyone across cities. By April, 2014, Uber was serving more than 100 cities from across the world. Among many target countries, Kalanick was very interested in China and wanted to handle this market himself.

The Promises and Pitfalls of China :

In August 2015, the American Chamber of Commerce in China conducted a survey and found that only 25 per cent of its members in the service sector including banks, restaurants and companies such as Uber were optimistic about the regulatory environment in China. The survey found that respondents were worried about the uncertainties associated with regulations passed by the Chinese Government. It found that Chinese markets were so difficult that often multinationals ended up selling out to local partners. The high chances of failure of Western companies operating in China could be attributed to unique market, which offered tough local competition and unexpected laws and regulations.

Uber's Entry in China.

China had been attracting many MNCs from across the world and ride-sharing provides were no exception. The huge size and success of China's ride sharing economy attracted many other companies to come to the country.

Uber's attraction to Chinese market could be attributed to the growing demand for transportation in China's congested and populated cities which required immediate solutions. Motor vehicle emissions had become a major cause of air pollution in the country

Analysts believed that China had complex political structures, legal systems and regulatory rules and financial markets and banking system were relatively underdeveloped than those in the West. All these factors made it difficult for Western firms to operate in China in the same way as at home. Further, the taste of Chinese consumers was so different from Westerners that foreign companies had to adapt products and services to meet the specific needs of Chinese customers.

While deciding on which city to choose to launch its services, Uber focused on cities with heavy traffic and imbalanced supply and demand. Uber's entry strategy for Chinese markets was considered a relatively low-key affair. The strategy ensured the localization of services, which was important to the Chinese market.

In February 2014, Uber made a formal launch in China with the introduction of luxury car services in three Chinese cities Shanghai, Guanzhou and Shenzhen. Kalanick himself took over the role of Chief Executive in China.

Uber's strategies in China.

Soon after entering China, Uber adjusted and adapted its strategies to meet the needs and trends of Chinese markets. In general, Uber's business model relied mainly on being the first entrant to a market, and then rapidly scaling up to put its competitors at a disadvantage to the point of a forced exit. Thus, being first to a market, it offered subsidies to drivers and cheap rides to passengers and generated a rapid scale.

Establishing a separate entity

While entering China, Uber decided on a strategy that was unlike anything it had tried anywhere else. It separated its Chinese entity—Uber China. Setting up a separate subsidiary helped Uber invite local investors along with getting financial. Further, it was believed that becoming a Chinese company would help and it would also avoid many restrictions faced by foreign companies operating in China.

Adaption Strategies :

Alipay was the most common payment method used in China which Uber adapted. Uber had been offering only an English language app across all its markets. However, before the formal launch in China, Uber's IOS app was updated to add simplified Chinese features.

It introduced a Chinese language app called You-bu to attract local drivers and passengers. In a bid to crack Chinese market, Uber China distinguished itself from its competitors with high-quality cars and a streamlined interface. It tried to attract Chinese clients during special events similar to the ones the company was doing in the USA.

The game of subsidies

June 2014, it initiated aggressive expansion in China and launched another line of economic services, Uber X. In August 2014, it launched People's Uber, which operated on a not-for-profit basis. Considering the fierce competition in the Chinese market, Uber started aggressively attracting drivers and paid its drivers a multiple of passenger's fare.

Local Investment and partnership

In March 2015, the company signed a strategic co-operation agreement with a Chinese automobile company, Yongda Auto, which became its first car dealer partner in China. In April 2015, Uber entered into another strategic partnership with the world's largest wireline communications—CDMA mobile network and broadband internet-services provider of China. Another collaboration of Uber China happened in September 2015, when it signed a strategic co-operation agreement with National Centre of ITS Engineering and Technology, ITSC of China.

The bumpy ride of Uber China

Despite its localization strategies and adaption to the Chinese system, Uber China was still finding it hard to operate in the Chinese market. There were many factors, which obstructed Uber's growth in China, including fierce competition by local taxi-hailing and ride-sharing apps, protests from irritated cabbies, government raids and police crackdowns.

Intense local competition

Uber China had two competitors in China, namely, Didi Dache and Kuaidi Dache, which occupied the biggest chunk of the market share of the country's taxi hailing market. As a pioneer in China, the two local competitors had an advantage over Uber in reaching wider areas. Uber's strategy/ies to acquire more market share in China failed to outperform Didi. Even after initial year of rapid growth, Uber China was operating only in 60 cities and served 40 million rides per week against Didi's presence in more than 400 Chinese cities covering 100 million journey per week.

Scammers

The local competition was something which Uber always knew it had to face in China but it also had to struggle with the threat of scammers and frauds. Given the fact that China had been the home to many ride hailing scams, drivers and hackers exploited ride-sharing companies to get extra subsidies without driving any one any place at all. These scammers often created fake passenger accounts for taking a ride with a driver who received bonus.

Mounting losses :

Though by June 2016, China had become the largest market of Uber and accounted for more than a third of its global business in terms of weekly trips, the company was losing more money in China than any of other market in the world. By offering large discounts on trips, Uber's performance became unsustainable in the long run.

Complicated status of Uber China :

Uber was technically not illegal in China yet many Chinese drivers believed it was illegal. The company also experienced occasional police raids. The drivers while taking rides near train stations and other popular destinations had to look out for police waiting to detain them. The unclear status of Uber and police crackdowns posed big obstacles for the company to operate in China.

Growing protest against Uber :

Another prominent problem for Uber China was protests and strikes by traditional cab drivers of the country. There were increasing number of incidents of attack on Uber drivers by traditional taxi drivers.

China's National Regulation :

The nationalization of industry regulation was bad news for companies such as Uber. The Chinese government announced a new set of rules governing the ride hailing industry of China. The national regulations gave more powers to local authorities who were free to place any additional requirements on vehicles. Differences in the culture and regulatory system of China and the USA made it difficult for Uber to fit into the Chinese system.

Being a Foreign Company :

Kalanick made efforts to cultivate political relationship in China and paid frequent visits to the country. However for Western companies, it was always a challenge to expand in China given that local companies had an advantage in the country's cultural, economic and political environment. Foreign companies such as Uber were subjected to tougher regulations than local players.

The exit :

Amidst fierce competition and unfavourable national regulations passed by the government of China, Uber China finally surrendered in the country. On Aug. 2016, the regional subsidiary of Uber announced its merger with its biggest and major rival in the country—Didi in a megamerger of \$ 35 bn.

The terms of agreement suggested not only a financial transaction but also strategic alliance with Kalanick taking a seat at the board of Didi and Didi founder, Cheng Wei, joining the board of Uber. Many believed that the merger would be beneficial for both Didi and Uber. It was believed that the Uber-Didi deal had provided a graceful exit for Uber with it getting the best out of a bad situation.

Way forward :

Though some industry experts believed that Uber China exit was mostly bad news, Kalanick was optimistic about the future of Uber. But Uber's problems in China did not end with its merger with Didi. In September 2016, some of the Uber drivers in China were using zombie like profile pictures to scare customers who ended up cancelling their rides. As Uber was in transition after merger deal, it could not handle frauds making it an easy target of scammers. Further China's Ministry of Commerce opened an anti-trust investigation into Didi-Uber deal after it received complaints that the Uber-Didi merger deal did not follow the country's anti-monopoly laws. Though there were many challenges that China posed against Uber, there were certainly many lessons that company learned from its journey to China.

Questions :

- (i) Access the internal and external business environment faced by Uber in China, using Michael Parker's Five forces mode.
- (ii) Discuss Uber's situation analysis with the help of PESTEL MODEL.
- (iii) What strategy did Uber follow ? How did it adapt its strategy to survive and thrive in Chinese market.
- (iv) What were the take-aways from Uber's journey in China ?
- (v) Did Uber do the right thing to exit from the market ? Should Uber have persisted and continued its operations ? Give reasons.

(10 marks each)

Answer 1(i)**Porter's Five Force Model**

This model was given by Michael Porter. Porter's five forces model assess the attractiveness of industry by analysing five key forces. These five forces shape every industry and help them to achieve profitability in long run.

(a) *Threat of New / Potential Entrants: (Medium)*

The threat of new entrants depends on the entry barriers as well as the industry attractiveness. If the business is highly regulated, requires huge investments, technical expertise, or has a very long gestation period, the entry barriers make business less attractive. In china, already there are various application based cab riding services offered and considering the Chinese laws, the threat of new entrants may be measured as medium. Moreover, as the government regulations were favourable for domestic players, China was less attractive for foreign Companies. Also, technological differences may also discourage foreign players to enter China. These forces, opportunities and pitfalls of China bring down the threat of new entrants to medium level.

(b) *Supplier Power: (low-Medium)*

Uber's (ride-hailing app) business relies on technology (maps, internet Connectivity, payment system etc.) and availability of drivers, fuel, cars etc. these being the primary suppliers to the industry. Although there was ample availability of such resources, Uber being a foreign Company faced difficulty with some suppliers. This was due to the cultural, technological, regulatory and political factors. One prominent instance in Wechat blocking Uber users to use its mobile app. Another example, which indirectly influenced supplier power was risk from local taxi drivers in driving for a ride-hailing app in china. There were many instances when these taxi drivers threatened and beaten-up the Uber drivers and damaged their cars.

As Didi preferred to work with traditional taxi drivers over private car owners. This in turn brought the bargaining power of these car owners down. Other suppliers, like payment system had higher bargaining power, given that they favoured local companies. Thus, overall, the suppliers were expected to have low to medium bargaining power.

(c) *Buyer Power: (Medium)*

Strong bargaining power tends to drive the price down and limits profitability. Though the public transport in China was efficient, there was an increasing demand for ride-hailing services. However, limited number of licensed taxis across bigger cities reduced buyer's power for riders, who had to opt to Commute through Uber. However, given that Competitors like Didi and Kuaidi were offering attractive discounts, buyers could choose them over Uber. This increased buyer's power to some extent.

When buyer power was low, Uber could charge higher prices, whereas when buyer's power was high, Uber Could charge lower prices. Thus, given the nature of business, the buyer's power varied from city to City and time to time, considering all these points, buyer's power could be attributed as medium.

(d) *Threat of substitutes: (low)*

This force measures the power of the substitutes to which customers can shift to. Although, the transport system of China was efficient, demand of ride sharing service was on rise. This was due to the congestion and pollution across major cities in China. Moreover, there were limited numbers of regular taxi available on the streets in China. All these factors made threat to Substitutes overall low for ride-hailing apps in China.

(e) *Industry Rivalry (High)*

Industry Rivalry is a force which is decided by the level of competition within the industry. If competition is intense then it becomes difficult for existing players to earn sustainable profits, thus negatively impacting the industry attractiveness. Despite having limited number of players, ride-sharing industry of China witnessed severe rivalry. Didi Dache and Kuaidi Dache was the market leader, and became the only Competitor for Uber.

The entities accounted for majority of active users of private Car-hailing apps. However, as both Uber and Didi were eager to increase their market share, they regularly involved in price wars, offering discounts and subsidies to the drivers and passengers. This head-on Competition made them bleed in industry.

Despite the industry being attractive and offering ample opportunity, high rivalry between Didi and Uber negatively influenced the ride -hailing app industry.

Answer 1(ii)

PESTEL Analysis:

Political

Overall, the political environment was less favourable in China. First, the government imposed stricter rules on foreign Companies and did not provide a level playing field for the foreign Companies like Uber to flourish. According to analysts, the political party in China always supported domestic Companies.

Nevertheless, the government of China was undergoing restructuring and bringing transparency through reforms. In this direction, it showed its willingness to embrace ride sharing as an integral part of economy.

Moreover, the government implemented new regulation for ride-hailing from November 2016, which was supposed to create a level playing field for everyone. Therefore, the government was thus promoting this industry.

Economic

The economic environment in China was attractive for Western Companies. China being the home to around 20 percent of global population provided a huge market to businesses to flourish and grow. A large number of Chinese population is user of smart phones and were potential customers of Uber. China recorded more than 7% growth consistently over a long period unlike the west.

Socio-Cultural

The socio-Cultural environment in China was totally new for Western Companies. The Case elaborates many instances when Uber faced many challenges due to socio cultural, language and other Cultural differences.

Chinese Consumers were extremely reluctant to share their Credit Card details. Therefore, Uber had to choose payment partners carefully. Uber tried to adopt many practices, festivals and even the Chinese, language as its medium of Communication beside English.

Technology

Many Chinese people use Internet enabled mobile phones and thus China is considered as technologically advanced. But, China is famous for scam esters duping Companies like Uber. Uber had to face many frauds and scams adversely affecting its profitability. Google maps also did not provide accurate location information in China. Users often called the drivers and explained the location. At times this led to confusion and cancellation of Cabs.

Environmental

There were growing Concerns about pollution in big Chinese cities like Shanghai, Beijing and Guangzhou. Vehicle emissions beside Coal based power plants were considered the major source. This forced the government to reduce the number of private vehicles on road. It was both as a blessing and bane for ride-hailing Companies like Uber, which can reduce congestion on road.

Legal

Legal environment in China was much different from home County of Uber. The sole Political party in China favoured local business and the taxation structure made difficult to operate for foreign Companies like Uber. Until 2016, the ride-hailing services were unregulated and different Cities in China had different regulations. In some, areas where government was not present or having no regulation success rate was very high. Situation changed drastically since July 2016, when the Chinese government announced National regulations for ride-hailing industry.

Answer 1(iii)

The strategy followed by Uber in China was of being one of the first movers and rapidly scaling up the operations so that it captures a large market share. Uber wanted to put pressure on its competitors to an extent that they forcefully exit the industry. Uber tried to achieve this by subsidizing drivers and offering cheap rides to customers Thus, the approach followed by Uber in China was to adopt or customise its products, services and marketing mix according to the local market parameters. It is more pertinent for a foreign company, entering a local market first time.

	Standardization	Adaption
PROS	Economies of scale	Respect local specification and expectation
	Faster set up time	Good local image
	Single Coherent global image	Customers keep their land mark and feel noticed.
CONS	Possible loss of advertisement effectiveness	Higher Cost
	Little reactivity and little flexibility	Time Consuming and poor speed of execution
	Can create negative reaction by neglecting local needs	Difficulty in knowing what consumers really want.

Standardization vs. Adaption

UBER China adapted its strategy by-

- Establishing a separate entity.
- Modifying payment system by clubbing with local partner, Alipay.
- Shifting from Google maps to Baidu maps.
- Introduced Chinese language app, you-bu.
- Celebrating New Year in Chinese styles.
- Offering huge subsidies and incentives.
- Entering into partnership with Chinese Companies.
- Investing in achieving the political clout in the country
- Followed Chinese way of functioning

Answer 1(iv)

- (a) *Choose right time to enter in Foreign Country* : Uber was in a disadvantageous Position in China. Given the fact that Uber Was founded in 2009, it was late to start in China in mid 2013 and further officially launched only early 2014. The other competitors already had a substantial presence in a large number of Chinese Cities.
- (b) *First mover advantage really matter in China* : Didi was the first riding ride hailing service provider in China. Uber being late was destined to lose the market share.
- (c) *Grab your partners* : It is important in any foreign market to choose your partner. Strategically, Uber failed to do this in China.
- (d) *Setting long term goals* : Uber entered the Chinese market to grab larger and larger market share in shortest time. As a result it lost more revenue than it earned. Uber should have long term goal to increase its market share gradually over a period of time. UBER lacked long term strategy to sustainably operate.
- (e) *Never Compete with Chinese Companies on price* : In China price war are common and Chinese Company may go to any extent. Uber China was fighting with a dominant Chinese player. Didi having wider presence and public- government support. As a result Uber was burning more than billion dollars in China.
- (f) *Understand local market needs* : Uber took time to understand Consumer payment preferences and trust profiles. Didi worked with professional taxi drivers trusted by most Chinese riders.
- (g) *Watch the support base* : Didi was having backing of Country's government, taxi drivers and giant Chinese Companies like Alibaba. It was rather advisable to uber to go to other market segments of China.
- (h) *The mobile ecosystem* : China is the home of advance mobile technology. Uber had to adopt the latest mobile technological advancement to keep pace with Didi.
- (i) *The Exit* : Uber China realised at an early stage that time had come to exit and it merged with Didi. Thus it was able to salvage its major part of investment.

Answer 1(v)

1. Uber was losing more than 1 billion dollar every year in China, which constrained its resources in other markets. By doing so it was able to save substantially to boost other markets profitability.
2. Despite large discounts and incentives, Uber could not exceed more than 15-20 market share in China with little hope for future.
3. Didi was both politically and financially much stronger than Uber in China. It was not possible for Uber to sustain.
4. Uber got a wonderful opportunity to leverage the investments made in initial years. The merger was win-win both for Didi and Uber.
5. 20% stake (7 billion US \$) in the merged entity valued at US \$ 35 billion is a good return for Uber initial investment.

Even after facing huge challenges, Uber could have continued in China.

Key points to support that Uber could have rather continued.

- (i) Within two years of operations, Uber was available in around 60 Cities offering 40 million rides per week.
- (ii) The new regulation was in favour of Uber as its drivers need to no more apprehensive about legal status and have them with police scrutiny.
- (iii) Uber had the backing of Baidu- financially strong Chinese Company. Uber could have raised funding from other Chinese investors or companies.
- (iv) Uber could have faced the challenges posed by scammers technologically.
- (v) Uber was operating in a fast changing business environment. Many of the today's handles may vanish with time.
- (vi) Uber should have tried other means of business activities like food delivery as it was doing elsewhere.
- (vii) There were only two players-Didi and Uber who were losing a lot of money in cut throat competition. They should have jointly promoted a Code of Conduct benefitting both the companies.

Question 2

- (a) *Strategic alliances often fail due to their inherent conflict. Discuss. (5 marks)*
- (b) *A company without global aspirations will also fail in domestic market in the long run. Comment. (5 marks)*
- (c) *What is Global Competitiveness Index ? Do you agree that the twelve pillars of competitiveness support each other ? (1+4=5 marks)*
- (d) *Do you agree that arbitration is an important tool to end commercial dispute ? (5 marks)*

- (e) *Distinguish between 'factoring' and 'forfeiting' in export management. (5 marks)*
- (f) *Is a Letter of Credit (LC) a secure financial instrument in international trade ? Discuss. (5 marks)*

Answer 2(a)

Strategic alliances may have following inherent weaknesses:

- (1) **Clash of cultures** : Cultural clash is probably one of the biggest problems that corporations in alliances face today. These cultural problems consist of language, egos, chauvinism, and different attitudes to business. Problems can be particularly acute between a publicly quoted American holding company, keenly focused on share-holders value, and Japanese partners who have different priorities.

It is important for the companies that are working together to be able to communicate and understand each other well or they are doomed before they even start. After the communication is worked out the firms face the problems with operations. Different cultures operate in different ways. For example, US companies tend to evaluate performance on the basis of profit, market share, and specific financial benefits While Japanese companies focus more on quality aspects, customer benefits and value addition.

- (2) **Lack of trust** : Risk sharing is the primary bonding tool in a partnership. What will happen if one company is successful and the other experiences a failure? A sense of commitment must be generated throughout the partnership. In many alliance cases one company will point the failure finger at the partnering company. Shifting the blame does not solve the problem, but increases the tension between the partnering companies and often leads to alliance ruin.

Building trust is the most important and yet most difficult aspect of a successful alliance. Only people can trust each other, not the company. Therefore, alliances need to be formed to enhance trust between individuals. The companies must form the three forms of trust, which include responsibility, equality, and reliability. Many alliances have failed due to the lack of trust causing unsolved problems, lack of understanding, and despondent relationships.

- (3) **Lack of clear goals and objectives** : In today's business world, many strategic alliances are formed for the wrong reasons. This leads to disaster in the future. Many companies enter into alliances to combat industry competitors. Corporate management feels this type of action deters competitors from focusing on their company. On the contrary, this action raises flags that problems exist within the joining companies. Many strategic alliances, although entered into for all the right reasons, do not work. Dissimilar objectives, inability to share risks, and lack of trust lead to an early alliance demise.

- (4) **Lack of coordination between management teams** : Action taken by subordinates that are not congruent with top-level management can prove particularly disruptive, especially in instances where companies remain competitors in spite of their strategic alliance. If it were to happen that one company would go off on its own and do its own marketing and sell its own

product while in alliance with another company it would for sure be grounds for the two to break up, and they would most likely end up in a legal battle which could take years to solve.

- (5) **Differences in operating procedures and attitudes among partners** : Other problems that can occur between companies in trade alliances are different attitudes among the companies, one company may deliver its good or service behind schedule, or do a bad job producing their goods or service which may lead to distrust among the two companies.
- (6) **Relational risk** : Relational risk is concerned with the probability that partner firms lack commitment to the alliance and that their possible opportunistic behaviour could undermine the prospects of an alliance.
- (7) **Performance risk** : Performance risk is the probability that an alliance may fail even when partner firms commit themselves fully to the alliance. The sources of performance risk according to a recent study by Das and Teng (1999) include environmental factors, such as government policy changes, war, and economic recession; market factors, such as fierce competition and demand fluctuations; and internal factors, such as a lack of competence in critical areas, or sheer bad luck.
- (8) **Strategic alliances might create a future local or even global competitor** : One partner, for example, might be using the alliance to test a market and prepare the launch of a wholly owned subsidiary. By declining to cooperate with others in the area of its core competency, a company can reduce the likelihood of creating a competitor that would threaten its main area of business; likewise, a company can insist on contractual clauses that constrain partners from competing against it in certain products or geographic regions.

Answer 2(b)

Since globalisation results in increasing integration of economies around the world it is imperative a country and thereby a company cannot grow without going global. By doing so, it opens the doors to foreign Competition, investment and a chance to improve its quality and quantity reducing cost. The global companies are able to increase their market share and are able to achieve economy of scale and economies of scope.

Companies also get access to cheaper sources of raw materials and labor. There is growth, and expansion facilitating professional management.

All these lead to better quality and low priced goods and services with a wider choice improving the standard of living in developing and semi developing countries.

Answer 2(c)

Global Competitive Index (GCI)

The World Economic Forum releases annual Global Competitiveness Reports which studies and benchmarks the many factors underpinning national competitiveness. The goal is to provide insight and stimulate the discussion among all stakeholders on the best strategies and policies to help countries to overcome the obstacles to improving competitiveness.

The Global Competitiveness Report series has evolved over the last three decades into the world's most comprehensive assessment of national competitiveness. The Report presents the rankings of the Global Competitiveness Index (GCI), developed by Professor Xavier Sala-i-Martin and introduced in 2005. The GCI is based on 12 pillars of competitiveness, providing a comprehensive picture of the competitiveness landscape in countries around the world at different stages of economic development. The Report contains detailed profiles highlighting competitive strengths and weaknesses for each of the 144 economies featured, as well as an extensive section of data tables displaying relative rankings for more than 100 variables.

These Pillars are as under:

- Institutions
- Infrastructure
- Macro-economic Environment
- Health and Primary Education
- Higher Education and Training
- Goods Market Efficiency
- Labor Market Efficiency
- Financial Market Development
- Technology Readiness
- Market Size
- Business Sophistication
- Innovation

These pillars are not independent but tend to support each other. A weakness in one may adversely affect others. They provide a sense of the specific areas in which a particular country needs to improve.

Answer 2(d)

Arbitration is a mechanism for the settlement of disputes and has several merits over other forms of business settlement, i.e. litigation and mediation. It is not only consensual but also a private procedure. It leads final and binding determination of rights and obligations of the parties. United Nations Commission on International Trade Law UNCITRAL Model Law on International Commercial Arbitration 'ICA' and it facilitates international arbitration.

ICA is definitely an important tool to settle the disputes in foreign Collaboration as:-

1. It avoids litigation in foreign Court.
2. It reduces inequalities through institutions like International Centre for Dispute Resolution.
3. It reduces chances of partiality in local courts especially when state is a party.
4. There is an ease of enforcement.

Answer 2(e)

1. Factoring is suitable for financing several and small claims for Consumer goods with credit terms between 90-180 days. Forfaiting is used to finance Capital goods exports with Credit terms between a few months and seven years.
2. Factoring covers only Commercial risk. Forfaiting additionally covers political and transfer risk.
3. A factoring house or a factor is a bank or Specialised finance firm that performs financing through purchase of invoices or account receivables. A forfeiter is a specialised financial firm or department in a bank that performs non-recourse export financing through the medium term trade receivables.
4. Factoring is an attractive option for small and medium sized exporters particularly during periods of rapid growth because Cash flow is preserved and risk is virtually eliminated. In forfaiting, receivables are normally guaranteed by the importer bank which allows the exporters to take the transaction off the balance Sheet to enhance key financial ratios.

Answer 2(f)

A letter of Credit (LC) is a written instrument issued by a bank (importer's bank) at the request of its customer (importer) whereby the bank promises to pay exporter (beneficiary) for goods or services provided that the exporter presents all documents called for exactly in compliance to stipulated conditions and instructions in LC and meets the other conditions of LC.

Yes, LC is a very secure document available in international trade as it removes the risk of non realisation of the money by the exporters and it removes the risk of buyers (importers) non receiving the goods / services

An LC is a commitment by an issuing bank on behalf of the buyer that the payment will be made to beneficiary (exporter) on the execution of complied presentation of documentary evidence to successful performance of the contract. Bank deals in documents hence documents becomes the basis of successful relations of payments. The buyer is also protected as no payment obligations arise till the documents proving the despatch of goods or delivered as promised. In nutshell; L/C is safe mode of payment subject to documentary compliance.

Question 3

Highlight the role of UNCTD in promoting international trade. (5 marks)

Answer 3

The role of United Nations Conference on Trade and Development (UNCTAD) is immense as it supports the developing countries to access the benefits of a globalized economy more fairly and effectively. UNCTAD help equipping developing countries' to deal with the potential drawbacks of greater economic integration. To do this, UNCTAD provide analysis, facilitate consensus-building, and offer technical assistance. This helps them to use trade, investment, finance, and technology as vehicles for inclusive and

sustainable development. UNCTAD works at all levels, national, regional, and global level, to help the developing countries to help its member nations to:

- Comprehend options to address macro-level development challenges
- Achieve beneficial integration into the international trading system
- Diversify economies to make them less dependent on commodities
- Limit their exposure to financial volatility and debt
- Attract investment and make it more development friendly
- Increase access to digital technologies
- Promote entrepreneurship and innovation
- Help local firms to move up value chains
- Speed up the flow of goods across borders
- Protect consumers from abuse
- Curb regulations that stifle competition
- Adapt to climate change and use natural resources more effectively

The role is not limited to above, The UNCTAD is playing a vital role for economic development of small, less-developed, poor and vulnerable countries' as it provides them key inputs on trends and problems in world trade and development, commodity problems and policies of different nations, problems of growth development finance and aid to developing nations, synchronisation of national policies with global policies and specific problems of developing nations regarding:

- (a) Expansion and diversification of exports of finished (manufactured) and semi-finished goods
- (b) Invisibles, including shipping

It publishes reports which provide great insights to global development affecting the economic and social interest of developing countries and also provides way forward on policy evolution. It works closely with IMF, IBRD, and other developmental bank on favourable and sustainable policy evolution at global level.

Question 4

Special Economic Zones (SEZs) are engines of economic growth. Discuss.

(5 marks)

Answer 4

Special Economic Zones (SEZs) are created to over-come the short comings experienced on account of multiplicity of Controls and Compliances, absence of world class infrastructure and unstable fiscal regime; with a view to attract larger foreign investments in the Country. One of the main objectives of SEZ is to enhance exports, i.e. to have a prominent role in international business. A main factor in determining the

success of SEZ is growth in the exports made by them. The purpose behind their establishment is to provide an internationally competitive environment to increase export, by making available goods and services free of tax and duties supported by convergent infrastructure.

These are engines of growth for nations that have strong governments. SEZs are located within a country's national borders, and their aims include increasing trade balance, employment, increased investment, job creation and effective administration. To encourage businesses to set up in the zone, financial policies are introduced. These policies typically encompass investing, taxation, trading, quotas, customs and labour regulations. Additionally, companies may be offered tax holidays, where upon establishing themselves in a zone, they are granted a period of lower taxation.

The units in SEZs are: -

- 100% tax exempted on export income for particular period.
- Exemption from MAT.
- ECB.
- Exemptions from Central Sales Tax
- Exemption from Goods & Services Tax
- Single Window clearance for Central and state level approvals
- Exemption from state sales tax and other levies.

A country has many benefits by the set-up of Special Economic Zones inside its territorial limits. Some of these are as follows:

- Special Economic Zones promote exports of goods and services.
- SEZs generate employment opportunities for the population.
- Special Economic Zones can develop infrastructure facilities.
- SEZs can provide, in a concentrated area, the necessary conditions external investors may require. Moreover, these may include a skilled labor force, adequate infrastructure, and local input suppliers. Additionally, they can facilitate investment from foreign sources.
- Additionally, a well-executed SEZs helps generate spill-overs for the economy of the rest of the country. This is because domestic firms and industries outside an SEZ tend to up-skill and expand, to be able to supply the SEZ firms.
- SEZs can play the role of 'testing grounds' for the Government for implementing liberal business policies in the future. Likewise, the Government can decide to implement 'successful' policies across the country and dump the 'unsuccessful' ones.

Question 5

Discuss the role of TRIPS in protecting intellectual rights.

(5 marks)

Answer 5

TRIPS deals with the protection of rights of people and organisations that have developed specific knowledge that could be exploited commercially.

It is one of the WTO's Agreements that is named Trade-Related Aspects of Intellectual Property Rights (TRIPS) and is the most comprehensive multilateral agreement on intellectual property (IP). It plays a central role in facilitating trade in knowledge and creativity, in resolving trade disputes over IP, and in assuring WTO members the latitude to achieve their domestic policy objectives. It frames the IP system in terms of innovation, technology transfer and public welfare. The Agreement is a legal recognition of the significance of links between IP and trade and the need for a balanced IP system. All the WTO member nations had signed it and it came into effect on 1 January 1995. The members have agreed to rectify their IPR laws in matter that is consistent with TRIPs so that the process of filing an award of IPR protect is uniform globally.

It has far reaching impacts on food health, education, Culture and social activities. Ideas and knowledge are becoming increasingly enhancing our everyday life. Most of the medicine, high technology, Products are the outcomes of innovations, invention, R&D and testing. Creators are given exclusive marketing rights to protect their inventions, designs and other creations and may negotiate with others before they use them.

TRIPS agreement protects patents, Copyrights, trade secrets, test data, trademarks, geographical indicators industrial designs and integrated circuits.

Question 6

Logistic management is the process of putting 'right product', in 'right quantity' at 'right place' at 'right-time' with 'right-cost'. Elaborate the statement. (5 marks)

Answer 6

According to the Phillips Kotler "Market logistic involves planning, implementing and controlling the physical flow of materials and final goods from the point of origin to the point of use to meet customer's requirements.

- **The Right Product** : Product is rightly redefined as the soul of whole international marketing offer and heart of marketing mix. Customer, be it in domestic market or international, always want a product which fulfils his needs, wants, desire and demand.
- **The Right Quantity** : Right quantity of goods is an important element and is aimed at balancing the inventory of the firm in logistics operations. Right quantity helps to determine the desired level of inventory for servicing international markets and is particularly more relevant in cases of retail outlets where, the quantity needed is determined by the amount, the customer picks-up on daily basis.
- **The Right Place** : The logistics help the firm to place the product where it is needed by customer or can be of use by him as and when require. Trade logistics system is important in creating the time and place utilities for any internationally engaged firm and help to balance the demand and supply of goods and services, thus minimizing the working capital requirements, pruning down the excess stock and associated costs.

- **The Right Time** : Delivery of goods at right time create time utilities thus promote sales in international markets. If a customer expects a delivery of product at a certain time, logistics team of an internationally engaged firm should ensure to deliver the cargo exactly on the expected schedule date and time.

The logistics functions integrate the management actions on logistical inputs through various stages of logistics including sub-system elements with the objective of managing the orderly movement of material, money, machine and man within the logistics system so as to ensure the supply of goods and services (logistical outputs) to end user in an effective and efficient manner at the right time, right price and right condition.

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