

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

DECEMBER 2018

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

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003

Phones : 41504444, 45341000; Fax : 011-24626727

E-mail : info@icsi.edu; Website : www.icsi.edu

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.

C O N T E N T S

Page

MODULE 3

| | |
|---|----|
| 1. Advanced Tax Laws and Practice | 1 |
| 2. Drafting, Appearances and Pleadings | 20 |
| 3. Banking Law and Practice (<i>Elective Paper 9.1</i>) | 38 |
| 4. Capital, Commodity and Money Market (<i>Elective Paper 9.2</i>) | 59 |
| 5. Insurance Law and Practice (<i>Elective Paper 9.3</i>) | 71 |
| 6. Intellectual Property Rights - Law and Practice (<i>Elective Paper 9.4</i>) | 85 |
| 7. International Business – Laws and Practices (<i>Elective Paper 9.5</i>) | 99 |

PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2018

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 2018-19, unless stated otherwise.
3. Working notes should form part of the answer.

PART A

Question 1

- (a) From the following information provided for the previous year 2017-18, compute the total income and tax liability considering provisions of Alternate Minimum Tax assuming the assessee is an individual :

| | Amount (₹) |
|---------------------------------------|------------|
| Net Profit as per Profit & Loss A/c | 19,05,000 |
| Depreciation as per Profit & Loss A/c | 3,50,000 |
| Depreciation as per Income Tax Rules | 3,60,000 |
| Inadmissible expenses | 1,40,000 |
| Deduction u/s 10AA (computed) | 12,00,000 |
| Deduction u/s 80-IA | 35,000 |
| | (5 marks) |

- (b) (i) What are the restrictions with regard to transactions in cash as per the provisions of Income Tax Act, 1961 ? (3 marks)
- (ii) An individual wants to donate ₹5,000 in cash to a political party. Should the political party accept it in cash ? (2 marks)
- (c) Discuss provisions under section 115BBD Vs. 115BBDA with reference to taxation of foreign dividends. (5 marks)

Answer 1(a)

Computation of Total Income and Tax Liability for AY 2018-19

| Computation of Total Income and Tax Liability | Amount (₹) |
|---|------------------|
| Net Profit as per Profit & Loss A/c | 19,05,000 |
| Add : Inadmissible Expenses | 1,40,000 |
| Add : Depreciation as per P&L A/c | 3,50,000 |
| Less : Depreciation as per Income Tax Rules | (3,60,000) |
| Total | <u>20,35,000</u> |

| | |
|---|---------------|
| Less : Deduction u/s 10AA of Income Tax Act | (12,00,000) |
| Business Income | 8,35,000 |
| Less : Deduction u/s 80IA of Income Tax Act | (35,000) |
| Net Total Income | 8,00,000 |
| Tax Liability | |
| (₹800000 - ₹500000) * 20% + ₹12500 | 72,500 |
| Add : EC + SHEC @ 3% | 2175 |
| Total Tax Liability | 74,675 |

**Computation of Adjusted Total Income for Calculation of AMT
'Alternate Minimum Tax'**

| <i>Particulars</i> | <i>Amount (₹)</i> |
|--|-------------------|
| Total Income | 8,00,000 |
| Add : Deduction u/s 10AA | 12,00,000 |
| Add : Deduction u/s 80IA | 35,000 |
| Total | 20,35,000 |
| Tax on adjusted income (including cess) (18.50% +3% on 18.50% = 19.055% of 20,35,000) | 3,87,769 |
| Tax Payable (Round off) | 3,87,770 |
| AMT Credit (₹3,87,770 - ₹74,675) | 3,13,095 |

Answer 1(b)

(i) In order to move India towards less cash economy, from 01/07/2017, Section 269 ST of the Income Tax Act, 1961 has been introduced as per which no person (whether seller of goods or service provider or transferor of capital assets) shall receive an amount of ₹2,00,000 or more in the following cases:

- In aggregate from a person in a day or
- In respect of Single transaction or
- In respect of transaction relating to an event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.

This restriction is not applicable where receiver is Govt., any banking company, post office savings bank/co-operative bank and any other person notified by Central Govt.

Further, as per section 40A(3) of the Income Tax Act, 1961, where the assessee incurs any expenditure in respect of which a payment or aggregate of payments

made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure while computing income under the head profit and gains from business and profession.

- (ii) As per Finance Act, 2017, clause (d) is inserted in section 13A of the Income Tax Act, 1961, as per which "No donation exceeding ₹2000 can be received by any political party otherwise than by an account payee draft or cheque or electronic clearing system or through electoral bond.

Therefore political party cannot accept cash donation in excess of ₹2000.

Answer 1(c)

Section 115BBD of Income Tax Act, 1961: Where the total income of an assessee, being an Indian company, includes any income by way of dividend declared, distributed or paid by a specified foreign company, the income-tax payable shall be the aggregate of:

- The amount of income-tax calculated on the income by way of such dividends, at the rate of fifteen percent; and
- The amount of income tax with which the assessee would have been chargeable had its total income reduced by the aforesaid income by way of dividends.

Notes:

1. The aforesaid amount would be increased by the applicable surcharge and cess.
2. Deduction in respect of any expenditure or allowance shall not be allowed to the assessee under any provision of this Act in computing its income by way of aforesaid dividends.
3. Above provisions are not applicable to deemed dividend u/s 2(22)(e).
4. Specified foreign company means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company.

Section 115BBDA of Income Tax Act, 1961: Notwithstanding anything contained in this Act, where the total income of an assessee, being a Resident individual, Hindu Undivided Family or a Firm, or any person (not being a domestic company, or a fund/institution/trust/university/educational institution/hospital/other medical institution referred to in section 10(23C), or a trust/institution registered u/s 12A / 12AA), includes any income in aggregate exceeding 10 lakh rupees, by way of dividend declared, distributed or paid by a domestic company or companies, the income tax payable shall be the aggregate of:

- The amount of income tax calculated on the income by way of such dividends in aggregate exceeding 10 lakhs rupees, at the rate of 10% and
- The amount of income tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount by way of dividends.

Notes:

1. No deduction in respect of any expenditure or allowance or set-off of loss shall be allowed to the assessee under any provision of this Act in computing the income by way of dividends referred to in clause (a) of sub-section (1).
2. The aforesaid amount would be increased by the applicable surcharge and cess.
3. Above provisions are not applicable to deemed dividend u/s 2(22)(e).

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

- (a) Specify whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion.
- (i) P deposits ₹1,00,000 in Public Provident Fund (PPF) account so as to reduce his total income from ₹3,40,000 to ₹2,40,000.
 - (ii) SQL Ltd. maintains register of tax deduction at source affected by it to enable timely compliance.
 - (iii) An individual tax payer making tax saver fixed deposit of ₹1,00,000 in a nationalized bank.
 - (iv) A bank obtaining declaration from depositors in Form No. 15G /15H and forwarding the same to income-tax authorities.
 - (v) Z debits his household expenses as business expenses in the books.
(1 mark each)
- (b) A Ltd., a US company has a subsidiary B Ltd. in India. A Ltd. sells Laptops to B Ltd. for resale in India. A Ltd. also sells laptops to C Ltd., another reseller. It sells 40,000 Laptops to B Ltd. at ₹10,000 per unit. The price fixed for C Ltd. is ₹9,000 per unit. The warranty in case of sale of laptops by B Ltd. is provided by B Ltd. However, for laptops sold by C Ltd., A Ltd. is responsible for providing service warranty for 3 months. Both A Ltd. and B Ltd. offer extended warranty at a standard rate of ₹1,000 per annum. On the basis of these facts explain the method which can be applicable for determination of arm's length price. Also determine the effect on the net profit / income of B Ltd. (Assuming that C Ltd. has not entered into an advance pricing agreement) in the scenario discussed above. Determine the arm's length price also.
(5 marks)
- (c) Usha, aged 50 years, a resident in India for the previous year 2017-18 receives professional fee of ₹4,50,000 for rendering services outside India. Tax of ₹1,20,000 was deducted at source in the country with which India does not have any double taxation avoidance agreement. She incurred ₹1,60,000 as expenditure for earning this fee. She has income from other sources in India amounting to ₹2,50,000 and she deposited ₹1,40,000 towards Public Provident Fund. Compute the tax liability and relief under section 91 of the Income Tax Act, 1961.
(5 marks)

OR (Alternate question to Q. No. 2)**Question 2A**

- (i) Written down value of a block of assets as on 1st April 2017 was ₹4,00,000. On 12th May, 2017, an asset belonging to the same block was purchased for ₹2,00,000. Suddenly a fire broke out on 18th October, 2017. Rate of depreciation on the asset is 15%. Compute the amount of capital gain, if any, in each of the following cases :
- (a) All the assets are destroyed by fire and the company receives ₹10,00,000 from the Insurance Company. (2 marks)
- (b) Part of the assets are destroyed by fire and the company receives ₹5,00,000 from the Insurance Company. (3 marks)
- (ii) Parimal, Managing Director of Heavens Engg. Pvt. Ltd. holds 70% of its paid up capital of ₹20 Lakh. The balance as on 31st March 2017 in General Reserve was ₹6 Lakh. The company on 1st July 2017 gave an interest-free loan of ₹5 Lakh to its Supervisor having salary of ₹4,000 p.m., who in turn on 15th August 2017 advanced the said amount of loan so taken from the company to Parimal. The Assessing Officer had taxed the amount of advance in the hands of Parimal. Is the action of Assessing Officer correct in the light of Provisions of Income Tax Act, 1961 ? (5 marks)
- (iii) (a) Advise Rashmi suitably to minimise her tax liability based on the facts given below.
- Rashmi, an Indian citizen, joined University of Toronto as a professor in Canada, on a monthly salary of Canadian \$ 10,000 on 1st April, 2015. She wants to come to India in the year 2017 and to stay continuously for a period of 11 months to complete her house construction in Delhi. She wants to know whether she can avoid payment of income tax legally on her foreign income earned. She can come to India at any time in 2017 for this purpose. (2 marks)
- (b) A is employed with XYZ Ltd. His salary is ₹1,00,000 per month. He is also paid house rent allowance of ₹20,000 per month. His wife B is also employed at a salary of ₹40,000 per month with ABC Ltd. where A holds 20% shares. B does not hold adequate qualification for the post which she is holding. B is the owner of a house which is self-occupied by the family. The house was constructed in the year 2015-16 with borrowed funds. Suggest a scheme for tax planning to minimise the tax liability for the financial year 2017-18 (assessment year 2018-19). (3 marks)

Answer 2(a)

- (i) Depositing an amount to the Public Provident Fund 'PPF' in order to reduce the total income and tax liability is an act of Tax Planning. Therefore, deposit of ₹1,00,000 in 'PPF' by P to reduce his total income from ₹3,40,000 to ₹2,40,000 is an act of **Tax Planning**.
- (ii) Maintenance of Register of Tax Deduction at Source to enable timely compliance is an act of Tax Management. Therefore, the maintenance of TDS register by SQL Ltd. to enable timely compliance is an act of **Tax Management**.

- (iii) Investment in tax saver fixed deposits is allowed as deduction u/s 80C of the Income Tax Act, 1961 and is an act of Tax Planning. Therefore, depositing ₹1,00,000 in tax saver fixed deposit by an Individual tax payer is an act of **Tax Planning**.
- (iv) Obtaining declaration from depositors by a bank in Form 15G / 15H and forwarding the same to the Income Tax Authorities is an act of **Tax Management**.
- (v) Claiming the household expenses as business expenses in the books of account is not allowed as deduction u/s 37 of the Income Tax Act, 1961 and is an act of Tax Evasion. Therefore, the act of Z debiting his household expenses as business expenses is an act of **Tax Evasion**.

Answer 2(b)

A Ltd., the foreign company, and B Ltd., the Indian company, are associated enterprises since A Ltd. is the holding company of B Ltd. A Ltd. sells laptops to B Ltd. for resale in India. A Ltd. also sells identical laptops to C Ltd. which is not an associated enterprise. The price charged by A Ltd. for a similar product transferred in comparable uncontrolled transaction is available. Therefore, Comparable Uncontrolled Price 'CUP' method for determining arm's length price can be applied.

For sale of laptops by C Ltd. A Ltd. is responsible for warranty of 3 months. The price charged by A Ltd. to C Ltd. includes the charge for warranty for 3 months. Hence arm's length price for laptops being sold by A Ltd. to B Ltd. would be:

| <i>Particulars</i> | <i>Amount (₹)</i> |
|--|-------------------|
| Sale Price per laptops charged by A Ltd. from C Ltd. | 9,000 |
| Less : Cost of warranty included in the price charged to C Ltd. (Rs.1000*3/12) | (250) |
| Arm's Length Price | 8,750 |
| Actual Price paid by B Ltd. to A Ltd. | 10,000 |
| Difference per unit | 1,250 |

No. of units supplied by A Ltd. to B Ltd. = 40,000

Addition of Income required to be made in the computation of total income of B Ltd. = ₹1250*40000 = ₹5,00,00,000

Note : No deduction under chapter VI-A would be allowable in respect of the enhanced income of ₹5 crores.

Answer 2(c)**Computation of Tax Liability of Ms. Usha for AY 2018-19**

| <i>Computation of Tax Liability of Ms. Usha</i> | <i>Amounts (₹)</i> |
|--|--------------------|
| Income under the head Business and Profession | |
| Foreign Income (₹4,50,000 + ₹1,20,000) | 5,70,000 |
| Less : Expenses incurred | 1,60,000 |
| Income under the head Business and Profession | 4,10,000 |

| | |
|--|-----------------|
| Income from Other Sources | 2,50,000 |
| Total Income | 6,60,000 |
| Less : Deduction u/s 80C - PPF | 1,40,000 |
| Net Total Income | 5,20,000 |
| Income Tax (₹5,20,000 – ₹5,00,000) * 20% + ₹12500) | 16500 |
| Add : EC+SHEC @ 3% | 495 |
| Total Tax | 16,995 |
| Less: Relief u/s 91 | 13,400 |
| Net Tax Payable | 3,595 |
| Net Tax Payable (Round off) | 3,600 |

Computation of Relief u/s 91

| <i>Particulars</i> | <i>Amount (₹)</i> |
|--|-------------------|
| Doubly Taxed Income | 4,10,000 |
| Total Income in India | 5,20,000 |
| Tax on total income in India | 16,995 |
| Tax paid in foreign country | 1,20,000 |
| Total income assessed in foreign country | 5,70,000 |
| (a) Tax on such doubly taxed income in India (16995*410000) / 520000 | 13,400 |
| (b) Tax on such doubly taxed income in Foreign Country (120000*410000) / 5,70,000 | 86,316 |
| Relief u/s 91 will be lower of (a) or (b) above | 13,400 |

Answer 2(A)(i)

- (a) Computation of Amount of Capital Gains if all the assets are destroyed by fire and the company receives ₹10,00,000 as compensation from an insurance company

| <i>Particulars</i> | <i>Amount (₹)</i> |
|---|-------------------|
| Assets as on 01/04/2017 | 4,00,000 |
| Add : Assets purchased on 12/05/2017 | 2,00,000 |
| Total | 6,00,000 |
| Less : Money received from Insurance Co. to the extent of WDV | (6,00,000) |
| WDV of the block of assets | Nil |
| Consideration received from an insurance company | 10,00,000 |
| Less : WDV of the block of assets upto fire accident | (6,00,000) |
| Short Term Capital Gains u/s 50 | 4,00,000 |

- (b) Computation of Amount of Capital Gains if part of the assets are destroyed by fire and company receives ₹5,00,000 as compensation from an insurance company

As the block of assets was not fully destroyed, so no capital gains will arise u/s 50 of the Income Tax Act, 1961. Depreciation and written down value 'WDV' as on 01/04/2018 can be calculated as under:

| <i>Particulars</i> | <i>Amount (₹)</i> |
|--|-------------------|
| Assets as on 01/04/2017 | 4,00,000 |
| Add : Assets purchased on 12/05/2017 | 2,00,000 |
| Total | 6,00,000 |
| Less : Money received from Insurance Co. | (5,00,000) |
| WDV of the Block of assets for current year depreciation | 1,00,000 |
| Less : Depreciation @ 15% | (15,000) |
| WDV of the block of assets as on 01/04/2018 | 85,000 |

Answer 2(A)(ii)

The company had advanced a loan to an employee who in turn had advanced the same to the Managing Director of the company holding 70% of its capital.

By virtue of the provisions of section 2(22)(e) of the Income Tax Act, 1961, the same shall be treated "as deemed dividend" as the payment made by a company, in which public is not substantially interested, on behalf of, or for individual benefit of any such share holder (who holds not less than 10% of the voting power), to the extent to which the company possesses accumulated profits. In this case, the company has reserve of ₹6 lakhs on March 31st of the preceding year and the amount of loan advanced on 1st July is ₹5 lakhs.

Therefore, the payment is to be treated as deemed dividend. The amount of interest free loan of ₹5 lakhs given by the company to the supervisor who in turn had given the same to Mr. Parimal, shall be construed as the amount given for the benefit of Mr. Parimal and is treated as deemed dividend chargeable to tax in the hands of Mr. Parimal.

Answer 2(A)(iii)

- (a) The period of 11 months may be staggered over 2 previous years, in such a way that the basic condition for residence is not satisfied i.e. Rashmi may be treated non-resident in India if her stay in India is less than 182 days during relevant previous year.

Therefore, Rashmi can stay in India upto 362 days at a stretch spread over two financial years (181 days in 2016-2017 and 181 days in 2017-2018) without becoming residents in India in any of the previous year.

- (b) A is advised to reduce his share holdings with XYZ Ltd. from 20% to 19% to avoid clubbing of salary income of B (A's wife) u/s 64(1)(iv).

B should not treat the house as self occupied. She should let it out to A and

issue a rent receipt of an amount say ₹40,000 per month. On the basis of rent receipt, A is entitled to claim the exemption in respect of House Rent Allowance 'HRA' to reduce his tax liability. Besides, B can claim the exemption in respect of interest payable on housing loan.

PART B

Question 3

- (a) Determine the place of supply according to the provisions of Integrated Goods and Services Tax Act, 2017 in the following cases :
- (i) K of Kerala places an order to H of Gurgaon (Haryana) to supply motor parts and instructs him to deliver the spare parts to U of Kanpur (U.P.) directly to save transportation cost.
 - (ii) P Ltd. registered in Punjab sold its pre-installed transformer tower of electricity located at Himachal Pradesh to Bharat Ltd. registered in Delhi.
 - (iii) M from Mumbai enters into contract with the Indian Railways controlling office situated in U.P. for sale of food items in the trains from Mumbai to Delhi.
 - (iv) D of Delhi has a savings bank account with HDFC Bank in Delhi. When he was in Mumbai for official tour, he gets a DD (Demand Draft) from HDFC Bank in Mumbai.
 - (v) K of Kerala avails architect services for his property located in Chennai (Tamil Nadu) from an architect H of Hyderabad in Telangana State.
- (1 mark each)
- (b) Calculate FOB Value, Cost of Insurance, Cost of Freight and Assessable Value where only the CIF value is given as US \$ 5,000. Exchange rate notified by RBI and CBEC are ₹50 and ₹48 respectively for one US \$. (5 marks)
- (c) M/s Nose Ltd. reduced the amount of ₹2,25,000 from the output tax liability in contravention of the provisions of section 42(10) of the CGST Act, 2017 in the month of January 2018 (vide invoice dated 12th January, 2018), which is ineligible credit at invoice level. As a result a show cause notice was issued by the Central Tax Department under section 74 of the CGST Act, 2017 along with interest. M/s Nose Ltd. paid the tax and interest on 5th March, 2018. Find the interest liability if any ? Ignore penalty. (5 marks)
- (d) Compute the assessable value and total customs duty payable under the Customs Act, 1962 for an imported machine, based on the following information:

Amount (US \$)

| | |
|--|--------|
| • Cost of the machine at the factory of the exporter | 20,000 |
| • Transport charges from the factory of the exporter, to the port for shipment | 800 |
| • Handling charges paid for loading the machine in the ship | 50 |
| • Buying commission paid by the importer | 100 |
| • Lighterage charges paid by the importer | 200 |

- *Freight incurred from port of entry to Inland Container depot* 1,000
- *Ship demurrage charges* 400
- *Freight charges from exporting country to India* 5,000

— *Date of bill of entry* 20-02-2018

*(Rate of BCD 20%; Exchange rate as notified by
CBEC ₹60 per US \$)*

— *Date of entry inward* 25-01-2018

*(Rate of BCD 12%; Exchange rate as notified by
CBEC ₹65 per US \$)*

Rate of IGST 12%. (5 marks)

(e) *Briefly explain the following features of GST law in India :*

- (i) *Consumption based tax (2 marks)*
- (ii) *Integrated Goods and Services Tax. (3 marks)*

Answer 3(a)

- (i) Goods are delivered to U (Kanpur, U.P.) the recipient of goods on the direction of K of Kerala. As per section 10 (1) (b) of IGST Act, 2017, where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person, therefore in the given case, place of supply shall be the location of principal place of K i.e. Kerala.
- (ii) As per section 10 (1) (c) of IGST Act, 2017, where supply does not involve movement of goods, place of supply shall be the location of goods at the time of delivery to the recipient. In the given case, the location of pre-installed tower is in Himachal Pradesh, therefore, place of supply is Himachal Pradesh.
- (iii) As per section 10 (1) (e) of IGST Act, 2017, where the goods are supplied on board a conveyance, the place of supply shall be the location at which such goods are taken on board. In the given case, M from Mumbai supplying food items in the train from Mumbai to Delhi, assuming that food items are taken on board at Mumbai, therefore, place of supply shall be Mumbai.
- (iv) Assuming that D is unregistered person and on record address in Delhi as per the records with HDFC Bank, place of supply shall be Delhi.
- (v) As per section 13 (4) of IGST Act, 2017, place of supply of services of architects in relation to immovable property, shall be the location where immovable property is located. Therefore, in the given case place of supply shall be Chennai (Tamil Nadu).

Answer 3(b)

As per rule 10(2) proviso 3 of Customs Valuation (Determination of Value of Imported

Goods) Rule, 2007 where FOB value of goods, cost of insurance, and freight are not ascertainable, then cost of insurance and cost of freight shall be computed as follows:

| | | |
|---------------------|---|--------------------------------------|
| CIF value | - | US\$ 5,000 x ₹48 = ₹2,40,000 |
| Freight & Insurance | - | ₹2,40,000 x 21.125/121.125 = ₹41,858 |
| FOB Value | - | ₹2,40,000 – ₹41,858 = ₹1,98,142 |

Exchange rate notified by CBEC / CBIC has to be taken i.e. ₹48/US\$.

As per Rule 10 of Valuation Rules, freight and insurance when not available has to be taken as 20% and 1.125% of FOB value respectively

Answer 3(c)

As per section 42(10) read with section 50(3) of CGST Act, 2017 amount reduced from the output tax liability in contravention of the provisions of section 42(7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in the section 50(3) of CGST Act, 2017.

- Therefore, applicable interest rate shall be 24% per annum.
- January month return due date is 20th of February, 2018.
- Interest = ₹1,923 (₹ 2,25,000 x 24% x 13/365)
- From 21st February 2018 to 5th March 2018 = 13 days

Answer 3(d)

Computation of assessable value and total customs duty

| <i>Particulars</i> | <i>Amount US\$</i> |
|--|--------------------|
| Cost of the machine | 20,000 |
| <i>Add</i> : transport charges from factory of exporter to the port for shipment | 800 |
| <i>Add</i> : handling charges | 50 |
| FOB | 20,850 |
| <i>Add</i> : buying commission (not addable) | Nil |
| FOB of the Customs | 20,850 |
| <i>Add</i> : Insurance (20850 x 1.125%) | 234.5625 |
| <i>Add</i> : Freight | 5000 |
| <i>Add</i> : Lighterage Charges | 200 |
| <i>Add</i> : Ship Demurrage Charges | 400 |
| CIF Value/Assessable value | 26,684.5625 |

| | Amount ₹ |
|---|-----------------|
| Assessable Value (US \$ 26,684.5625 x ₹60) | 16,01,074 |
| Add : BCD @ 20% (16,01,074 x 20%) | 3,20,215 |
| Add : Social Welfare Surcharge @ 10% (3,20,215 x 10%) | 32,021.50 |
| | 19,53,310.50 |
| Add : IGST @ 12% (19,53,310.50 x 12%) | 2,34,397.26 |
| Total Custom Duty | 5,86,634 |

Answer 3(e)

- (i) GST is a consumption based tax i.e. tax payment accrue to the state where consumption of supply takes place. Exports are not taxable because place of consumption is outside India whereas imports are taxable as place of consumption is in India.
- (ii) Integrated Goods and Services Tax (IGST) is charged on inter-state supply of goods or services or both and collected by Central Government under IGST Act, 2017.

IGST rate is equal to CGST and SGST rates. Revenue from IGST apportions among Union and State Governments on the basis of recommendations of GST council.

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

Question 4

- (a) *St. Thomas Hospital and Research Centre imported a machine from Long Life Scientific Ltd., USA for in-house research. The price of the machine was settled at US \$ 8,000. The machine was shipped on 10th March, 2018. Meanwhile, the hospital authorities negotiated for a reduction in the price. As a result Long Life Scientific Ltd. agreed to reduce the price by \$ 500 and communicated the revised price of \$ 7,500 by sending a fax message dated 14th March, 2018. The machine arrived in India on 17th March, 2018. The Commissioner of customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.*

Do you agree with the step taken by the commissioner ? Give reasons in support of your answer. (5 marks)

- (b) *X is a registered trader in Ghaziabad (Uttar Pradesh). In the Financial Year 2017-18 total value of supplies are as follows :*
- | | |
|---|------------|
| (i) <i>Intra-state supplies made under forward charge</i> | — ₹35 lakh |
| (ii) <i>Intra-state supplies made which are chargeable to GST at Nil rate</i> | — ₹25 lakh |
| (iii) <i>Intra-state supplies of goods which are wholly exempt under section 11 of CGST Act, 2017</i> | — ₹30 lakh |

- (iv) *Value of inward supplies on which tax payable under Reverse Charge Basis (RCM)* — ₹20 lakh

Briefly explain whether X is eligible to opt for Composition Scheme in the financial year 2018-19 ? (5 marks)

- (c) *Importer BOPPA Ltd. imported two consignments of ethyl alcohol which were allowed to be cleared for home consumption on execution of a bond undertaking to produce licence within a month. Since, BOPPA Ltd. failed to fulfill the obligation, proceedings were initiated which culminated in confiscation of the goods under Section 111(d) of the Customs Act, 1962 and imposition of penalty on the importer under Section 112(a) of the Customs Act, 1962. Examine the correctness of the decision in terms of statutory provisions.* (5 marks)

OR (Alternate question to Q. No. 4)

Question 4A

- (i) *Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing :*
- (a) *The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.* (2 marks)
- (b) *The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.* (1 mark)
- (c) *The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee for cancellation of the license of a private warehouse if he has contravened any provision of the Customs Act, 1962.* (2 marks)
- (ii) *Ratan exported 2,000 pairs of leather shoes @ ₹750 per pair. All industry rate of duty drawback is fixed on average basis i.e. @ 11% of F.O.B. subject to maximum of ₹80 per pair. The exporter found that actual duty paid on input was ₹1,95,000. He has approached you as a consultant to apply under Rule 7 of the drawback rules for fixation of 'Special Brand Rate'. Advise him suitably.* (5 marks)
- (iii) *With reference to recent amendments made (Vide Finance Act, 2017) in the Customs Act, 1962, examine the validity of the following statements :*
- (a) *A beneficial owner of imported goods is a person on whose behalf the goods are being imported but cannot be exported.*
- (b) *Customs area does not include a warehouse.*
- (c) *Customs station includes international courier terminal but does not include the foreign post office.* (5 marks)

Answer 4(a)

No, the commissioner's approach is not correct in the law.

As per section 14 of the Customs Act, 1962, the transaction value is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.

Further, Supreme Court in the case “Garden Silk Mills vs UOI” has held that importation get complete only when the goods become part of mass of goods within the country.

In the given case, the price of the goods was reduced while the goods were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

Answer 4(b)

As per section 10 of CGST, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹1 crore may opt for Composition Scheme.

As per section 2(6) of CGST Act, 2017, “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number.

Computation of Aggregate Turnover in FY 2017-18:

| | <i>₹ in lakhs</i> |
|--|-------------------|
| Intra-state supplies made under forward charge | 35 |
| Intra-state supplies made which are chargeable to GST at Nil rate | 25 |
| Intra-state supplies of goods which are wholly exempt under section 11 of CGST Act, 2017 | 30 |
| Value of inward supplies under Reverse Charge Basis (not to be included in computing aggregate turnover) | Nil |
| Total | 90 |

Since, aggregate turnover does not exceed ₹1 crore during the financial year 2017-18, Mr. X is entitled for Composition Scheme for FY 2018-19.

Answer 4(c)

- The given case is similar to the case of *Hira Lal Hari Bhagwati vs CBI (2003)* 155 ELT 433 (SC). The Supreme Court of India had held that no penalty can be imposed if the goods are imported with bona fide belief that they are entitled to exemption, later on they could not fulfil conditions of exemptions but paid the duty.
- Further it was held that for establishing offence of cheating, complainant (i.e. importer) is required to show dishonest intention at the time of making promise or presentation. Thereby there is no penalty under section 112(a) of Customs Act, 1962. With regard to confiscation of the goods under section 111(d) of Customs Act, 1962, the Supreme Court in the case of *Sachinanda Banerji v Sitaram Agarwala* 110 ELT 292 (SC), held that goods imported against restrictions under section 11 of the Customs Act, 1962 (section 11 deals with power to

prohibit importation or exportation of goods) are liable to confiscation. Therefore, action of the department to confiscate the goods u/s 111(d) of the Customs Act, 1962 is valid.

Answer 4A(i)

- (a) **The given statement is invalid** : As per section 58A(1) of the Customs Act, 1962 the Principal Commissioner of Customs or Commissioner of Customs may subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods there from without the permission of the proper officer.
- (b) **The given statement is invalid** : The Commissioner of Customs or the Principal Commissioner of Customs can appoint public warehouse, wherein dutiable goods can be deposited under section 57 of the Customs Act, 1962.
- (c) **The given statement is valid** : The Commissioner of Customs or the Principal Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act, as per section 58(2)(b) of Customs Act, 1962.

Answer 4A(ii)

Drawback amount = ₹1,65,000 (i.e. $2,000 \times 750 \times 11\%$) or ₹1,60,000 (i.e. ₹80 x 2,000) whichever is less.

Therefore duty drawback allowed ₹1,60,000.

- All industry duty drawback rate = 82.05% [$(1,60,000/1,95,000) \times 100\%$]
- Exporter is not eligible to apply for Special Brand rate.
- Therefore, exporter is eligible for claiming All Industry Duty Drawback.

Note : *Special brand rate of duty is applicable only when all industry rates do not cover 80% of the duties paid by the exporter.*

Answer 4A(iii)

- (a) **The statement is invalid** : A new section 2(3A) has been inserted in the Customs Act, 1962 vide the Finance Act, 2017 to define beneficial owner means any person on whose behalf the goods are imported or exported or who exercise effective control over the goods being imported or exported.
- (b) **The statement is invalid** : Section 2(11) of Customs Act, 1962 has been amended to include a warehouse within the customs area.
- (c) **The statement is invalid** : The Finance Act, 2017 has included international courier terminal and foreign post office within the scope of customs station as defined under section 2(13) of Custom Act, 1962.

Question 5

- (a) (i) Explain the consequences according to provisions of GST law, if a recipient of goods or services or both does not make payment for the supply within 180 days. (2 marks)
- (ii) Discuss the provisions relating to refund of balance in electronic cash ledger as per the GST law. (2 marks)
- (iii) M/s Basu & Co., an Audit Firm based in Kolkata undertake an Audit assignment of a Mumbai based client. The contract with the client includes ₹5,00,000 as audit fee and arrangement of taxi for movement of auditors amounting to ₹15,000 actually spent by the auditors and reimbursed by the client. Find out the transaction value in the hands of M/s Basu & Co. (2 marks)
- (b) What are the documents required to be prepared by the recipient of supplies from an unregistered person as per GST law? (3 marks)
- (c) Explain the concept of "Zero rated and Exempt transaction" for the purpose of availment of input tax credit in GST law. (3 marks)
- (d) Briefly discuss the provisions related to Levy of late fee as per section 46 of CGST Act, 2017 on a person who fails to furnish the details of outward or inward supplies required under section 37 or 38 or 39 or 45 of CGST Act, 2017. (3 marks)

Answer 5(a)

- (i) Where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.
- (ii) As per section 54 a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund by submitting a refund application form RFD – 01.
- (iii) As per section 15(2)(b) the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.

Therefore, transaction value in the hands of M/s Basu & Co. is ₹5,15,000.

Answer 5(b)

- (i) A registered person who is liable to pay tax under reverse charge shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;
- (ii) A registered person who is liable to pay tax under shall issue a payment voucher at the time of making payment to the supplier.

Answer 5(c)

“Exempt supply” means supply of goods or services which attracts Nil rate of tax or which are wholly exempt from tax and includes non-taxable supply.

“Zero rated supply” means export of goods or services or supplies made to Special Economic Zone (SEZ) developer or SEZ unit.

As per section 17(2) of CGST Act, 2017 where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Answer 5(d)

As per section 47 of CGST Act, 2017 read with notification No. 64/2017 – Central Tax and 4/2018 – Central Tax, any registered person who fails to furnish the return under section 37 or 38 or 39 or 45 of CGST Act, 2017 shall pay the late fees of ₹25 for every day during which such failure continues and ₹10 in case of nil return subject to a maximum of ₹5,000.

As per Central Government notifications the late fees has been reduced to ₹25 for every day during which such failure continues and ₹10 in case of nil return subject to a maximum of ₹5,000

Note : ₹25/₹10 is late fees in CGST Act, equal late fees shall be charged under respective SGST Act of the state.

Question 6

- (a) (i) *B, a supplier registered in Chennai (Tamil Nadu) procures goods from China and directly supplies the same to a customer in UAE without bringing to India. With reference to the provisions of GST law examine whether the supply of goods by B to customer in UAE is an inter-state supply and is it either import or export in terms of Customs Act, 1962 ? (3 marks)*
- (ii) *Is a dealer, who is not required to be registered because he has not crossed the turnover limit, required to pay GST under reverse charge in respect of supplies for which reverse charge is applicable ? (2 marks)*
- (b) *Hiyakash Ltd. is a producer of certain products. The tax rate applicable on the supply of goods by them is 18%. (SGST 9% and CGST 9%). The company purchased goods worth ₹47,200 (Inclusive of Tax 18%) which is fully utilized in the manufacture of final products. The company sold the goods for ₹25,000 within the State and also exported the goods worth ₹8,000. The invoices are properly uploaded and matched in GSTN Portal. Calculate the tax payable by the company assuming there was no opening or closing stock of inputs or final products. (5 marks)*
- (c) *Yash an importer, imported certain goods on 10th April, 2017 and paid custom duty by understating the value of goods imported. A show cause notice was issued on Yash by the proper officer on 9th August, 2017 demanding duty along*

with interest and penalty on the value of goods understated. The said notice was received by Yash on 14th August, 2017. Yash deposited the amount of duty and interest along with penalty that should be payable as per provisions of law on 11th September, 2017. With reference to section 28AA of the Customs Act, 1962 explain the provisions for imposition of interest and penalty, if any. Also give reasons for your answer. (5 marks)

Answer 6(a)

- (i) The transaction undertaken by Mr. B is neither import nor export of goods in terms of Customs Act, 1962.

However, it is an inter-state supply in terms of provision of section 7(5)(a) of IGST Act, 2017, which provides that when the supplier is located in India and the place of supply is outside India, supply of goods or services or both shall be treated to be a supply of goods or services or both in the course of inter-state trade.

- (ii) Yes, as per section 24 of CGST Act, 2017 the taxpayer who is required to pay tax under reverse charge have to compulsorily register under GST and threshold limit of ₹20 lakhs shall not be applicable to him.

Answer 6(b)**Calculation of tax payable by Hiyakash Limited**

| <i>Particulars</i> | <i>SGST (₹)</i> | <i>CGST (₹)</i> |
|---|-----------------|-----------------|
| Tax payable on supply of goods within the State (₹25,000 x 18/100) | 2,250 | 2,250 |
| Tax payable on exported goods of ₹8,000 | Nil | Nil |
| Input Tax Credit available on purchase of goods (₹47,200 / 118 x 18) | 3,600 | 3,600 |
| Net tax payable | Nil | Nil |
| Excess ITC carried forward to next period | 1,350 | 1,350 |

Answer 6(c)

Where notice under section 28(1)(a) of the Customs Act, 1962 has been served for short / non levy or erroneous refund of duty or interest, for reason other than the reasons of collusion or any wilful misstatement or suppression of facts, penalty will not be imposed. If the proper officer is of the opinion that the amount of duty along with interest leviable under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within 30 days from the date of receipt of notice. The proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded.

Further, if the notice is served in respect of collusion, any mis-statement or suppression of facts for duty or interest which has not been so levied, or short levied or

short paid or to whom refund has erroneously been made and the person make payment is full and penalty equal to 15% of the duty specified in the notice within thirty days of the receipt of notice and inform the proper officer, then the proceedings in respect of such person shall be deemed to be conclusive as to the matter stated therein.

In the given case, show cause notice was received by Mr. Yash on 14.08.2017 and he paid the duty, interest and applicable penalty on 11.09.2017, which is within 30 days of the receipt of the notice, therefore, if Mr. Yash has understated the value of imported goods with a fraudulent intention and has informed the proper officer of the payment made by him, in writing, in view of the above mentioned provisions, penalty leviable on Mr. Yash will be 15% of the duty specified in the notice. However, if Mr. Yash has understated the value of imported goods on account of bonafide reasons, no penalty will be imposable on him.

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : *Answer ALL Questions.*

Question 1

Comment on the following statements :

- (a) Terms and Conditions in the Agreement to Sell/Purchase.*
- (b) Essentials of a Promissory Note.*
- (c) Formulation of a Legal opinion needs certain precautionary measure.*
- (d) Essentials of a Written statement. (5 marks each)*

Answer 1(a)

Terms and conditions in the Agreement to Sell / Purchase

- (i) The vendor has a marketable title in the property agreed to be sold / purchased and that the vendor has produced the title deeds relating to the property to the purchaser for his inspection or in any other manner, must be specifically stipulated between the parties to the agreement.
- (ii) If the property agreed to be sold is a part of a larger property, an agreement as to retention of a particular or all the title deeds to the property by a party should be arrived at and incorporated in the agreement to sell / purchase.
- (iii) If the property is subject to any prior charge or encumbrance, the parties must agree that the sale is to be subject to such encumbrance or price payable under the agreement including the sum due under the encumbrance and is required to be paid to the charge holder at the time of registration or thereafter.
- (iv) The mode of payment of the price or the balance thereof, if some earnest money or deposit has been paid, should also be stipulated in the agreement. It should also be clearly stated whether the vendor or the purchaser shall be liable to pay rates, rents, taxes or other imposts for the period commencing from the date of execution of the agreement to sell / purchase till the execution of the conveyance deed.
- (v) The parties should agree as to the point of time when possession of the property should be handed over by the vendor to the purchaser, if the vendor is in possession or how the atonement by the tenant(s), if the possession is to be effected.
- (vi) The parties should also agree as to who shall bear the cost and expense of execution and registration of the sale deed and if both the parties have to bear the same, in what precise proportions they shall bear.
- (vii) If any broker is involved in the transaction, the agreement should clearly spell

out if any brokerage is payable and by whom and at what rate, and at what point of time.

Answer 1(b)

To be a promissory note, an instrument must possess the following essentials:

- (a) It must be in writing. An oral promise to pay will not do.
- (b) It must contain an express promise or clear undertaking to pay. A promise to pay cannot be inferred. A mere acknowledgement of debt is not sufficient. If A writes to B
 "I owe you (I.O.U.) Rs. 500", there is no promise to pay and the instrument is not a promissory note.
- (c) The promise or undertaking to pay must be unconditional. A promise to pay "when able", or "as soon as possible", or "after your marriage to D", is conditional. But a promise to pay after a specific time or on the happening of an event which must happen, is not conditional, e.g., "I promise to pay Rs. 1,000 ten days after the death of B", is unconditional.
- (d) The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.
- (e) The maker must be a certain person, i.e., the note must show clearly who is the person engaging himself to pay.
- (f) The payee must be certain. The promissory note must contain a promise to pay to some person or persons ascertained by name or designation or to their order.
- (g) The sum payable must be certain and the amount must not be capable of contingent additions or subtractions. If A promises to pay Rs. 100 and all other sums which shall become due to him, the instrument is not a promissory note.
- (h) Payment must be in legal money of the country. Thus, a promise to pay Rs. 500 and deliver 10 quintals of rice is not a promissory note.
- (i) It must be properly stamped in accordance with the provisions of the Indian Stamp Act, 1899. Each stamp must be duly cancelled by maker's signature or initials.
- (j) It must contain the name of place, number and the date on which it is made. However, their omission will not render the instrument invalid, e.g., if it is undated, it is deemed to be dated on the date of delivery.

Answer 1(c)

A request for a legal opinion will usually come in written form. Such a request will usually include any document / documents in the case. The request for a legal opinion will include at least one and usually a number of questions which the legal advisor is being asked to address.

A legal opinion will often have the overarching question – does the client have a good and viable case. This is clearly the most important question to any client and must

be approached with honesty and directness. If the client's case is not viable they must be advised about this during the course of legal opinion. If there is something that can be done to improve the client's prospects of success, a good legal opinion will spell out this very precisely. Numbered action points are one way of achieving clarity in this regard. Above all, it is vital to remember that if being asked to draft a legal opinion it implies that you are being asked to advise. Sitting on the fence is not an option. Lay out the pros and cons of a particular course of action, but always come down on one side or the other. Giving a percentage chance of success at the beginning of a legal opinion is one way of being clear about what you think the client's prospects are.

Drafting a legal opinion can and should always be split into three processes: The mental attitude, the thinking process and the writing process.

Answer 1(d)

It is essential for the defendant to file his defence in writing. If the defendant fails to file written statement, the court may pronounce judgment against him or may under O. 8, R. 10 of Civil Procedure Code, make such order in relation to the suit as it deems fit. If the defendant has omitted to avail of his right to file a written statement at or before the first hearing, the court can extend the time for filing it, in exercise of its discretion, if the circumstances so warrant. The rule has to be worked in a manner so as to advance justice (*Mehar Chand v. SurajBhan, AIR 1971 Punj 435*).

When the defendant appears and files a written pleading by way of defence, his pleading should conform to all the general rules of pleading laid down in the preceding paras. A subsequent pleading filed by the plaintiff, either in reply to a defendant's claim of set off, or with leave of the court, in answer to defendant's pleas in defence, is also called a "written statement" (also called Replication or Rejoinder). All the rules relating to defendant's written statement apply, mutatis mutandis to such written statement of the plaintiff also.

Question 2

Write notes on the following :

- (a) *Recitals*
- (b) *Click-wrap or Web-wrap Agreements*
- (c) *Outsourcing Agreements*
- (d) *Expert's opinion.* (4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

Explain the following :

- (i) *Requisites of a complaint along with relevant case laws.*
- (ii) *Compounding of offences under the Securities and Exchanges Board of India (SEBI) Act, 1992.*
- (iii) *Assignment of Policies of Insurance.*
- (iv) *Elements of Debenture Trust Deed.* (4 marks each)

Answer 2(a)

Recitals contain the short story of the property up to its vesting into its transferors. Recitals may be of two types. One, narrative recitals which relate to the past history of the property transferred and sets out the facts and instrument necessary to show the title and relation to the party to the subject matter of the deed as to how the property was originally acquired and held and in what manner it has developed upon the grantor or transferor. The extent of interest and the title of the person should be recited. It should be written in chronological order, i.e., in order of occurrence. This forms part of narrative recitals. This is followed by inductive recitals, which explain the motive or intention behind execution of deed.

Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as estoppel [*Ram Charan v. Girija Nandini*, 3 SCR 841 (1965)].

Recital generally begins with the words “Whereas” and when there are several recitals instead of repeating the words “Whereas” before each and every one of them, it is better to divide the recitals into numbered paragraphs. For example, “Whereas” —

- 1.
- 2.

Answer 2(b)

Generally the basic forms of e-contracts are the Click-wrap or Web-wrap Agreements; the Shrink-wrap Agreements; the Electronic Data Interchange or (EDI).

These are the agreements which we generally come across while surfing internet such as “I AGREE” to the terms or “I DISAGREE” to the above conditions. A click-wrap agreement is mostly found as part of the installation process of software packages. It is also called a “click through” agreement or click-wrap license.

Click-wrap agreements can be of the following types:

1. Type and Click where the user must type “I accept” or other specified words in an on-screen box and then click a “Submit” or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.
2. Icon Clicking where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a “take-it-or-leave-it” type of contract that lacks bargaining power.

Answer 2(c)

Outsourcing is the contracting out of a company’s non-core, non-revenue producing activities to specialists. It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best i.e., its core competencies. The common types of outsourcing are Information

Technology (IT) outsourcing, Business Process Outsourcing (BPO) and Knowledge Process outsourcing (KPO).

A good outsourcing agreement is one which provides a comprehensive road map of the duties and obligations of both the parties - outsourcer and service provider. It minimizes complications when a dispute arises. However, many a times people neglect to pay attention while drafting an outsourcing agreement. Before finalizing an outsourcing agreement, the terms should be thoroughly discussed and negotiated to avoid any misunderstanding at a later stage. It is advisable to consult a lawyer before finalizing any outsourcing agreement.

Answer 2(d)

Drafting of legal documents is a skilled job. The duty of a draftsman is to express the intention of the parties clearly and concisely in technical language. If the draft document has been prepared for the first time to be used again and again with suitable modification depending upon the requirements of each case it should be got vetted by the experts to ensure its suitability and legal fitness if the corporate executive feels it so necessary.

Expert opinion comes from the professional who has acquired knowledge and skills through study and practice over the years, in a particular field or subject, to the extent that his or her opinion may be helpful in fact finding, problem solving, or understanding of a situation.

Answer 2A(i)

A complaint in a criminal case is what a plaint is in a civil case. The requisites of a complaint are:

- (i) an oral or a written allegation;
- (ii) some person known or unknown has committed an offence;
- (iii) it must be made to a magistrate; and
- (iv) it must be made with the object that he should take action.

There is no particular format of a complaint. A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprit be suitably dealt with is a complaint. (*Mohd. Yousuf v. AfaqJahan*, AIR 2006 SC 705). Complaint need not be presented in person. A letter to a magistrate stating facts constituting an offence and requesting to take action tantamounts to a complaint.

Answer 2A(ii)

Section 24A of SEBI Act, 1992 permits compounding of offences by the court where prosecution proceedings are pending. Section 24A of SEBI Act, 1992 reads as under:

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.”

Compounding of offence can cover appropriate prosecution cases filed by SEBI before the criminal courts.

Prosecution here means filing of criminal complaints before various criminal courts by SEBI for violation of provisions of securities laws which may lead to imprisonment and / or fine. Compounding of offence can take place at any stage after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed rather than the one for compounding.

Settlement of proceedings through compounding can be sought by any person who is notified that a proceeding may or will be instituted against him / her, or any party to a proceeding already instituted, may, at any time, propose in writing for settlement.

Answer 2A(iii)

Policies of insurance are principally of two types (1) insuring risk to life of a person, and (2) covering various risks relating to goods. Under the former, a sum of money is secured to be paid on the death of the person whose life is insured. The latter is a contract whereby an insurer undertakes to indemnify the assured, his nominees, assigns, heirs and legal representatives against the loss of and/or damage to goods. A contract of insurance is complete when the proposal of the assured is accepted by the insurer, whether the policy of insurance is issued or not.

Insurable interest in the subject-matter insured is a pre-requisite of a contract of insurance and for the success of an insurance claim the assured or the claimant, as the case may be, must be interested in the subject-matter insured at the time of the loss.

An insurable interest in the subject-matter insured is a right which is capable of assignment. An insurance policy may be transferred by assignment unless it contains terms expressly prohibiting assignment. It must be assigned before death in the case of a life insurance policy and it may be assigned either before or after loss in the case of a marine or good policy. The assignee can sue on the policy of insurance in his own name and can defend an action on any ground available to the assignor. The policy may be assigned by endorsement thereon or in other customary manner. An assured who has no insurable interest in the subject-matter insured cannot assign.

Where an assured who has lost interest in the subject matter by transfer and has not, before or at the time of transferring the subject matter, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative.

Answer 2A(iv)

Companies in the course of their normal business borrow funds by various modes, one such mode being the issue of debentures. An issue of debentures is usually secured by a trust deed, where under movable and immovable properties of the company are mortgaged in favour of the trustees for the benefit of the debenture holders.

The elements of debenture trust deeds are as follows:

1. The trust deed usually gives a legal mortgage on block capital and a floating security on the other assets of the company in favour of the trustee on behalf of the debenture holders.
2. The trust deed gives in detail the conditions under which the loan is advanced.
3. The trust deed should specify in some detail the remuneration payable to the trustee, their duties and responsibilities in relation to the trust property.

4. It also gives in detail, rights of debenture holders to be exercised through the trustees in case of default by the company in payment of interest and principal as agreed upon.

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

Question 3

Distinguish between the following :

- (a) *Drafting and Documentation*
- (b) *Prohibition and Certiorari*
- (c) *English mortgage and Usufructuary mortgage*
- (d) *Agreement among partners of Partnership Firm and Agreement among the members of a Co-operative Society.* (4 marks each)

OR (Alternate question to Q. No. 3)

Question 3A

Write notes on the following :

- (i) *Components of Deed*
- (ii) *Special Leave Petition (SLP)*
- (iii) *Revocable and Irrevocable Power of Attorney*
- (iv) *Advocacy Tips.* (4 marks each)

Answer 3(a)

Drafting may be defined as the synthesis of law and fact in a language form. It is the development and preparation of legal instruments such as constitutions, statutes, regulations, ordinances, contracts, wills, conveyances, indentures, trusts and leases, etc. The process of drafting operates in two planes: the conceptual and the verbal. Besides seeking the right words, the draftsman seeks the right concepts. Drafting, therefore, is first thinking and second composing. Drafting may cover all types of documents in business usages. Drafting, in legal sense, means an act of preparing the legal documents like agreements, contracts, deeds etc.

Commercial houses, banks and financial institutions have been using the term “documentation” in substitution of the words “drafting and conveyancing”. Documentation refers to the activity which symbolizes preparation of documents including finalisation and execution thereof. Documentation is a set of documents provided on paper, or online, or on digital or analog media, such as audio tape or CDs. Examples are user guides, white papers, on-line help, quick-reference guides. Proper documentation provides evidence of what has transpired as well as provides information for researching discrepancies. Supporting documentation may come in paper or electronic form.

Answer 3(b)

The writ of prohibition is issued by the Supreme Court or any High Court to an

inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. It compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of rules or law.

The writ of prohibition is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions. If abuse of power is apparent this writ may be prayed for as a matter of right and not a matter of discretion. The Supreme Court may issue this writ only in case of Fundamental Rights being affected by reason of the jurisdictional defect in the proceedings. This writ is available during the pendency of the proceedings and before the order is made.

The writ of certiorari is available to any person whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority. The writ removes the proceedings from such body to the High Court in order to quash a decision that goes beyond the jurisdiction of the deciding authority.

Answer 3(c)

In an English mortgage, a mortgagor binds himself to repay the mortgaged money on certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will re-transfer it to the mortgagor upon payment of the mortgaged money as agreed.

In a Usufructuary mortgage, the mortgagor delivers possession of the mortgaged property to the mortgagee who retains the possession until the satisfaction of the debt. The mortgagee will take the usufruct in lieu of the interest or part payment of the principal or partly in payment of interest or partly in part payment of the principal. The mortgagor is not personally liable to pay the debt and the mortgagee is not entitled during the term of the mortgage to demand his mortgage money.

Answer 3(d)

The partnership is based on a contract. This contract may be made either orally or in writing or even may be inferred from the course of dealing between the partners. In order to avoid all disputes relating to terms of partnership, it is suggested that a written document containing terms and conditions of partnership be executed between the partners. The deed is executed by all the partners and is drafted as an agreement to carry on certain business in partnership on certain terms and conditions.

While drafting partnership deed we should incorporate all terms and conditions that govern a particular partnership business. Partners of any partnership business are normally interested in settling certain terms amongst them before they join hands to carry on business in partnership.

A Co-operative Society comes into being when several like-minded persons come together to form an association for mutual benefit. The number of members in a co-operative society is quite large making it impossible for each and every member to take active participation in the management of the affairs of the co-operative society. Accordingly, the decisions in a co-operative society are taken by following a democratic process.

An agreement among the members of a co-operative society provides for the eligibility criteria for becoming members of the co-operative society, payment of contribution, categories of membership of the co-operative society, their voting rights and the manner of exercising their votes. The agreement also provides for restrictions on transfer of shares and the transfer of interest on death of a member.

Answer 3A(i)

The components of deeds are as follows:

- Description of the Deed Title.
- Place and Date of execution of a Deed.
- Description of Parties to the Deed.
- Recitals.
- Testatum.
- Consideration.
- Receipt Clause.
- Operative Clause.
- Description of Property.
- Parcels Clause.
- Exceptions and Reservations.
- Premises and Habendum.
- Covenants and Undertakings.
- Testimonium Clause.
- Signature and Attestation.
- Endorsements and Supplemental Deeds.
- Annexures or Schedules.

Answer 3A(ii)

Special leave petition (SLP) means that an individual takes special permission to be heard in Apex Court in appeal against any court/tribunal verdict.

Section 112 of the Code of Civil Procedure, 1908 keeps the powers of the Supreme Court under Article 136 of the Constitution to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India, beyond the scope of the provisions of the Code.

Where a High Court refuses to issue the required certificate under Article 134A of the Constitution of India to enable an aggrieved party to appeal to the Supreme Court against the judgment, order or sentence awarded by the High Court, the aggrieved party may file a petition in the Supreme Court for grant of special leave to appeal under Article 136 of the Constitution.

Answer 3A(iii)

A power of attorney executed in favour of a person can always, at the discretion of the donor thereof, be revoked. The donee of a power of attorney is an agent of the donor. If a donee himself has an interest in the matters covered by the power of attorney, which forms the subject matter thereof, the power of attorney in the absence of express contract cannot be terminated to the prejudice of such interest. In other words, agency coupled with interest cannot be terminated without the consent of the other party (Section 202 of the Indian Contract Act, 1872). Therefore, a power of attorney executed, in which the donee himself has an interest, is irrevocable. Such irrevocable powers of attorney are executed in favour of the financial institutions by a company who offer financial assistance to the latter. Through such irrevocable powers of attorney, powers are given to the financial institutions for executing a security document for securing the financial assistance in the event of a company failing to execute such a document by a certain date.

A power of attorney is revocable if the principal reserves the right to revoke the power at any time. Once the principal revokes the power, the agent can no longer act on the principal's behalf. But a power of attorney can be made irrevocable if the document includes a provision that specifically states that the principal gives up the right of revocation or otherwise indicates that the power is irrevocable. As a practical matter, an irrevocable power of attorney is rarely used and is typically limited to a specific purpose.

Answer 3A(iv)

Advocacy tips are as under:

- *Clarity* : The judge's time is limited, so make the most of it.
- *Credibility* : The judge needs to believe that what you are saying is true and that you are on the right side.
- *Demeanour* : We don't have a phrase "hearing is believing". The human animal which includes the human judge, is far more a video than an audio. Most of the information is collated through our eyesight.
- *Be likeables* : One should possess the ability to create more likeability in the minds of judge/(s) so that they sympathise / emphasise with you.
- *Psychology* : Since advocacy entails convincing the judge with your argument or version of truth so it is imperative to comprehend the minds of the judges.
- *Eye contact* : While pleading, maintain eye contact with your judge.
- *Voice modulation* : Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Anger in advocacy to be used tactfully and should be used rarely. However, efforts should be towards controlling the anger.
- Develop listening skills.
- *Entertain your judge* : Humour will often bail you out of a tough spot.

Question 4

- (a) *Draft a Specimen Agreement on behalf of a firm M/s ABC to hypothecate goods to secure fixed Loan from Axis Bank. Assume data. (8 marks)*

- (b) *Draft a Bail application on behalf of the Director of a company who has been falsely implicated for financial irregularities in the company. Assume data if required.*

(8 marks)

Answer 4(a)

Specimen Agreement to Hypothecate Goods to Secure Fixed Loan

The Branch Manager,

Axis Bank,

Sir,

In consideration of your Bank advancing to me/us on loan the sum of Rs..... I/We hereby agree to hypothecate and hold under lien to the Bank as security for the repayment as per Schedule hereto of the principal amount of the loan and payment of interest on demand at.....% per annum subject to a maximum of.....% per annum above Bank Rate.

The goods so to be held by me/us under lien to the Bank I/We declare to be my/our absolute property, and to be stored in my/our godowns at..... I/We hereby agree to furnish you at the close of business on the last day of each English calendar month so long as any money remains due in respect of the said loan with a full and correct statement of particulars of all goods so held under lien to the Bank, with the market value thereof respectively on that day.

All goods from time to time held by me/us under lien to the Bank in terms of this agreement shall be kept separate and apart from all other goods in my/our possession, and no moneys shall be borrowed by me/us from any company, firm or person on the security of such goods stored in the same godown in a way that such other goods may be mixed with the goods held under lien to the Bank nor shall I/We do any other act by means of which the Bank's lien on the goods so held shall be in any way impaired or affected.

It is understood that I/We are at liberty, from time to time in the ordinary course of business, to sell all or any of the goods from time to time held under lien to the Bank under this agreement provided that no such sale shall reduce the value of the goods held under lien below the amount of my/our said debt to the Bank plus the margin of..... per cent. In case of any goods held under lien to the Bank reducing the value of the goods held under this lien to less than the amount of my/our said debt to the Bank plus such margin, the proceeds of such sale, as soon as the same are received, shall be paid into the bank in part satisfaction of the said loan and shall in the meantime be held as specifically appropriated to payment of the amount due by me/us on the security.

I/We empower you or any one from time to time authorised by you on behalf of the Bank to enter the godowns in which the goods held under lien to the bank under this agreement shall be from time to time stored, for the purpose of inspecting and taking an account of the said goods.

I/We further empower you or anyone authorised by you as aforesaid so long as any money advanced by the bank under this agreement remains unpaid, to take possession of any goods from time to time held by me/us under lien to the Bank under this agreement and or any promissory notes or bazaar chits held by me/us in respect of any of the goods which may have been sold in such manner as you may think fit and on so taking possession to exercise on behalf of the Bank all the rights of a pawnee under the Indian Contract Act and failing payment of the amount under this loan on....., to sell and realize the said goods and promissory notes or bazaar chits. No notice to me/us of such sale shall be necessary, and I/We hereby agree to waive any such notice. I/ We agree to accept the Bank account of such sale signed by the Manager, Accountant or other duly authorised officer of the Bank as sufficient proof of the correctness of the amount realised by the Bank and the charges and expenses incurred in connection with such realisation, and I/We hereby further agree to sign all documents, furnish all information and do all acts and things necessary for the purpose of enabling the Bank to sell any goods or realise any promissory notes or bazaar chits of which you shall so take possession.

I/We undertake to keep all held under lien to the Bank under this agreement, insured against fire to their full value, and to produce and deposit the policies with the Bank any time on demand and to hold all moneys which may become payable under any such policies in trust for the Bank so long as any money shall remain due in respect of my/our said loan. It shall be optional for, but not obligatory on the Bank, to insure the said goods in the Bank's name or to appropriate floating policies for the time being effected by the Bank towards insurance of the said goods and in either case to debit the said loan with relative premiums.

It is understood that the Bank's lien on the goods, so held under this agreement shall extend to any other sum or sums of money for which I/we or any other of us either separately or jointly with any other person or persons maybe or become indebted or liable to the bank on any account.

Schedule of securities referred
to in the agreement.

.....

Schedule of instalments for the
repayment of the loan amount.

.....

Yours faithfully,

For A B C Ltd.

(.....)

Managing Director,

New Delhi

Dated.....

Answer 4(b)

Specimen Bail Application

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 says:

1. That your petitioner was arrested by the police on 4th December, 2018 on mere suspicion. That more than 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 auditor inmate of PQ Ltd. where the financial bungling is alleged to have taken place, nor was any incriminating document found in his office or residence.
3. That your petitioner has not dealt any banking or financial transaction during the last one year and moreover, there is very strict internal control system in the company.
4. That the company has formed a committee and the internal committee has already placed a report before the management. There is no allegation against the petitioner so far.
5. 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.
6. That your petitioner shall fully co-operate with the police.
7. 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 7 of the foregoing petition are true and correct to my knowledge and belief.
3. I sign this verification on the 6th day of January, 2019.

Solemnly affirmed by the said AB

On 6th day of January, 2019 at the Court

House at..... AB

Before me

Notary/Magistrate

Question 5

- (a) *Enumerate the Appellate Authorities under the Securities and Exchange Board of India Act (SEBI), 1992.* (4 marks)
- (b) *Draft a deed of Agreement of Admission of Sushma as a third partner w.e.f. 1st September, 2018, into the already established firm of Seema and Reshma running a sweet shop. Assume data.* (6 marks)
- (c) *Define 'Will' and explain its essential characteristics. Is there any requirement to get it stamped and registered ?* (6 marks)

Answer 5(a)

Appellate Authorities under the Securities and Exchange Board of India Act, 1992 are Securities Appellate Tribunals and Supreme Court of India.

According to Section 15T of the SEBI Act, 1992, any person aggrieved by an order of the Board or by an order made by an adjudicating officer under this Act; or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

According to Section 15Z of the SEBI Act, 1992, any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court.

Answer 5(b)**Deed of Agreement of Admission into Firm of a New Partner Sushma**

THIS DEED OF AGREEMENT is made the day of 2018 BETWEEN Seema daughter of aged

..... R/o and Reshma daughter of aged R/o partners in the firm SWEET & CO. of the one part, AND Sushma..... daughter of aged years resident of of the other part.

WHEREAS the said Seema and Reshma are partners in the firm SWEET& Co. situated in..... and are bound assuch under a deed partnership executed by them on the..... day of..... 2018 hereinafter referred to as the "partnership deed".

AND WHEREAS the said Sushma is desirous of being admitted as a member in the aforesaid firm of SWEET&Co. and invest a sum of Rs..... AND the said Seema and Reshma are willing to admit her as an additional partner.

NOW THEREFORE THE DEED WITNESSES that in pursuance of the said agreement and in consideration of the said Sushma bringing in and contributing the sum of Rs..... (Rupees..... only) as additional capital of the above partnership firm, it is mutually agreed as follows:

- 1. The parties hereto shall, as from the date hereof be and continue partners for the unexpired residue of the terms mentioned in para..... of the partnership deed subject in all respects to the conditions, stipulations, and provisions of the aforesaid partnership deed, so far as applicable, and except as varied by this deed of agreement.
- 2. The capital mentioned in the partnership deed shall hereafter be changed to the sum of Rupees.....only and the partners shall hereafter have the undernoted shares in the capital.

Seema shall have Rs..... in the said capital;

Reshma shall have Rs..... in the said capital; and

Sushma shall have Rs..... in the said capital.

- 3. The profits and losses of the partnership shall continue to be borne by the partners hereto in proportion to their above named respective shares.

IN WITNESS WHEREOF the said Seema, Reshma and Sushma have hereto at..... signed the day and the year first above mentioned.

Sd/- Seema

Sd/- Reshma

Sd/- Sushma

WITNESSES:

- 1.
- 2.

Answer 5(c)

As per Section 2(h) of Indian Succession Act, 1925, 'Will' means the legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death.

Essential characteristics of will are:

- The document must be in accordance with the requirements laid down under section 63 of Indian Succession Act, 1925, i.e., executed by a person competent to make Will and attested as required under the Act.
- The declaration should relate to the properties of the testator, which he wishes to bequeath.
- The declaration must be to the effect that it operates after the death of Testator.
- It is revocable during the life time of the testator.
- It is of an ambulatory nature which can be modified or altered at any time by the testator.
- Wills should be made in writing.

A Will does not require any stamp duty. Registration of Will is not mandatory. It is optional under Section 18 of the Registration Act, 1908. However a registered Will has certain advantages.

Question 6

- (a) 'A', a landlord in Ahmedabad, engaged a servant to do household work, on a monthly salary of ₹5,000 plus food and clothing. After serving 'A' for a fortnight, the servant disappeared and it was found that the servant had taken away A's gold watch, shirt with gold buttons, a purse which contained ₹20,000 and one silver flower pot.

Draft a complaint before First class Magistrate Ahmedabad. (8 marks)

- (b) *Draft an Affidavit of a creditor in proof of his debt in proceeding for the liquidation of Company. Assume data. (8 marks)*

Answer 6(a)

**IN THE COURT OF FIRST CLASS MAGISTRATE,
AHMEDABAD**

Case No. _____

A, residing at..... Complainant

versus

B, residing at..... Accused

Charge : Theft by a servant under Section 381 of Indian Penal Code

May it please your honour,

I beg to state on oath as follows:

1. I am the landlord of a building in Ahmedabad. About a fortnight ago, I engaged

the accused as domestic servant on a salary of Rs. 5,000/- per month plus food and clothing. Yesterday, the accused suddenly disappeared. I made enquires and found my gold watch, shirt with gold buttons and purse containing Rs. 20,000/- missing along with one silver flower pot. I, at once lodged complain with the police.

- 2. I have made enquiries from the accused's place and have learnt that the accused is preparing to run away from Ahmedabad.

I therefore charge the accused as above, and pray for issue of a search warrant as well as warrant of arrest against him.

Sd/- A
Complainant

Before me

First Class Magistrate, Ahmedabad

Dated this 4th January, 2019

Answer 6(b)

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, son of Shri..... resident of....., do hereby on oath (or on solemn affirmation) state as follows:

- 1. That the above named company was on the..... day of....., 2018, the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of Rs.....(Rupees..... 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 my 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 my personal knowledge.

Sd/- A.B.

Dated.....

I, S/o.....R/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..... 2018
of..... (time)by the deponent.

Sd/-.....

(Oath Commissioner)

BANKING LAW AND PRACTICE
(Elective Paper 9.1)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Read the financial data of The Kuber Bank Ltd. as below :

Balance Sheet of The Kuber Bank Ltd. as on 31st March, 2017

| <i>Particulars</i> | <i>Schedule</i> | <i>31.3.2017</i> | <i>31.3.2016</i> |
|---|-----------------|------------------|------------------|
| <i>(₹ in crores)</i> | | | |
| I. CAPITAL AND LIABILITIES | | | |
| <i>Capital</i> | 1 | 286.82 | 286.82 |
| <i>Reserves & Surplus</i> | 2 | 1209.59 | 1052.42 |
| <i>Deposits</i> | 3 | 27689.90 | 23623.05 |
| <i>Borrowings</i> | 4 | 450.94 | 0.10 |
| <i>Other Liabilities and Provisions</i> | 5 | 1813.39 | 1582.95 |
| TOTAL | | 31450.64 | 26545.34 |
| II. ASSETS | | | |
| <i>Cash and balances with the Reserve</i> | | | |
| <i>Bank of India</i> | 6 | 2414.33 | 2011.49 |
| <i>Balances with Banks and money at call and short notice 7 404.35 492.09</i> | | | |
| <i>Investments</i> | 8 | 9235.05 | 8570.67 |
| <i>Advances</i> | 9 | 18303.40 | 14231.23 |
| <i>Fixed Assets</i> | | 441.88 | 466.99 |
| <i>Other Assets</i> | | 651.63 | 772.87 |
| TOTAL | | 31450.64 | 26545.34 |
| <i>Contingent Liabilities</i> | | 13695.44 | 7141.04 |
| <i>Bills for Collection</i> | | 2735.10 | 2063.21 |

*Profit and Loss Account for the year ended 31.03.2017**(₹ in crores)*

| <i>Particulars</i> | <i>Schedule</i> | <i>Year Ended 31.03.2017</i> | <i>Year Ended 31.03.2016</i> |
|---|-----------------|----------------------------------|----------------------------------|
| INCOME | | | |
| <i>Interest earned</i> | | 2118.51 | 1760.12 |
| <i>Other income</i> | | 391.52 | 439.03 |
| TOTAL | | 2510.03 | 2199.15 |
| EXPENDITURE | | | |
| <i>Interest expended</i> | | 1263.15 | 1037.45 |
| <i>Operating expenses</i> | | 611.51 | 561.34 |
| <i>Provisions and contingencies</i> | | 433.80 | 527.37 |
| TOTAL | | 2308.46 | 2126.16 |
| PROFIT | | | |
| <i>Net profit for the period</i> | | 201.57 | 72.99 |
| <i>Net Profit/Loss Brought Forward</i> | | 0 | 0 |
| TOTAL | | 201.57 | 72.99 |
| APPROPRIATIONS | | | |
| <i>Transfer from Investment Fluctuation Reserve</i> | | 0 | -42.70 |
| <i>Transfer to Statutory Reserve</i> | | 60.47 | 21.90 |
| <i>Transfer to Capital Reserves</i> | | 2.45 | 41.85 |
| <i>Transfer to Revenue Reserves</i> | | 111.80 | 51.94 |
| <i>Proposed Dividend (Include Dividend Tax)</i> | | 26.85 | 0 |
| <i>Balance Carried over to Balance Sheet 0 0</i> | | | |
| TOTAL | | 201.57 | 72.99 |
| <i>Significant Account Policies and Notes on Accounts</i> | | | |

SCHEDULES TO THE BALANCE SHEET*(₹ in crores)*

| <i>Particulars</i> | <i>31-03-2017</i> | <i>31-03-2016</i> |
|--|-------------------|-------------------|
| SCHEDULE - 1 : CAPITAL | | |
| AUTHORISED CAPITAL | | |
| <i>150,00,00,000 Equity Shares of ₹10/- each</i> | 1500.00 | 1500.00 |
| ISSUED, SUBSCRIBED AND PAID-UP | | |
| <i>28,68,23,200 (Previous year 28,68,23,200) Equity Shares of ₹10 each fully paid up of which 14,68,20,000 shares are held by the Government of India.</i> | 286.82 | 286.82 |
| TOTAL | 286.82 | 286.82 |

(₹ in crores)

| Particulars | 31-03-2017 | 31-03-2016 |
|---|----------------|----------------|
| SCHEDULE - 2 : RESERVES AND SURPLUS | | |
| I. Statutory Reserves : | | |
| Opening Balance | 295.63 | 273.73 |
| Additions during the year | 60.47 | 21.90 |
| TOTAL | 356.10 | 295.63 |
| II. Capital Reserves : | | |
| Opening Balance | 51.09 | 9.22 |
| Additions during the year | 2.45 | 41.87 |
| TOTAL | 53.54 | 51.09 |
| III. Revaluation Reserve : | | |
| Opening Balance | 273.68 | 111.16 |
| Additions during the year | 0 | 213.34 |
| Deduction during the year | -17.55 | -50.82 |
| TOTAL | 256.13 | 273.68 |
| IV. Share Premium : | | |
| Opening Balance | 256.00 | 256.00 |
| Addition during the year | 0 | 0 |
| TOTAL | 256.00 | 256.00 |
| V. Revenue Reserves : | | |
| Opening Balance | 176.02 | 124.08 |
| Addition during the year | 111.80 | 51.94 |
| TOTAL | 287.82 | 176.02 |
| VI. Investment Fluctuation Reserve : | | |
| Opening Balance | 0 | 42.70 |
| Deduction during the year | 0 | -42.70 |
| TOTAL | 0 | 0.0 |
| TOTAL (I, II, III, IV, V and VI) | 1209.59 | 1052.42 |

(₹ in Crores)

| Particulars | 31-03-2017 | 31-03-2016 |
|--|------------|------------|
| SCHEDULE - 3 : DEPOSITS | | |
| A. I. Demand Deposits : | | |
| i. From Banks | 66.85 | 53.47 |
| ii. From Others | 3214.40 | 2327.10 |
| II. Savings Bank Deposits | 9043.60 | 7930.62 |
| III. Term Deposits : | | |
| i. From Banks | 1117.05 | 1372.76 |
| ii. From Others | 14248.00 | 11939.10 |
| TOTAL | 27689.90 | 23623.05 |
| B. i. Deposits of Branches in India | 27689.90 | 23623.05 |
| ii. Deposits of Branches Outside India | 0 | 0 |
| TOTAL | 27689.90 | 23623.05 |

(₹ in Crores)

| Particulars | 31-03-2017 | 31-03-2016 |
|--------------------------------------|------------|------------|
| SCHEDULE - 4 : BORROWINGS | | |
| I. Borrowing in India : | | |
| i. Reserve Bank of India | 450.00 | 0 |
| ii. Other Banks | 0 | 0 |
| iii. Other Institutions and Agencies | 0.94 | 0.10 |
| II. Borrowings outside India | 0 | 0 |
| TOTAL | 450.94 | 0.10 |

(₹ in Crores)

| Particulars | 31-03-2017 | 31-03-2016 |
|--|------------|------------|
| SCHEDULE - 5 : OTHER LIABILITIES AND PROVISIONS | | |
| I. Bills Payable | 270.80 | 307.19 |
| II. Inter office adjustments (Net) | 183.19 | 164.70 |
| III. Interest Accrued | 123.99 | 93.87 |
| IV. Subordinated debt from Central Govt. and Unsecured redeemable Bond * | 535.00 | 607.28 |
| V. Others | 700.41 | 409.91 |
| TOTAL | 1813.39 | 1582.95 |

* Out of above, forming part of TIER II Capital 395.00 424.11

| | (₹ in Crores) | |
|--|---------------|------------|
| Particulars | 31-03-2017 | 31-03-2016 |
| SCHEDULE - 6 : CASH AND BALANCES WITH RESERVE BANK OF INDIA | | |
| I. Cash in hand (including foreign currency notes) | 182.07 | 140.91 |
| II. Balance with Reserve Bank of India : | | |
| i. In Current Account | 2232.26 | 1570.58 |
| ii. In Other Accounts (Under LAF) | 0 | 300.00 |
| TOTAL | 2414.33 | 2011.49 |

| | (₹ in Crores) | |
|--|---------------|------------|
| Particulars | 31-03-2017 | 31-03-2016 |
| SCHEDULE - 7 : BALANCES WITH BANKS AND MONEY AT CALL AND SHORT NOTICE | | |
| I. In India : | | |
| i. Balance with Banks : | | |
| a. In Current Accounts | 254.25 | 298.18 |
| b. In Other Deposit Accounts | 100.00 | 151.09 |
| ii. Money at call and short notice : | | |
| a. With banks | 0 | 0 |
| b. With other institutions | 0 | 0 |
| TOTAL - I | 354.25 | 449.27 |
| II. Outside India : | | |
| i. In Current Accounts | 50.10 | 42.82 |
| ii. In Other Deposit Accounts | 0 | 0 |
| iii. Money at call and short notice | 0 | 0 |
| TOTAL - II | 50.10 | 42.82 |
| TOTAL (I and II) | 404.35 | 492.09 |

| | (₹ in Crores) | |
|---------------------------------------|---------------|------------|
| Particulars | 31-03-2017 | 31-03-2016 |
| SCHEDULE - 8 : INVESTMENTS | | |
| A. Investment in India in | | |
| i. Government Securities | 7588.15 | 7030.60 |
| ii. Other approved Securities | 160.76 | 200.34 |
| iii. Shares | 142.32 | 122.14 |
| iv. Debentures and Bonds | 884.29 | 930.73 |
| v. Subsidiaries and/or joint ventures | 21.72 | 21.72 |

| | | |
|-----------------------------------|---------|---------|
| vi. Others | | |
| a. Venture Capital | 3.65 | 2.50 |
| b. Units and Mutual Funds | 0.49 | 17.50 |
| c. RIDF Deposits | 272.42 | 208.10 |
| d. Commercial Papers | 19.41 | 9.79 |
| e. Security Receipts of ARCs | 43.85 | 27.25 |
| f. Oil Bonds | 48.23 | 0 |
| g. CBLO | 49.76 | 0 |
| TOTAL | 437.81 | 265.14 |
| TOTAL | 8797.24 | 8305.53 |
| Grand TOTAL | 9235.05 | 8570.67 |
| B. Investments outside India : | 0 | 0 |
| TOTAL (A + B) | 9235.05 | 8570.67 |
| Gross Investments | 9324.55 | 8635.27 |
| Less : Provision for Depreciation | 89.50 | 64.60 |
| Net Investments | 9235.05 | 8570.67 |
| Includes Encumbered Securities | 9.00 | 9.00 |

(₹ in Crores)

| | | |
|-------------|------------|------------|
| Particulars | 31-03-2017 | 31-03-2016 |
|-------------|------------|------------|

SCHEDULE - 9 : ADVANCES

| | | |
|--|----------|----------|
| A. i. Bills Purchased and discounted | 1166.28 | 908.98 |
| ii. Cash Credits, Overdrafts & Loans repayable on demand | 7315.16 | 5650.90 |
| iii. Term Loans | 9821.96 | 7671.35 |
| TOTAL | 18303.40 | 14231.23 |
| B. i. Secured by tangible assets | 12914.33 | 10436.98 |
| ii. Covered by Bank/Government Guarantees | 1484.32 | 1236.95 |
| iii. Unsecured | 3904.75 | 2557.30 |
| TOTAL | 18303.40 | 14231.23 |
| C. I. Advances in India | | |
| i. Priority Sector | 7238.00 | 5835.60 |

| | | |
|----------------------------|----------|----------|
| ii. Public Sector | 2134.39 | 1884.31 |
| iii. Banks | 425.00 | 220.14 |
| iv. Others | 8506.01 | 6291.18 |
| TOTAL | 18303.40 | 14231.23 |
| II. Advances outside India | 0 | 0 |
| TOTAL | 0 | 0 |
| TOTAL (I and II) | 18303.40 | 14231.23 |

Based on the financial data of The Kuber Bank Ltd, answer the following questions (a to e) :

(a) Compute the following ratios :

- (i) Interest Expense Ratio.
- (ii) Burden Ratio : Non-Interest Income to Non-Interest Expenses Ratio.
- (iii) Efficiency Ratio : Non-Interest Expenses to Net Total Income Ratio.
- (iv) Equity Multiplier.
- (v) Net Interest Margin (NIM).
- (vi) Asset Utilization : Total Income to Total assets Ratio.
- (vii) Return of Assets (ROA).
- (viii) Return On Equity (ROE).
- (ix) Liability Mix Ratio : Total deposits to Total Liability Ratio.
- (x) CD Ratio : Credit to Deposits Ratio. (20 marks)

(b) Based on the above ratios, comment on the performance of The Kuber Bank Ltd. in terms of profitability specifically indicating the reasons for the variation.

(10 marks)

(c) Compute the Net Demand and Time Liabilities (NDTL) of The Kuber Bank Ltd. as on 31.03.2017. Calculate and comment on the levels of CRR and SLR maintained by the bank. (Assuming that the current level stipulated by RBI is CRR-7.5% and SLR-25%). (10 marks)

(d) How you interpret the increase in Contingent liabilities V/s increase in advances of The Kuber Bank Ltd ? (5 marks)

(e) Asset Liability Management (ALM) is concerned with strategic balance sheet management. The significance of ALM to the financial sector is highlighted due to the dramatic changes that have occurred in recent years in the assets and liabilities of banks. Discuss the various reasons for the growing significance of ALM. (5 marks)

Answer 1(a)

$$(i) \text{ Interest Expenses Ratio} = \frac{\text{Interest Expenses}}{\text{Total Income}} \times 100$$

| 2017 | 2016 |
|--------------------------------------|--------------------------------------|
| $\frac{1263.15}{2510.03} \times 100$ | $\frac{1037.45}{2199.15} \times 100$ |
| = 50.32% | = 47.18% |

Total Income = Interest Income + Non - Interest Income

$$2017 : 2118.51 + 391.52 = 2510.03$$

$$2016 : 1760.12 + 439.03 = 2199.15$$

$$(ii) \text{ Burden Ratio: Non - Interest Income/ Non - Interest Expenses}$$

| 2017 | 2016 |
|------------------------------------|------------------------------------|
| $\frac{391.52}{611.51} \times 100$ | $\frac{439.03}{561.34} \times 100$ |
| = 64.03% | = 78.21% |

$$(iii) \text{ Efficiency Ratio: Non - Interest Expenses/ Net Total Income}$$

| 2017 | 2016 |
|-------------------------------------|-------------------------------------|
| $\frac{611.51}{1246.88} \times 100$ | $\frac{561.34}{1161.70} \times 100$ |
| = 49.04% | = 48.32% |

Net Total Income = Net Interest Income (Interest Income - Interest Expenses) + Other Income

$$2017 : 2118.51 - 1263.15 + 391.52 = 1246.88$$

$$2016 : 1760.12 - 1037.45 + 439.03 = 1161.70$$

$$(iv) \text{ Equity Multiplier: Total Assets/ Total Equity}$$

| 2017 | 2016 |
|----------------------------|----------------------------|
| $\frac{31450.64}{1496.41}$ | $\frac{26545.34}{1339.24}$ |
| = 21.02 | = 19.82 |

$$2017 : \text{Total Equity} - 286.82 + 1209 = 1496.41$$

$$2016 : \text{Total Equity} = 286.62 + 1052.42 = 1339.24$$

(v) Net Interest Margin (NIM): Net Interest Income/ Total Assets

| 2017 | 2016 |
|--------------------------------------|--------------------------------------|
| $\frac{855.36}{31450.64} \times 100$ | $\frac{722.67}{26545.34} \times 100$ |
| = 2.72% | = 2.72% |

Net Interest Income = Interest Income- Interest Expenses

$$2017 : 2118.51 - 1263.15 = 855.36$$

$$2016 : 1760.12 - 1037.45 = 722.67$$

(vi) Asset utilization Ratio : $\frac{\text{Total Income}}{\text{Total Assets}}$

| 2017 | 2016 |
|---------------------------------------|---------------------------------------|
| $\frac{2510.03}{31450.64} \times 100$ | $\frac{2199.15}{26545.34} \times 100$ |
| = 7.98% | = 8.28% |

Total Income = Interest Income + Non - Interest Income

$$2017 : 2118.51 + 391.52 = 2510.03$$

$$2016 : 1760.12 + 439.03 = 2199.15$$

(vii) ROA (Return on Assets): Net Profit/ Total Assets

| 2017 | 2016 |
|--------------------------------------|-------------------------------------|
| $\frac{201.57}{31450.64} \times 100$ | $\frac{72.99}{26543.34} \times 100$ |
| = 0.64% | = 0.27% |

(viii) Return on Equity - Net Profit/ Capital+ Reserves & Surplus

| 2017 | 2016 |
|-------------------------------------|------------------------------------|
| $\frac{201.57}{1496.41} \times 100$ | $\frac{72.99}{1339.24} \times 100$ |
| = 13.47% | = 5.45% |

(ix) Liability Mix : Total Deposits/ Total Liability

| 2017 | 2016 |
|--|--|
| $\frac{27689.90}{31450.64} \times 100$ | $\frac{23623.05}{26545.34} \times 100$ |
| = 88.04% | = 88.99% |

(x) CD Ratio: Credit/ Deposits

| 2017 | 2016 |
|--|--|
| $\frac{18303.40}{27689.90} \times 100$ | $\frac{14231.23}{23623.05} \times 100$ |
| = 66.10% | = 60.24% |

Answer 1(b)

- (i) *Interest Expenses Ratio*. The net profit in turn is influenced by the interest and non-interest income and expenses. Interest expenses ratio shows interest expenses to total income. In 2016-17 interest expenses ratio has marginally increased from 47.18% to 50.32% from the year 2015-16.
- (ii) *Burden Ratio* it is the ratio of non-interest income to non-interest expenses, in the year 2016-17 burden ratio reduced from the 78.21% to 64.02% from the previous year. This reduced is because of fall in other income.
- (iii) *Efficiency Ratio* on the other hand compares the non-interest expense to net total income. This ratio marginally increased from 48.32% to 49.04% in 2016-17 from the year 2015-16.
- (iv) *Equity multiplier* is an indicator of total assets to total equity. There is marginal increase in equity multiplier from 19.82 times to 21.02 times in the year 2016-17 from the previous year.
- (v) *Net Interest Margin (NIM)* : The difference between the revenue generated by interest bearing assets and cost of borrowed fund gives the Net Interest Income (NII) of the bank. The NII when expressed as a percentage of the assets gives the NIM of the bank. NIM of the bank remained same in both the year.
- (vi) Assets utilization is an indicator of the efficiency usage of bank's assets. In 2016-17 asset utilization ratio has decrease from 8.28% to 7.98% this is mainly due to fall in other income of the bank.
- (vii) *Return on Assets (ROA)* assesses the profitability of the bank based on the assets. ROA of the bank has increased to 0.64% in 2016-17 from the 0.27% in 2015-16, but still this is considered as very low and indicates that banks deployment of the fund is not up to the mark.
- (viii) *Return on Equity (ROE)* shows the return earned by the shareholder of the bank. In the year 2016-17 ROE of the bank has increased to 13.47%, from 5.45% in 2015-16. This is due to significant rise in the net profit of the bank.

- (ix) *Liability Mix Ratio* decreased from 88.99% in FY'16 to 88.04% in FY'17 shows that share of deposits in total liabilities have marginally decreased.
- (x) *CD Ratio : (Cost to Deposit Ratio)*. This ratio improved have from 60.24% in FY'16 to 66.10% in FY'17 which is good for the bank. Bank has tapped the lending opportunity available in the market which gives more margins to the bank in future.

Answer 1(c)**Calculation of NDTL: Net Demand and time liabilities***(Rs. in crore)*

| | |
|--|------------------|
| Total deposits from others (3214.40+9043.60+14248.00) | 26,506.00 |
| Bills payable | 270.80 |
| Inter-office adjustments (Net) | 183.19 |
| Interest accrued | 123.99 |
| 50% of others (assumption) | 350.21 |
| Total | 27,434.19 |

Liabilities with banking system

| | |
|----------------------------|-----------------|
| Demand deposits from banks | 66.85 |
| Term deposits from banks | 1,117.05 |
| Borrowings from banks | 0.00 |
| Total | 1,183.90 |

Assets with banking system

| | |
|------------------------------|---------------|
| Balances with banks in India | 354.25 |
| Total | 354.25 |

NDTL = Liabilities to others + Net Inter-Bank Liabilities (NIBL)

Where NIBL = Liabilities to banking system - Assets with banking system

Net Inter-Banking Liabilities (NIBIL) = 1183.90 - 354.25 = 829.65

NDTL = 27,434.19 + 829.65 = 28,263.84

$$\begin{aligned} \text{CRR maintained} &= \frac{\text{Balance with RBI}}{\text{NDTL}} \\ &= \frac{2,232.26}{28,263.81} = 7.90\% \end{aligned}$$

CRR is maintained at 7.90%

Assuming CRR of 7.5%, the additional amount of cash with RBI in current account is considered for SLR purpose.

$$\begin{aligned} \text{SLR maintained} &= \text{Cash} + \text{Government securities} + \text{Approved securities} + \\ &\quad \text{Net balances with banks in current accounts} + \text{Excess cash reserve} \\ &= 182.07 + 7,588.15 + 160.76 + (254.25 - 66.85) + [2,232.26 - (0.075 * 28,263.84)] \\ &= 8,230.85 \end{aligned}$$

$$\text{SLR as \% of NDTL} = \frac{8,230.85}{28,263.84} = 29.12\%$$

Bank is maintaining SLR at 29.12%.

Answer 1(d)

Contingent liabilities of the bank increased to 91.78% in FY 2017 whereas advances increased by 28.61% during the same period. In Contingent liabilities bank undertake to pay the amounts on happening of a contingency. Contingent liabilities mainly contain Bank Guarantees, Letter of Credit, underwritings and credit guarantees.

Exceptional growth in contingent liabilities may be the strategy of the bank or bank may not aware on this item.

If growth in contingent liabilities is the strategy of bank, it will improve the non interest income of the bank. It generates other business for the bank like deposits in the shape of margins. It does not require funds for income generation.

But sudden spurt in contingent liabilities should alarm our control systems and polices. It should attract the attention of management and all stake holders of the bank. Many questions should come in the mind of management:

- a. Whether it is a conscious decision?
- b. Whether it is according to the prescribed policy?
- c. Which type of contingent liabilities are increasing?
- d. Who are the beneficiaries?
- e. Whether beneficiaries are financially sound?
- f. Whether proper assessments were made into consideration ?
- g. Whether proper margins were taken into consideration ?

Contingent liabilities attract credit risk which requires capital as per Risk rating of the party.

Keeping in view of recent fraud in one of Indian Bank, accounting and monitoring of contingent liabilities require more attention as risk is equivalent to fund based limits.

Answer 1(e)

The main reasons for the growing significance of Assets Liability Management (ALM) are:

- (a) **Volatility** : In the recent times, we have witnessed increasing number of free economics, with more and more nations globalizing their operations. Closely regulated markets are paving the way for market-driven economics. The vagaries of such free economic environment are reflected in the interest rate structures, money supply and the overall credit position of the market, the exchange rates and the price levels. For a business which involves trading in money, rate fluctuations invariably affect the market value, yields/costs of the assets/liabilities which further affect the market value of the bank. Tackling this situation would have been a very difficult task in a setup where interest rates are volatile and exchange rate volatility is high, but for ALM.
- (b) **Product Innovation** : The second reason for the growing significance of ALM is the rapid innovations taking place in the financial products of the bank. In several cases, the same product has been repackaged with certain differences and offered by various banks. Whatever may be the features of the products, most of them have an impact on the risk profile of the bank thereby enhancing the need for ALM.
- (c) **Regulatory Environment** : In order to enable the banks to cope with the changing environment that has resulted due to the integration of the domestic markets with international markets, the regulatory authorities of various financial markets have initiated a number of measures with an objective to prevent market vagaries. One step towards this direction was the increased focus in the management of the bank's assets and liabilities. The RBI also asserted for a framework for banks to develop ALM policies.
- (d) **Management Recognition** : All the above mentioned aspects forced the managements of the banks to have a serious thought about the management of the assets and liabilities. The managements have realized that it is just not sufficient to have very good franchise for credit disbursement nor is it enough to have just a very good retail deposits base. In addition to these, the bank should be in a position to relate and link the assets side with the liability side and this calls for efficient ALM.

Question 2

- (a) *E-banking is beneficial to banks, as well as customers. Explain the benefits that can be derived by banks, as well as customers. (10 marks)*
- (b) *Differentiate the following in brief :*
 - (i) *Repo Rate and Reverse Repo Rate.*
 - (ii) *Universal Banking and Virtual Banking.*
 - (iii) *"Red Clause" Credit and "Green Clause" Credit.*
 - (iv) *Certificate of Deposit and Commercial Paper.*
 - (v) *Special endorsement and Restrictive endorsement. (10 marks)*
- (c) *Basel Committee on Banking Supervision (BCBS) has identified Compliance*

Risk as one of the major risk faced by banks. In this context, explain the Basel Committee's principles for managing 'Compliance Risk' in banks. (10 marks)

Answer 2(a)

Benefits from the bank's point of view

The main goal of any firm is to maximize profits for its owners and banks are not any exception. Automated e-banking services enable the banks to reduce the transaction cost which will improve the profitability. Another benefit for those banks that offer such services would be perceived as leaders in technology implementation and those banks enjoy goodwill and a better brand image. The other benefits that would accrue to the bank that adopted e-banking are as under:

1. Procedures and processing of banking transactions can be standardized to eliminate frauds.
2. Better security of the systems can be ensured.
3. Accountability for frauds and irregularities can be fixed.
4. Manpower can be used fully, without any scope for disguised unemployment.
5. Performance can be measured and achievers or performers can be rewarded to improve the business.
6. Document or transaction and details can be retrieved easily without delay.
7. Increased speed in processing of banking transactions will enhance the image of the bank.

The main benefit from the bank customers' point of view is significant saving of time by the automation of banking services processing and introduction of an easy maintenance tools for managing customer's money. The main advantages of e-banking are as follows:

- Reduced costs in accessing and using the banking services. Increased comfort and time-saving transactions can be made 24 hours a day, without requiring the physical interaction with the bank.
- Quick and continuous access to information. Corporations will have easier access to information as, they can check on multiple accounts at the click of a button.

Better cash management. E-banking facilities speed up cash cycle and increases efficiency of business processes as large variety of cash management instruments are available on Internet sites.

Answer 2(b)

(i) Repo Rate & Reverse Repo Rate

| <i>Repo Rate</i> | <i>Reverse Repo Rate</i> |
|--|---|
| Repo Rate also known as the benchmark interest rate is the rate at which the RBI lends money to the banks for a short term. RBI purchase Government securities from Bank, payment are made to banks, inject liquidity in the market. | Reverse Repo Rate is the short term borrowing rate at which RBI borrows money from banks. RBI sells Government Securities in the market. It provides short term avenues to banks to park their surplus funds. Absorbs liquidity from the market |

(ii) Universal Banking and Virtual Banking

| <i>Universal Banking</i> | <i>Virtual Banking</i> |
|---|--|
| <p>Universal banks refer to the banks which offer a wide range of financial services apart from the traditional function of accepting deposits and granting of loans by commercial banks.</p> <p>In universal banking, large banks operate extensive networks of branches, provide many services, hold several claims on firms including equity and participate directly; in the corporate management of firms which depend on banks for funds. Universal banking is combination of commercial banking, investment banking, insurance and various other activities.</p> | <p>Under the branch banking system the large banks operate through a large number of branches. There is personal direct relationship between the banker and the customer. But under virtual banking while the banks are trying to strengthen customer relationship, the customers are slowly moving away from the traditional branch banking. The important types of virtual banking services include ATMs, POS, Internet Banking, Mobile Banking, Smart Cards etc. With the help of these modern devices, the customers can transact banking business from anywhere in the world.</p> |

(iii) “Red Clause” Credit & “Green Clause” Credit

| <i>“Red Clause” Credit</i> | <i>“Green Clause” Credit</i> |
|--|--|
| <p>In a Letter of Credit a special clause allows the beneficiary (exporter) to avail of a pre-shipment advance (a type of export finance granted to an exporter, prior to the export of goods). This special clause used to be printed (highlighted in red colour, hence it is called “Red Clause” Credit.</p> | <p>The exporter is entitled for an advance for storage (warehouse) facilities of goods. The advance would be granted only when the goods to be shipped have been warehoused, and against an undertaking by the exporter that the transportation documents would be delivered by an agreement date.</p> |

(iv) Certificate of Deposit (CD) & Commercial Paper (CP)

| <i>Certificate of Deposit (CD)</i> | <i>Commercial Paper (CP)</i> |
|---|--|
| <p>A certificate of deposit (which is also a money market instrument) is issued by a bank. It is issued at discount to be redeemed at par on the maturity date.</p> | <p>Commercial papers are issued by companies with high credit ratings, in the form of promissory notes, at discount but repayable at par, to their holder at maturity. Commercial papers are money market instruments and issued as per the guidelines of the Reserve Bank of India.</p> |

(v) Special Endorsement & Restrictive Endorsement

| <i>Special Endorsement</i> | <i>Restrictive Endorsement</i> |
|---|---|
| <p>When the endorser adds a direction to pay the amount mentioned in the instrument</p> | <p>An endorsement is restrictive when it prohibits further negotiation of the</p> |

to or to the order of a specified person, the endorsement is said to be in full or special endorsement, and the persons specified is called the endorsee of the instrument. Suppose, a cheque is drawn in favour of 'A' and he wants to transfer it in favour of 'B', then 'A' should write at the back of the cheque as follows.

"Pay to 'B' or his order"

'A'

(Sd.)

instrument or stipulates that it should be dealt with only in the manner directed in the endorsement.

For example:

1. 'Pay to 'A' only'.
2. 'Pay to 'A' or order for the Account of 'B'
3. 'Pay 'A' for my use'

Answer 2(c)

Basel committee has defined "Compliance risk" as the risk of legal or regulatory sanctions, material financial loss, or loss of reputation a bank may suffer as a result of its failure to comply with laws, regulations, rules, related self-regulatory organization standards, and codes of conduct applicable to its banking activities (together, compliance laws, rules and standards).

Basel Committee's Principles

1. The bank's board of directors is responsible for overseeing the management of the bank's compliance risk. The board should approve the bank's compliance policy, including a formal document establishing a permanent and effective compliance function, the board should oversee the implementation of the policy, including ensuring that compliance issues are resolved effectively and expeditiously by senior management with the assistance of the compliance function.
2. The bank's senior management is responsible for the effective management of the bank's compliance risk.
3. Senior management should, with the assistance of the compliance function at least once a year, identify and assess the main compliance risk issues facing the bank and the plans to manage them, report to the board of directors or a committee of the board on the bank's management of its compliance risk and report promptly to the board of directors or a committee of the board on any material compliance failures.
4. The bank's senior management is responsible for establishing a permanent and effective compliance function within the bank as part of the bank's compliance policy and take the necessary measures to ensure that the bank can rely on a permanent and effective compliance function.
5. The bank's compliance function should be independent. Head of Compliance should not be placed in a position where there is a possible conflict of interest between his compliance responsibilities and any other responsibilities he may have and Banking supervisors must be satisfied that effective compliance policies

and procedures are followed and that management takes appropriate corrective action when compliance failures are identified. Compliance starts at the top. It will be most effective in a corporate culture that emphasizes standards of honesty and integrity and in which the board of directors and senior management lead by example and compliance function staff should have access to the information and personnel necessary to carry out their responsibilities.

6. The bank's compliance function should have the resources to carry out its responsibilities effectively. Compliance function staff should have a sound understanding of compliance laws, rules and standards and their practical impact on the bank's operations.
7. The compliance function should advise senior management on compliance laws, rules and standards, including keeping them informed on developments in the area. The compliance function may have specific statutory responsibilities (e.g. fulfilling the role of anti-money laundering officer). It may also contact relevant external bodies, including regulators, standard setters and external experts.
8. The scope and breadth of the activities of the compliance function should be subject to periodic review by the internal audit function. Compliance risk should be included in the risk assessment methodology of the internal audit function, and an audit program that covers the adequacy and effectiveness of the bank's compliance function should be established, including testing of controls that commensurate with the perceived level of risk.
9. Banks should comply with applicable laws and regulations in all jurisdictions in which they conduct business, and the organization and structure of the compliance function and its responsibilities should be consistent with local legal and regulatory requirements. Procedures should be in place to identify and assess the possible increased reputation risk to the bank if it offers products or carries out activities in certain jurisdictions that would not be permitted in its home jurisdiction.
10. Compliance should be regarded as a core risk management activity within the bank. Specific tasks of the compliance function may be outsourced, but they must remain under the appropriate oversight of the head of compliance.

Question 3

“The Central bank has changed the emphasis of the monetary policy from meeting the medium term targets of aggregates of money supply to monitoring daily changes in the liquidity position of the market.” What are the targets against which easing or tightening of the monetary policy can be defined ? With reference to each target explain how the easing or tightening can be brought about. (5 marks)

Answer 3

Once the goals of monetary policy have been decided, the next step is implementation. Whatever the goal, implementation means easing or tightening as the circumstances warrant. We can specify the degree of easing or tightening in terms of its effects. Target of monetary policy is an economic variable whose desired value is used to define the stance of a monetary policy. The target can be stated in terms of any one of the effects of an easing or tightening - money growth, the interest rate, or the exchange rate.

A Money - Growth Target : Monetary policy can be defined in terms of a money-growth target. Depending on its goals, the Central Bank decides on the appropriate rate of growth of the quantity of money. It then increases reserves through open market operations at a rate that will achieve this target.

To ease monetary policy, the Central Bank raises its target rate of growth. To tighten monetary policy, it lowers its target rate of growth. The reason for the change might be that the current policy is failing to achieve its desired goal; for example, inflation may be higher or lower than intended. Or the reason might be a change in goals: worries about inflation might give way to worries about unemployment.

An Interest - Rate Target : Monetary policy can be defined instead in terms of an interest rate target. Depending on its goals, the Central Bank decides on the appropriate level of the interest rate. It then increases reserves through open market operations at a rate that will achieve this target. If the interest rate is above target, increasing the rate of growth of reserves will increase monetary growth and bring the interest rate down. If the interest rate is below target, reducing the rate of growth of reserves will decrease monetary growth and push the interest rate up. To ease monetary policy, it raises its target level of interest rate.

An Exchange-Rate Target : Bank decides on the appropriate level of the exchange rate. It then increases reserves through open market operations at a rate that will achieve this target. If the exchange rate is above target, increasing the rate of growth of reserves will increase monetary growth, lower interest rates, and bring the exchange rate down.

If the exchange rate is below target, reducing the rate of growth of reserves will decrease monetary growth, raise interest rates, and push the exchange rate up.

To ease monetary policy, the Central Bank lowers its target level of exchange rate: it devalues the currency. To tighten monetary policy, the Central Bank raises its target level of exchange rate. It revalues the currency.

Question 4

Apart from the credit evaluation procedures and the lending rates, the loan policy of a bank also has various other components. Discuss these components. (5 marks)

Answer 4

The Components of credit evaluation procedures and lending rates in banks are as under :

Loan Objectives : Due to the presence of multifarious objectives like profitability, liquidity, volume of business, risk levels, etc. there will be prioritization of objectives while drafting the policy. But due to certain conflicting situations, reconciliation / trade-off between different objectives may become necessary.

Volume and Mix of Loans : The policy should specify the targeted composition of the loan portfolio, such composition being in terms of industry / location / size / interest rate/security.

Geographical Spread : There will be various locations from where a bank conducts its operations. Of these locations, some may be weak credit demand areas with a considerably high deposit potential and vice versa.

Loan Administration : Efficient administration is the key to the success of the lending policy and for improving its efficiency, the authority of the loan executives should be clearly stated as also their responsibilities. The loan policy should state the sanctioning powers of the loan officers regarding the credit limits.

Credit Files : The contents of the credit file should include all details of the borrower including detailed financial statements and analysis, collateral provided and the value of the same, details of compensating balances, non-rate clauses, etc. Other issues/ parameters that the loan policy may contain:

- Type and extent of collaterals.
- Compensating balances.
- Statutory limits for different types of loans.
- Monitoring mechanism.
- Loan-Deposit ratio.
- Incentive schemes for the loan officers.
- Loan repayment pattern.
- Communication practices.
- Extension of renewals of past-due installment loans (rescheduling the loan).
- Loan-loss reserves.
- Consumer laws and regulations.
- Role of credit and recovery department.

Question 5

What precautions to be taken by the Bankers while issuing of Letter of Credit to their existing clients ?
(5 marks)

Answer 5

Precautions to be taken by the Banks while issuing of Letter of Credit (LC) to it's existing clients are as under :

- i. The LC application cum agreement form is adequately stamped as per respective State Stamp Duty Act / Laws.
- ii. The LC application is signed by an authorised signatory of the firm, company etc. The signature is to be verified by the processing officer to satisfy the genuineness.
- iii. The LC application is complete in all respects with clear and consistent instructions which correspond to the conditions / provisions of accompanying contract / indent / licence. In case of any variance the importer customer should be asked to obtain necessary modifications.
- iv. The beneficiary of the LC should not be importer himself or his nominee or his

buying agent. Further, beneficiary should be either a manufacturer, supplier or shipper of the goods. Care should be taken with regard to method of payment where the beneficiary is in one country and shipment is authorised from a different country.

- v. The insurance policy / cover note provides coverage up to 110% of the invoice value, in the currency of invoice in the banks' name and covers risks under Institute Cargo Clause "A".
- vi. If the import is covered under licence, the importer must submit Exchange Control copy of the same.
- vii. The LCs to be advised through a bank specified by the opener provided we have prior arrangement with that bank.
- viii. Ability of the Applicant to retire the import bills on due date / presentation and / or availability of funded facilities to meet his import payment obligations including payment duties and taxes. It must be ensured that the applicant will be in a position to clear the goods by payment of duties.
- ix. Credit standing and capability of the supplier to ship the goods as per the requirements is to be assessed by the branches by obtaining a credit report from the overseas banker of the supplier / Credit rating agency for establishing import LCs of over specified limit.
- x. As the import LC is drawn in a freely convertible foreign currency, the importer is exposed to exchange risk.

Question 6

Management of credit risk in a bank will require alertness on the part of staff at all the stages of credit delivery. Explain various steps for efficient management of credit risks. (5 marks)

Answer 6

Key issue in managing credit risk is to apply a consistent evaluation and rating system of all investment opportunities. Prudential limits need to be laid down on various aspects of credit viz., benchmarking current ratio, debt-equity ratio, profitability ratio, debt service coverage ratio, concentration limits for group / single borrower, maximum exposure limits to industries, and provision for flexibilities to allow variation for very special features. Credit rating may be single point indicator of diverse risk factors. Management of credit risk in a bank will require alertness on the part of staff at all the stages of credit delivery and monitoring process:

Appraisal Stage : In addition to following the prescribed guidelines of the bank, the important point is the appraisal of the man behind the project. For this, no rules can be prescribed or formula can be given.

- i. Whether the branch has its own network for obtaining reliable information about present and prospective borrowers through some well-known sources like local organizations, lead bank offices, other customers etc.
- ii. Whether the credit officers keep an eye on local newspapers for keeping track on some developments in some units / industries etc.

- iii. Whether marketability of the product is assured beyond reasonable doubt.
- iv. Whether while processing the proposals, a list of all the important references made by the borrowers is kept on record.
- v. Whether a small map of the location of the unit, residence of the borrowers / guarantors are kept on record.

Disbursement Stage

- i. Whether the branch ensures creation of assets and whether the disbursement is made in stages and checked at every stage, wherever possible.
- ii. Whether the payments are directly made to the dealers.
- iii. Whether the branch ensures long term availability of the business premises, wherever business premises are on rent.

Review / Renewal

- i. Whether the branch considers renewal as a ritual or uses the opportunity to review its credit decision.
- ii. Whether proper follow-up for obtaining financial information is started in time and borrowers are properly educated in this regard.

Asset Verification / Inspection / Visits : This is most important aspect of monitoring of a borrowers' account. If done regularly, it gives an opportunity to interact with the borrowers and must be used to ascertain the problems that the unit is facing/likely to face. Remedial steps should be initiated at the earliest. If an eye is kept on the activities of the borrower, there is no reason as to why the account can't be kept healthy.

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. was incorporated in May 2010. It came out with its initial public offer (IPO) in January 2017 and the shares were issued at a premium of ₹225 per equity shares.

The face value of share is ₹10 per equity share. The company now wants to expand its business and for this purpose it requires further capital of ₹10 crores, which it intends to raise the funds through the preferential issue for which the relevant approval from the shareholders have been obtained by the company in the General Meeting held on 30-8-2017.

The average of the weekly high and low of the closing prices of the equity shares are as under :

| Number of Weeks | Average of High and Low (₹) |
|--------------------------------------|-----------------------------|
| 20 weeks preceding the relevant date | 230.22 |
| 2 weeks preceding the relevant date | 288.00 |

From the above information, please answer the following questions :

- (i) Whether the company can issue preferential issue ? If so, what are the pricing norms of such issue ? Mention the name of the relevant SEBI Regulation and its detailed provisions. (15 marks)
- (ii) At what price preferential issue shall be made to the Qualified Institutional Buyers (QIBs). (10 marks)
- (iii) After issue of shares to the QIBs the weekly high and low averages of share price of ABC Ltd. on completion of 26 weeks from the date of listing was ₹238.40. Calculate, whether any further amount has to be received from the QIBs, to whom such preferential allotments were made ? (10 marks)
- (b) Ronak Ltd. is a public company listed on BSE. Its share capital is ₹2,75,00,000 consisting of ₹27,50,000 shares of ₹10 each. The public holding in the company is 47% of the total shares and rest of 53% shares are held by the promoters and its relatives as on 31-3-2013.

The promoters in order to avoid any hostile take over, want to increase their stake by 5% of the total shares in the F. Y. 2013-14 and further want to increase

their stake by 5% of total shares in the succeeding F.Y. i.e. 2014-15; 2015-16; 2016-17 and 2017-18 without making any public announcement.

The promoters intend to acquire shares as per the guidelines prescribed under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations). In light of the above information, please answer the following questions :

- (i) *Whether the promoters can acquire additional 5% stake in the share capital of the company during the F.Y. 2013-14 in terms of SEBI—Takeover Regulations. Narrate your answer with quoting the regulation and also state disclosure requirements. (8 marks)*
- (ii) *Whether the promoters can further acquire 5% additional shares as per Takeover Regulations in each of the F.Y. 2014-15; 2015-16; 2016-17 and 2017-18 till it reaches the level of 75% of the share capital of Ronak Ltd. (7 marks)*

Answer 1(a)(i)

Yes, the company can go for the preferential issue. Preferential issue means issuance of equity shares to promoter group or selected investors. SEBI (ICDR) Regulations 2009 prescribes the procedure for issue of preferential issue and its pricing.

Pricing of the Issue

I More than 26 Weeks

Where the equity shares of the company have been listed on a stock exchange for a period of 26 weeks or more as on the relevant date. The issue of the equity shares on preferential basis is being made at a price not less than higher of the following:

- i. The average of the weekly high and low of the closing prices of the related equity shares quoted on the stock exchange during the twenty six weeks preceding the relevant date;

OR

- ii. The average of the weekly high and low of the closing prices of the related equity shares quoted on the stock exchange during the two weeks preceding the relevant date.

II Less than 26 Weeks

Where the equity shares of the company have been listed on a stock exchange for a period of less than 26 weeks as on the relevant date, the issue of shares on preferential basis has been made at a price not less than the higher of the following:

- i. The price at which shares were issued by the company in its Initial Public Offering (IPO) or the value per share arrived at in a scheme of the arrangement under Section 230 to 232 of the Companies Act, 2013, pursuant to which shares of the company were listed, as the case may be;

OR

- ii. The average of the weekly high and low of the closing prices of the related shares, quoted on the stock exchange during the period shares have been listed preceding the relevant date;

OR

- iii. The average of the weekly high and low of the closing prices of the related shares on a stock exchange during the two weeks preceding the relevant date.

Where the price of the equity shares is determined in terms of the (II) above, such price shall be recomputed by the issuer on completion of 26 weeks from the date of listing on a recognized stock exchange with reference to the average of weekly high and low of the closing prices of the related equity shares quoted on the recognized stock exchange during these 26 weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

Answer 1(a)(ii)

An issue of share on preferential basis to Qualified Institutional Buyer (QIB) not exceeding five in numbers will be made at a price not less than the average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

In the given case, the meeting of the shareholders was held on 30.8.2017 and the relevant date is 30 days prior to the date of such meeting. By this date the listing of shares has not been completed 26 weeks hence provision (II) above shall be applied.

Thus according to this, the price of the preferential issue for allotment to (Qualified Institutional Buyer) QIBs shall not be less than higher of the following:

| | |
|---|--|
| The price at which shares were issued by the company in its IPO | Shares were issued at a premium of Rs. 225 i.e. total price of the Equity shares was Rs. 235/- |
| The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the period shares have been listed preceding the relevant date | Rs. 230.22 |
| The average of the weekly high and low of the closing prices of the related shares on a stock exchange during the two weeks preceding the relevant date | Rs. 288 |

Among all the three options the highest is Rs. 288/- Hence the preferential issue price for QIBs shall be Rs. 288/-

Answer 1(a)(iii)

It is given that after issue of shares to the QIBs the weekly high and low averages of share price of ABC Ltd. on completion of 26 weeks from the date of listing was Rs. 238.40.

Hence according to the SEBI ICDR Guidelines, where the price of the equity shares is determined in terms of the (II) above, such price shall be recomputed by the issuer on completion of 26 weeks from the date of listing on a recognized stock exchange with reference to the average of weekly high and low of the closing prices of the related equity shares quoted on the recognized stock exchange during these 26 weeks and if such re-compounded price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

However, in the given case price after 26 weeks is given as Rs. 239.40 and the company has already priced earlier as Rs. 288 which is lower than the price earlier charged, hence there is no need to charge any amount from the preferential issue allottees.

Answer 1(b)(i)

Regulation 3 (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation 2011 (Takeover Regulations) provides that –

No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five percent (25%) or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five percent (5%) of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Therefore, since the shareholding of the acquirer is between twenty-five percent (25%) of the total shares and the maximum permissible non-public shareholding limit, hence they can acquire five percent (5%) additional shares in the F.Y. 2013-14.

Disclosure of Acquisition and Disposal

29. (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five percent (5%) or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.
- (2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent (5%) or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five percent (5%), if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two percent (2%) of total shareholding or voting rights in the target company, in such form as may be specified.

- (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—
- a. Every stock exchange where the shares of the target company are listed; and
 - b. The target company at its registered office.
- (4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

Answer 1(b)(ii)

In the given question, it is asked whether the acquirer can acquire five percent (5%) additional shares in each of F.Y. of 2014-15, 2015-16, 2016-17 and 2017-18.

Since the Regulation 3(2) of the Takeover Regulations provides that additional shares can be acquired in 'Any Financial Year', hence he can acquire the additional shares as under:

| <i>Financial Year</i> | <i>% of the Holding of the Promoter</i> | <i>Whether allowed without making Public Announcement</i> |
|-----------------------|---|---|
| Before F.Y. 2012-13 | 53% - Already Having | Yes |
| 2013-14 | 53+ 5% = 58% | Yes |
| 2014-15 | 58+ 5% = 63% | Yes |
| 2015-16 | 63+ 5% = 68% | Yes |
| 2016-17 | 68+ 5% = 73% | Yes |
| 2017-18 | 73+ 5% = 78% | No |

Hence the promoters can acquire shares up to the F.Y. 2016-17 without making any public announcement subject to the fulfilment of the other conditions.

Question 2

- (a) You are a practicing Company Secretary named AAA and has been approached by Secretarial Department of LMN Ltd. (a listed company) seeking your opinion on the appointment of following person as Independent Director on the Board of LMN Ltd. :
- (i) Kanhaiya, whose wife is Director in the RPQ Ltd. (holding company of LMN Ltd.)

- (ii) Ms. Avneet Kaur, whose spouse once supplied raw material to LMN Ltd. of ₹40 lakh during the preceding financial year in which the gross turnover of LMN Ltd. was ₹500 crore.
- (iii) Reggie, who is already having directorship in 19 companies, of which 9 companies are listed public companies.
- (iv) Khalid, who was earlier a promoter of TCA Ltd. (A subsidiary of LMN Ltd.). Comment on each of the points, whether above named persons can be appointed as independent directors in LMN Ltd. ? (8 marks)
- (b) The shares of XYZ Ltd. are listed on NSE. However, trading in the shares of company were rarely held. During the F.Y. 2017-18, the share price (face value ₹10) remained constant at a price of ₹85 and last transaction in this script was held in the month of June 2017.

However, during the period from May 2018 to June 2018, there were good amount of transactions and it ranges from ₹110 to ₹254. This gave an alarm to the SEBI and it observed that :

- (i) Shares are not liquid and were not frequently traded, however it suddenly got momentum.
- (ii) A significant portion of gross volume of MB, who is a broker of National Stock Exchange, as Investor amounted to 5.59% of the total volume traded on NSE during that period.
- (iii) A significant portion of gross volume of MB was in the shares of XYZ Ltd. only and that too, squaring off in nature and with the same opposite party.

Under these circumstances, what action the SEBI should take against the broker MB. Your answer should cover the relevant portions of the SEBI Act/its relevant Regulations and also mention, whether the broker MB is liable for the monetary penalty ? (12 marks)

- (c) What course of action should be followed by a company, if it has accumulated free reserves and is desirous of bridging the gap between the capital and fixed assets. Mention the conditions which must be satisfied before following this course of action and relevant guidelines under the Companies Act, 2013 and SEBI Regulations. (10 marks)

Answer 2(a)

- (i) Mr. Kanhiya, whose wife is director in GHI Ltd. a holding company of LMN Ltd. No, Mr. Kanhiya, whose wife is director in GHI Ltd. a holding company of LMN Ltd. cannot be appointed as independent director in LMN Limited since as per Regulation 16(1)(b) of SEBI (LODR) Regulation, 2015, Independent Director should not be related to promoters or directors in the listed entity, its holding, subsidiary or associate company. However, wife of Mr. Kanhiya Lal is a Director in GHI Ltd. a holding company of LMN Ltd.
- (ii) Ms. Avneet Kaur, whose spouse once supplied raw material of 40 lakh during the preceding financial year.

Yes, Ms. Avneet Kaur can be appointed as an independent director, since as per Regulation 16(1)(b) of SEBI (LODR) Regulation, 2015, relatives of Independent Director hasn't or hadn't any pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two percent or more of its gross turnover or total income or 50 lakh rupees, whichever is lower, during the two immediately preceding financial years or during the current financial year. Since in the given case the amount of pecuniary relationship is less than the prescribed limit, she can be appointed as an Independent Director.

- (iii) Mr. Reggie, already Director in 19 companies of which 9 are Public Listed companies.

No, Mr. Reggie cannot be appointed as an independent director, although as per Section 165 of Companies Act, 2013, a person, shall not hold office as a director, including any alternate directorship, in more than 20 companies. The maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

However as per Regulation 25 of SEBI (LODR) Regulation, 2015, a person shall serve as an independent director in not more than seven listed entities: Provided that any person who is serving as a whole time director in any listed entity, then he shall be serving as an independent director in not more than three listed entities.

- (iv) Mr. Khalid, who was earlier promoter of TCA Ltd., a subsidiary of LMN Ltd.

No, Mr. Khalid cannot be appointed as Independent Director of LMN Ltd. because as per Regulation 16 (1) (b) (ii) of SEBI (LODR) Regulation, 2015 an Independent Director means a person who is or was not a promoter of the listed entity or its holding, subsidiary or associate company. In the given case, Mr. Khalid was one of the founder promoter of holding company of LMN Ltd., hence he cannot be appointed as an Independent Director.

Answer 2(b)

SEBI can prosecute the broker MB under Section 24 of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 for any of the following violations, namely –

- i. Dealing in securities without obtaining certificate of registration from the Board as a stock broker or a sub-broker.
- ii. Dealing in securities or providing trading floor or assisting in trading outside the recognized stock exchange in violation of provisions of the Securities Contracts (Regulation) Act, 1956 or rules made or notifications issued thereunder.
- iii. Market manipulation of securities or index.
- iv. Indulging in insider trading in violation of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.
- v. Violating the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

- vi. Failure without reasonable cause—
 - a. to produce to the investigating authority or any person authorized by him in this behalf, any books, registers, records or other documents which are in his custody or power; or
 - b. to appear before the investigating authority personally or to answer any question which is put to him by the investigating authority; or
 - c. to sign the notes of any examination taken down by the investigating authority.
- vii. Failure to pay penalty imposed by the adjudicating officer or failure to comply with any of his directions or orders.

No, MB shall not be liable for monetary penalty.

Answer 2(c)

When a company has accumulated free reserves and is desirous of bridging the gap between the capital and fixed assets, it issues bonus shares to its equity shareholders. Such an issue would not place any fresh funds in the hands of the company. On the contrary, after a bonus issue it would become necessary for the company to earn more to effectively service the increased capital. The shareholder will, however, be benefitted by way of increased return on investment and increased number of shares in their hands.

The following conditions must be satisfied before issuing bonus shares:

- (a) Bonus Issue must be authorised by the articles of the company. Such a provision is generally there in articles of almost all the companies as they adopt Table A of Schedule I of the Companies Act, 2013, Regulation 96 of ICDR Regulations, 2009.
- (b) Bonus Issue must be sanctioned by shareholders in general meeting on recommendation of the Board of Directors of the company.
- (c) Regulations issued by SEBI must be complied with.
- (d) Authorised Capital must be increased where necessary.
- (e) The Company should ensure that it has not defaulted in the payment of interest or principal in respect of fixed deposit or debt securities issued by it. (Section 63(2)(c), Companies Act, 2013).
- (f) The company has not defaulted in respect of the payment of stationary dues of the employees, such as contribution to provident fund, gratuity and bonus (Section on 63(2)(d), Companies Act, 2013).
- (g) The partly paid up shares, if any outstanding on the date of allotment are made fully paid up. (Section on 63 (2) (e), Companies Act, 2013).

Question 3

A student of an Engineering College is having a Savings Bank Account (SB A/c) in a bank situated in the college campus. His father used to deposit ₹20,000 per month

for his day to day need and the transactions in his bank account were normal. However, after some time, his savings bank account witnessed large number of credit entries of small-small amount (in hundreds/thousands of rupees) and it accumulated to the tune of crores of rupees. This credit inflow remained for a period of six months and accumulated upto ₹5 crores. The accumulated money was utilized for paying off to a builder for purchase of flat.

Comment on the above transactions from the point of view of the Prevention of Money Laundering Act, 2002 and what action the branch manager of the Bank (where the student is having his SB A/c) should take ? (5 marks)

Answer 3

The transactions in the accounts should be according to the profile of the customer. In the given case, the profile of the customer is of student, who is getting his monthly expenses from his father to meet out the day today expenses.

The regular credit inflow although in small amount from the unknown sources and leading to accumulate to a large volume, is not according to the profile of customer i.e. student. The branch manager should have interrogated the student about the source of credit inflow in his account and if no satisfactory reply with evidences tendered by the student, the branch manager should have marked the transactions as 'Suspicious Transactions' and be reported as Suspicious Transaction Report (STR) to the Financial Intelligence Unit – India (FIU - Ind) through the proper channel (i.e. through the Banks' Chief Compliance Officer, Head Office).

Question 4

Calculate the total margin payable on a trade of shares of PQR Ltd., market value of which is ₹50 lakh if VaR margin rate for these shares is 12% and Standard Deviation of Natural Log (LN) Return of the same security for the last 6 months is 4.5%. (5 marks)

Answer 4

Extreme Loss Margin can either be 1.5 times of the Standard Deviation or 5% whichever is higher.

Accordingly, $1.50 \times 4.50\% = 6.75\%$ or 5%.

Thus Extreme Margin Loss will be 6.75%

Total Margin Payable = $6.75\% + 12\% = 18.75\%$

For Trade of 50,00,000 total Margin would be

Rs. $50,00,000 \times 18.75\% = \text{Rs.}9,37,500$

Question 5

A Ltd. have issued 1,50,000 shares, market value of which is ₹475 per share. Out of the issued shares only 70% of the shares are available for trading in open market.

B Ltd. have issued 1,75,000 shares, market value of which is ₹425 per share. Out of the issued shares only 30% of the shares are available for trading in open market.

C Ltd. have issued 2,00,000 shares, market value of which is ₹400 per share. Out of the issued shares only 55% of the shares are available for trading in open market.

Assuming that a Stock Exchange Index consists of only three stocks.

(a) Calculate the Total Market Capitalization. (2 marks)

(b) Calculate the Free Float Market Capitalization. (3 marks)

Answer 5

(a) Total Market Capitalization

| Company | Total Shares Issued | Market Price (Rs.) | Market Capitalization (Rs.) |
|---------|---------------------|--------------------|-----------------------------|
| (1) | (2) | (3) | (4) = (2)*(3) |
| A | 1,50,000 | 475 | 7,12,50,000 |
| B | 1,75,000 | 425 | 7,43,75,000 |
| C | 2,00,000 | 400 | 8,00,00,000 |
| Total | | | 22,56,25,000 |

(b) Free Float Market Capitalization

| Company | Total Shares Issued | (%) of Shares Available for Trading | Number of Shares available for Trading | Market Price (Rs.) | Market Capitalization (Rs.) |
|---------|---------------------|-------------------------------------|--|--------------------|-----------------------------|
| (1) | (2) | (3) | (4)=(2)*(3)/100 | (5) | (4) = (2)*(3) |
| A | 1,50,000 | 70% | 1,05,000 | 475 | 4,98,75,000 |
| B | 1,75,000 | 30% | 52,500 | 425 | 2,23,12,500 |
| C | 2,00,000 | 55% | 1,10,000 | 400 | 4,40,00,000 |
| Total | | | | | 11,61,87,500 |

Question 6

(a) Describe the salient features of Commercial Paper (CP). (2 marks)

(b) A company issued Commercial Paper (CP) having a face value of ₹5 lakh for 90 days maturity at the interest rate of 10% of issue price. Calculate its issue price. (3 marks)

Answer 6(a)

Salient features of Commercial Paper (CP)

- It is an unsecured Money Market instrument issued in the form of a promissory note and held in physical form or in dematerialized form through any of the depositories approved by and registered with SEBI.

- CP is issued at a discount to face value as may be determined by the issuer.
- The guidelines for issue of CP are issued by the Reserve Bank of India.
- The Corporates, PDs and all-India financial institutions (FIs) that have been permitted to raise short-term resources under the umbrella limit fixed by the Reserve Bank of India (RBI) are eligible to issue CP.
- A corporate would be eligible to issue CP provided:
 - (a) the tangible net worth of the company, as per the latest audited balance sheet, is not less than rupees four crore;
 - (b) the company has been sanctioned working capital limit by bank/s or FIs; and
 - (c) the borrowal account of the company is classified as a Standard Asset by the financing bank/ institution.
- Credit rating for issuance of CP from any one of the SEBI registered Credit Rating Agencies have been obtained.
- The minimum credit rating shall be 'A3' as per rating symbol and definition prescribed by SEBI.
- CP can be issued for maturities ranging between a minimum of 7 days and a maximum of up to one year from the date of issue.
- The maturity date of the CP should not go beyond the date up to which the credit rating of the issuer is valid.
- CP can be issued in denominations of ₹5 lakh and multiples thereof. The amount invested by a single investor should not be less than ₹5 lakh (face value).
- The aggregate amount of CP from an issuer shall be within the limit as approved by its Board of Directors or the quantum indicated by the Credit Rating Agency (CRA) for the specified rating, whichever is lower.
- The total amount of CP proposed to be issued should be raised within a period of two weeks from the date on which the issuer opens the issue for subscription.
- Only a scheduled bank can act as an IPA for issuance of CP.
- CP may be issued to individuals, banking companies, other corporate bodies (registered or incorporated in India) and unincorporated bodies, Non-Resident Indians and Foreign Institutional Investors (FIIs).
- All OTC trades in CP shall be reported within 15 minutes of the trade to the Fixed Income Money Market and Derivatives Association of India (FIMMDA) reporting platform.

Answer 6 (b)

Calculation of Issue Price of CP

Given:

Face Value (FV) of CP: Rs. 5,00,000.

Rate of Interest (ROI): 10%

Period: 90 Days

Issue Price (IP): To calculate

Formula for calculation of Issue Price

The issue price of the CP at a discount of face value and on maturity of the deposit, the face value of the CP is paid to the investor. The issue price of CP is calculated as under:

$$\text{Issue Price/Discounted Value} = (36,500 \times \text{FV}) / 36,500 + (\text{Number of Days} \times \text{ROI})$$

$$\text{Issue Price} = (36,500 \times 5,00,000) / 36,500 + (90 \times 10)$$

$$\text{IP} = (36,500 \times 5,00,000) / 37,400$$

$$\text{IP} = 4,87,967.91$$

Rounded off to Rs. 4,87,968

Hence the Issue Price/Discounted Value of the CP is Rs. 4,87,968.

INSURANCE LAW AND PRACTICE
(Elective Paper 9.3)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

An employee of a government organization purchased a life insurance policy on 28-4-2011. It was a non-medical scheme policy as he was an employee of government organization and no medical examination was conducted. The above policy lapsed due to non-payment of premium which was due from April, 2012 to October, 2012. The life assured got the policy revived on 3-1-2013 by depositing the premium which was due. Unfortunately the life assured died on 13-1-2013. The legal heirs of the assured submitted a claim with the insurance company with respect to the above said policy. As the life assured died within 2 years from the date of obtaining the policy and within ten days of the revival of the policy, the insurance company carried out an investigation for the policy and the life assured.

The investigation revealed that the life assured was not keeping good health at the time of obtaining the policy and as well as at the time of revival of the policy, because his employer organization had supplied the details of earned leave and medical leave availed by the life assured during his service period w.e.f. 4-6-2007 to 18-9-2012. The details given for the leave were as under :

Medical leave

12-5-2008

30-5-2008 to 27-6-2008

27-7-2008 to 10-9-2008

06-8-2010 to 13-8-2010

13-6-2011 to 06-8-2011

05-9-2012 to 18-9-2012

The fact of the medical leave was made known to the insurance company only on investigation and the fact that the life assured was suffering also came to their knowledge. The fact was not disclosed by the life assured in the original proposal form at the time of taking the policy as well as at the time of revival. The life assured was suffering from epigastric C bleeding per rectum due to which he died in the hospital on 13-1-2013 where he was admitted on 4-1-2013. Thus, it was a clear case of concealment on the part of the life assured which was against the terms of the Insurance policy. Accordingly the insurance company repudiated the claim.

The legal heirs of the life assured challenged the repudiation of the claim in District Consumer Forum where the claim was awarded in their favour and against the insurance company.

The insurance company aggrieved by the decision of the District Consumer Forum filed an appeal with the State Commission where the appeal was accepted and the decision of the District Consumer Forum was set aside.

Based on the above case, answer the following questions :

- (i) Was there a violation of 'non-disclosure of material fact' in the case ? If so, state the insurance principle that governs such instances. What is the validity of the contract of insurance ? (10 marks)*
- (ii) Discuss the implications of section 45 of the Insurance Act, 1938 with regards to facts of the present case given. (10 marks)*
- (iii) Having issued a Life Insurance Policy on 'non-medical scheme', do you think the Insurance Company is justified in repudiating the claim ? Was there lapse in "Underwriting" ? Discuss. (10 marks)*
- (iv) Do you think the claim of the legal heirs is justified in the absence of any medical issues of the employee ? (10 marks)*
- (v) Given the facts of the case, what precautions and advises do you suggest to people taking insurance policies to cover their risks ? (10 marks)*

Answer 1(i)

Insurance contract is an agreement between two parties based on certain principles which are essentials of an insurance contract. If any of the principles are not complied, then the contract is voidable at the option of the aggrieved party.

A material fact is one which would have influenced the judgment of a prudent insurer in deciding whether he would accept the risk in whole or in part and, if so, at what amount of premium. The materiality of a fact depends upon the application of this test to the particular circumstance of the case as at the date of taking the policy and at the time of revival that the fact should have been communicated.

Material facts may have a bearing on the physical hazard or on the moral hazard, or they may show that if a loss occurs the insurer's liability is likely to be greater than would normally be expected.

Here in this case the person assured was required to state the facts about his health in the proposal form while taking the insurance policy. This is required under the very first and most basic principle of uberrimae fidei or the principle of utmost good faith. According to this principle, the insurance contract must be signed by both the parties (i.e. insurer and insured) in an absolute good faith or belief or trust, both the insured and the insurer should have good faith towards each other.

In the present case, the policy holder was suffering from epigastria C bleeding per rectum due to which the person died. The insured must provide the insurer complete and clear information of subject matter. In the case cited, the insured while signing the proposal form was required to give all the facts about his health which was an information material to the contract.

The principle of utmost good faith very clearly state that the person getting insured must willingly disclose and surrender to the insurer the complete and true information

regarding the subject matter of insurance. The insurer's liability Bets void (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. Thus there was a clear case of non-disclosure of material facts regarding health conditions by the life assured.

In a Contract of Insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasize that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a Contract of Insurance.

On the basis of above discussion the Contract of insurance is void.

Answer 1(ii)

The claim under the insurance policy was made by the legal heirs of the person assured after his death. As stated in the case the policy was taken by the person assured on 28.04.2011. Further the policy lapsed due to non-payment for the period from April, 2012 to October, 2012.

The policy was revived by the assured on 03.01.2013 by paying the overdue premium. Unfortunately the person assured died on 13.01.2013 which was just 10 days after the revival of the policy. The insurance company carried out the investigation into the cause of death of the assured as per section 45 of the Insurance Act 1938.

Section 45 of the Insurance Act 1938 states that Policy not to be called in question on ground of mis-statement after two years. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement.

The implication of section 45 of the Insurance Act, 1938 :

1. was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false.
2. or that it suppressed facts which it was material to disclose. Provided that nothing in section 45 of the Insurance Act, 1938 shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

In the given case, the death of the life assured occurred less than 2 years of taking the policy and within 10 days of the revival of the policy. Due to this short period of taking up of the policy and death of the life assured there could be doubt about the

intentions and doubts about the cause of death. Thus the investigation into the cause of death was carried out before processing of the claim under section 45 of the Insurance Act, 1938. This period of 2 years has now been amended to 3 years. Hence the Insurance Company has the legal right to call for and claim that there was suppression or non disclosure of material fact and leave the clause.

Answer 1(iii)

The facts stated in the case indicate that the life assured was suffering from epigastria C bleeding per rectum. He had been taking medical leave very frequently which is evident from the records provided by the employer of the life assured. In a short period of less than two years he had taken medical leave more than six times. Had the life assured mentioned the fact about the health condition in the proposal form, the insurance company based on condition of the existing critical illness would have rejected the proposal or might have carried out further medical examination as required for acceptance of the proposal for the applicants other than employees of government organisation. Looking at the health records the proposal would have been rejected by the insurance company. However, the policy is issued on non medical basis , the company would have not got any information about the health condition of Life assured then the company would have taken precaution and increased the premium as it was a non medical policy.

Though, the policy is issued on non medical basis but the life assured is duty bound to disclose all material facts that would have influenced the judgment of a prudent insurer in deciding whether he would accept the risk in whole or in part and, if so, at what amount of premium. Hence, the insurance company is justified in repudiating the claim.

There is no lapse in the underwriting process of the company due to being non medical scheme. The policy issued on the basis of non-medical is just a feature provided by the insurance company. The policy issued under non-medical is based on the risk appetite of the insurer, sum assured, age of the insured and employment details.

Answer 1(iv)

The investigations were carried out as required under section 45 of the Insurance Act, 1938. However if the investigation would not have shown any health problems found with the life assured then it would have satisfied all the requirements of the claim made under the policy. Thus if the investigation does not result in any problem with the health conditions of the life assured then there was no non- disclosure of any material fact related to subject matter of insurance. So there is no reason for the insurance company to treat the contract as void and the claim as filed under the Insurance policy would be payable to the legal heirs of the assured as per the conditions of the policy. Thus in such a situation, the claim of the legal heirs would be fully justified, in the absence of any medical issue of the life assured.

Answer 1(v)

Insurance is a contract between two parties the insurer and the insured. This contract needs to comply with all the requirements of a contract for it to be valid. It is required that parties to the contract make all the disclosure about the terms and conditions of the contract as well as all the facts about the subject matter of the insurance contract.

In the given case the life assured did not disclose the fact about the health conditions

while submitting the proposal form due to which the insurance company was required to carry out the investigation and had the right to consider the contract as void due to non-disclosure of a fact which was material to the contract.

Thus we would advise the person(s) taking insurance policy to make sure that before taking a policy they are aware of all the terms and conditions of the policy and also they disclose all the facts about the subject matter of the insurance policy.

The facts which must be disclosed are:

- (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.

Question 2

ABC Co. Ltd. which operates a wholesale warehouse, had a fire on its premises on 30th April, 2016 which destroyed most of the building and stock worth of ₹10,160 was salvaged. The company has a Fire Insurance Policy (with suitable average clauses) covering the assets as under :

| <i>Assets Insured</i> | <i>Insurance Cover (in ₹)</i> |
|-----------------------|-------------------------------|
| <i>Stock</i> | <i>6,50,000</i> |
| <i>Building</i> | <i>9,00,000</i> |

Loss of Profits

Including standing charges of ₹2,50,000 with a six month period of indemnity.

The Company's last Profit & Loss Account (year ended 31st March, 2016) is given below :

Profit & Loss Account for the year ended 31st March, 2016

| <i>Dr. (₹)</i> | | <i>Cr. (₹)</i> | |
|-------------------------|------------------|-------------------------|------------------|
| <i>To Opening stock</i> | <i>5,23,500</i> | <i>By Sales</i> | <i>22,50,000</i> |
| <i>To Purchases</i> | <i>19,66,500</i> | <i>By Closing stock</i> | <i>6,45,000</i> |

| | | | |
|-----------------------------|------------------|-----------------|------------------|
| To Insured standing charges | 1,15,500 | By Other income | 11,000 |
| To Other expenses | 65,500 | | |
| To Net Profit | 2,35,000 | | |
| | <u>29,06,000</u> | | <u>29,06,000</u> |

The company's records show that the sales for April, 2016 had been at ₹1,50,000. Payments made to trade creditors in April, 2016 were 1,15,500 and the creditors increased by ₹4,500.

The company's business was disrupted until the end of July, 2016 during which period the turnover fell by ₹2,20,000 compared with the same period in the previous year. It was agreed that 65% of the value of the building had been lost and at the time of fire it was worth ₹10,00,000.

Questions :

- (i) Discuss the validity of ABC Company's claim under a 'Fire Insurance' policy stating the loss coverage as per the policy provision. Can "Loss of Profit" also be insured ? (10 marks)
- (ii) What is the legal implication and provision relating to "Average clauses" ? How will it affect ABC company claims ? Calculate the liability of the Insurance Company for loss of stock, building and profits claims compensation payable to ABC Company. (10 marks)
- (iii) Explain the process of claim settlement followed by General Insurance Companies and the documents required to be submitted by ABC Ltd. for its claims. (10 marks)

Answer 2(i)

The company ABC Ltd. is entitled to a claim payment under its "fire Insurance" policy for the loss of stock, building and profits as the assets were destroyed due to a fire in its warehouse.

A fire insurance policy cover all losses caused due to unforeseen or damage to property due to fire and other parts covered under the policy includes:

- Dwelling
- Office
- Machinery, equipments accessories
- Goods, Stock material, semi finished goods etc.

The fire insurance policy cover all losses caused due to :

- Goods spoiled or property damaged by water used to extinguish the fire.
- Pulling down of adjacent premises by the fire brigade in order to prevent the progress of flame.
- Breakage of goods in the process of their removal from the building where fire is raging e.g. damage caused by throwing furniture out of window.
- Wages paid to persons employed for extinguishing fire.

Loss of profit can also be covered on payment of extra premium as add-on paid along with a basic fire policy. It cannot be sold as stand alone basis separately as an independent policy.

The sum insured under Loss of Profits policy should represent the gross profit of the indemnity period selected.

The indemnity period is the maximum period required to put the business back into normal operation after damage to insured property by an insured peril. The indemnity period could vary from 6 months to 3 years.

For indemnity periods up to one year, the annual gross profit should be selected as sum insured.

For indemnity periods longer than one year, the Gross Profit (GP) should be proportionately increased. For example:

| <i>Indemnity Period</i> | <i>Calculation of Sum Insured</i> |
|-------------------------|-----------------------------------|
| 1 year (12 months) | Annual Gross Profit × 1 |
| 2 years (24 months) | Annual Gross Profit × 2 |
| 2.5 years (30 months) | Annual Gross Profit × 2.5 |
| 3 years (36 months) | Annual Gross Profit × 3 |

For the purpose of Loss of Profit insurance, Gross Profit (GP) is commonly understood to be the net Trading Profit plus Standing Charges (fixed charges). Usually, insurance companies will cover only those Standing Charges which have been specifically declared at the time of proposal.

Answer 2(ii)

The application of average clause is triggered at the time of a claim settlement, if the Insurance Company observe that a property is under insured. In other words, where the full value of a property is not insured it implies that, the full indemnity of the loss is not available, due to inadequacy of sum insured.

In the given case, ABC Co. Ltd. did not insured building at its full value. It has under insured. While the building was valued at ₹10 lacs on the date of loss the sum insured available was only ₹9 lacs. Hence ABC Co. Ltd will compensate on this basis only.

The various loss claim under the policy are shown below:

Gross Profit % for last year

Gross Profit as per Profit & Loss (Net Profit+ Other Expenses+ Insured Standing Charges)

$$\begin{aligned}
 (2,35,000 + 65,500 + 1,15,500) &= ₹4,16,000 \\
 \text{Less : Other Income} &\quad \quad \quad \underline{11,000} \\
 \text{Gross Profit from Operation} &\quad \quad \quad \underline{₹4,05,000} \\
 \\
 \text{Gross Profit \% for last year} &= \frac{4,05,000 \times 100}{22,50,000} = 18\%
 \end{aligned}$$

Calculation of Purchases

| | |
|-----------------------------|------------------|
| Payment to Creditors | ₹1,15,500 |
| Increase of creditors | ₹ 4,500 |
| Purchases during the period | <u>₹1,20,000</u> |

Memorandum Trading Account for the period ended dated of fire

| <i>Particulars</i> | <i>Amount(₹)</i> | <i>Particulars</i> | <i>Amount (₹)</i> |
|--------------------|------------------|--------------------|-------------------|
| To Opening Stock | 6,45,000 | By Sales | 1,50,000 |
| To purchase | 1,20,000 | By Closing Stock | 42,000 |
| To Gross Profit | 27,000 | (balancing figure) | |
| 18% of sales | | | |
| Total | 7,92,000 | Total | 7,92,000 |

Computation of Loss of Stock

| | |
|--|------------------|
| Estimated Closing Stock as at the date of fire | ₹6,42,000 |
| Less Stock Salvaged | ₹10,160 |
| Loss of Stock | ₹6,31,840 |

Loss of building

| | |
|------------------------------|------------|
| Value of Building | ₹10,00,000 |
| 65% of the value of building | ₹6,50,000 |

Since the insurance cover was less than the value of the asset average clause will apply

$$\text{Claim of loss of Building} = \frac{9,00,000 \times 6,50,000}{10,00,000} = ₹5,85,000$$

$$\text{Claim for Building loss} = ₹5,85,000$$

Loss of Profit

$$\text{Indemnity Period} = 3 \text{ Months}$$

Gross Profit Ratio for the year

$$\text{Net Profit + Insured Standing Charges} = \frac{2,35,000 \times 1,15,500}{22,50,000} = 15.57\%$$

$$\text{Short Turnover} = ₹2,20,000$$

$$\text{Loss of Profit} = 2,20,000 \times 15.57\% = ₹34,254$$

Answer 2(iii)

General Insurance is basically an insurance policy that protects against losses and damages other than those covered by life insurance. The coverage for most general insurance policies is for one year. The risks covered by general insurance are:

1. Property loss, for example stolen car or burnt house.
2. Liability arising from damage caused by yourself or a third party.
3. Accidental death or injury.

General Procedure for Claim Settlement : The general procedure for seeking claim settlement is same in most forms of General Insurance. The procedure in detail is as explained below:

- (a) **Intimation of submission of the claim by the insured** : The insured would intimate the insurance company of the occurrence of a peril or risk which has caused loss or damage to the insured property.
- (b) **Evaluation/Registration of Claims** : The insurer would briefly initiate process check-
 - (i) Whether the policy has been issued by the insurer.
 - (ii) Whether the policy is in existence.
 - (iii) Whether the correct premium has been received by the insurer.
 - (iv) Whether the peril causing loss/damage is an insured peril.

If the insurer is not satisfied and the necessary elements of insurance are not present, it may repudiate the insurance claim and intimate the insured about the repudiation. In some cases, the insurer may ask for some other inputs about the insurance claim which he thinks necessary for processing the claim further. If on receipt of the additional inputs, the insurer is not satisfied, he may repudiate the claim and intimate the insured about repudiating of the claim. Only after getting satisfied about the claim, the insurer initiates the next step for claim processing.

The insurer would immediately arrange for surveyor to be appointed who would look into the circumstances of the loss, assess the actual loss suffered in money terms and that which can be indemnified in terms of the contract, advise the insurer regarding compliance of the various terms conditions and warranties under the contract etc.

The loss assessor has also to advise the client on various aspects of loss mitigation, limitation and salvage. Loss investigation including forensic investigation and analysis may also come under the purview of a professional investigator.

Acid tests applied by the surveyor of the various principles - insurable interest, utmost good faith, proximate cause and of course contribution, help in deciding ultimately. whether a claim is payable and the amount to be paid.

If the claim is not paid within the same financial year in which it occurred then

the surveyor's assessment would enable the adequate provisioning for the claim in its financials.

- (d) Settlement of Claims :** The insurer would ensure claims are settled on receipt of the final report from the surveyor, generally within the Turnaround time (TAT) by various regulations and committed by the insurance company.
- (e) Recovery :** The next step for the insurance company, in certain cases is initiating process for recovery from the third person who is party in the loss e.g. in marine cargo transit claims- recovery proceedings as per applicable statutes are initiated against carriers. In motor third party liability claims -awards are settled with victims of any motor accident and action initiated against the vehicles for recovery.

The various documents necessary for subtracting the claim under Fire Insurance policy by ABC Co. Ltd. include:

1. Copy of the original fire insurance policy.
2. FIR Copy.
3. Photographs of the loss/ fire accidents.
4. Accounts reports, ledgers to show the loss of profit.
5. Past year final accounts statement.
6. Surveyors initial report.
7. Claim notice copy.

Question 3

Rajesh purchased a bus by taking a loan from ABC Limited. The bus was being used as private service vehicle and not as a public transport vehicle. It was insured under a comprehensive insurance policy issued by XYZ Insurance Limited. The bus met with an accident, for which insurance was claimed.

The insurance company appointed its Surveyor, who assessed the loss at ₹1,26,500. However the insurance company deducted ₹33,125 from the assessed amount on the ground that the driver did not have an endorsement on his licence to drive a transport vehicle. Even this amount was not paid to Rajesh, but was paid directly to the Finance Company.

Advise :

- (i) Was the insurance company right in deducting the amount of ₹33,125 from the claim amount ?*
- (ii) Is it right on the part of the insurance company to pay the claim amount directly to the Finance Company and not to the insured ?* (5 marks)

Answer 3(i)

No, the insurance company was not right in deducting the amount of ₹33,125/- from the claim amount on the ground that the driver did not have an endorsement on his licence to drive a transport vehicle. Once a person had a licence to drive a heavy goods carriage vehicle, it would mean that he was entitled to drive a transport vehicle. Due to this entitlement with the driving licence the driver was allowed to drive the bus which

met with the accident. The insurance company in such a case was liable to pay the full amount of claim and was not justified in deducting the amount of ₹33,125/-.

The aggrieved insured person should file a complaint at the appropriate forum, so that the insurance company pays the balance amount along with interest at 12 percent and cost of ₹5,000/-.

Answer 3(ii)

No, the insurance company is not right in paying the claim amount directly to the finance company without informing the claimant. Even if the insurance company intended to make the claim payment to the finance company it should have informed the claimant insured and asked for his consent to do so. The insurance company and the financier cannot act in isolation without even informing the insured who has made the claim for the loss.

In such case the insurance company should have either paid the claim amount to the insured or should have properly communicated with the claimant and asked for his written consent/no objection certificate to pay the claim amount to the finance company.

Question 4

Write a short note on 'Risk Retention', as a risk management strategy. Should an insurance company opt for reinsurance or retention ? (5 marks)

Answer 4

Risk retention is one of the methods of handling risk. An individual or a business firm may retain all or part of a given risk. Risk retention can be either active or passive.

Active Risk Retention : Active risk retention means that an individual is consciously aware of the risk and deliberately plans to retain all or part of it. For example a motorist may wish to retain the risk of small collision loss by purchasing an own damage insurance policy with a ₹2000 voluntary excess. A homeowner may retain a small part of the risk of damage to the house by purchasing a Householders policy with substantial voluntary excess. A business firm may deliberately retain the risk of petty thefts by employees, shop lifting or the spoilage of perishable goods. In these cases, the individual or business firm makes a conscious decision to retain part or all of a given risk. There are benefits to active retention if the funds remain untouched and avoidable in the event the need for them arises.

Passive Risk Retention : Risk can also be retained passively. Certain risks may be unknowingly retained because of ignorance, indifference or laziness. This is often dangerous if a risk that is retained has the potential for destroying a person financially. For example, many persons with earned incomes are not insured against the risk of long term disability under either an individual or group disability income plan.

In summary risk retention can be an extremely useful technique for handling risk especially in a modern corporate risk management program. Risk retention, however, is appropriate primarily for high frequency, low severity risks where potential losses are relatively small. Except under unusual circumstances, an individual should not use the technique of risk retention to retain low frequency, high severity risks such as the risk of catastrophic losses like earthquake and floods.

Reinsurance is when an insurance company will guard themselves against the risk of loss. Reinsurance in simpler terms is the insurance that is taken out by an insurance company. Since insurance companies provide protection against the risk of loss, insurance is a very risky business, and it is important that an insurance company has its own protection in place to avoid bankruptcy.

Through a reinsurance scheme, an insurance company is able to bring together or 'pool' its insurance policies and then divide up the risk among a number of insurance providers so that in the event that a large loss occurs this will be divided up throughout a number of firms, thereby saving the insurance company from large losses.

The Insurance Company should prefer reinsurance over risk retention.

Question 5

Explain the role of insurance intermediaries in Insurance business. Explain the relevant provision of the Insurance Act, 1938, which gives protection to Agents who have served the insurance company for at least 5 years. (5 marks)

Answer 5

Role of Intermediaries in Insurance Industry

Innovative Marketing : Insurance intermediaries bring innovative marketing practices in the insurance marketplace. This deepens and broadens insurance markets by increasing consumers' awareness of the protections offered by insurance, their awareness of the multitude of insurance options and their understanding as to how to purchase the insurance they need.

Dissemination of information to Consumers : Intermediaries provide customers with the necessary information required to make educated purchases/ informed decisions. Intermediaries can explain what a consumer needs, and what the options are in terms of insurers, policies and prices. Faced with knowledgeable client base that has multiple choices, insurers will offer policies that fit their customers' needs and at competitive prices.

Dissemination of information to the marketplace : Intermediaries gather and evaluate information regarding placements, premiums and claims experience.

Sound Competition : Increased consumer knowledge ultimately helps increasing the demand for insurance and improve take up rates. Increased utilization of insurance allows producers of goods and services to make the most of their risk management budgets and take advantage of a more competitive financial climate, thereby, boosting economic growth.

An insurance agent is paid commission for every premium received till death or maturity or the premium paying period on the policies sourced by him on behalf of an insurance company.

However, where the Agent is terminated, the commission on the premiums paid subsequent to the date of termination stands normally forfeited.

However, Section 44 of the Insurance Act gives protection to Agents who have served the insurance company for atleast 5 years.

Therefore, where the services of an insurance agent is terminated after the Agent has served the insurer continually for a period of 5 years, the insurer is required to pay renewal commission on premiums received subsequent to termination on policies sourced prior to termination, if the following conditions are satisfied:

- (i) If the agent has not been terminated on the grounds of fraud.
- (ii) That policy amounting to not less than Rs. 50,000 of sum insured by the agent were in force on a date one year before his agency to act as an agent of the company.
- (iii) That the renewal commission due to him shall not exceeds 4%.

The section also empowers that the commission shall be payable to the legal heirs of the agent after his death say for 5 years, as levy on such commission is payable had such agent been alive.

Question 6

As a Compliance Officer, how would you ensure that your Company is not penalised for "penalty payments" highlighting the powers of IRDAI under section 44, 102, 105B or 105C in particular. (5 marks)

Answer 6

As a compliance officer every Company Secretary of an insurance company first and foremost ensure due diligence and compliance with the various provisions under the IRDAI guidelines and regulations.

The IRDAI is empowered under various section to impose penalties on insurance companies for default in company with the provisions under the Act.

The power of IRDAI under section 44, 102, 105B and 105C are discussed below :

Under section 44A of the Insurance Act, 1938, for the purposes of ensuring compliance with the provisions of sections 40A, 40B, 40C, 42B and 42C the Authority may by notice,—

- (a) require from an insurer, principal agent, chief agent, or special agent such information certified, if so required by an auditor or actuary, as he may consider necessary;
- (b) require an insurer, principal agent, chief agent, or special agent to submit for his examination as the principal place of business of the insurer in India, any book of account, register or other document, or to supply any statement which may be specified in the notice;
- (c) examine any officer of an insurer or a principal agent, chief agent or special agent on oath, in relation to any such information, book, register, document or statement and administer the oath accordingly;

and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice.

Under Section 102 : It empowers IRDAI to impose a penalty not exceeding five lakh rupees for each such failure and punishable with fine for an insurance company:

- (a) Failure to furnish any document, statement, account, return or report to IRDAI.
- (b) Failure to comply with the directions (Section 34 empowers IRDAI. to issue directions if it is satisfied to do so in the interests of public or for prevention of affairs being conducted detrimental to policy holders or to secure proper management of any insurer).
- (c) Failure to maintain the required solvency margin.
- (d) Failure to comply with the directions on the insurance treaties.

Under Section 105B : It empowers IRDAI, if an insurer fails to comply with the provisions of section 32B, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

Under Section 105C : It empowers IRDAI, if an insurer fails to comply with the provisions of section 32C, he shall be liable to a penalty not exceeding twenty-five lakh rupees for each such failure and in the case of subsequent and continuing failure, the registration granted to such insurer under section 3 shall be cancelled by the Authority.

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

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Please read the Case below carefully and answer the questions at the end in detail:

PayPal Accuses Paytm of Trademark Infringement in India

On November 18, 2016, Paypal Inc. filed an objection at the Indian Trademark Office accusing Paytm, an Indian mobile wallet company, of trademark infringement. The objection comes at the heels of the recent windfall made by the latter on account of a cash-strapped nation moving rapidly towards a cashless normal.

For six years, Paytm had been steadily becoming a household name in middle-class India — until it really hit the jackpot on November 8, 2016 when the Indian Prime Minister Narendra Modi announced demonetization of currency notes of Rs. 500 and Rs. 1000 — invalidating overnight 80% of the country’s cash in circulation. The drastic move was taken to tackle the vast amounts of unaccounted “black” money in the Indian economy that was being used for bribery, corruption, tax evasion and for funding separatists and terrorists — and has since invoked strong emotions, both in favor and against, from the media, politicians and citizens across the country.

A direct consequence to the demonetization has been an unprecedented increase in electronic transactions — with Paytm being at the forefront. Adding over half a million users a day, Paytm saw its daily transactions grow from 2.5 million to over 7 million a day and a 10-fold increase in the amount of money added to Paytm accounts in the first 14 days after the demonetization was announced.

Rapid growth in that short a time earns Paytm not only great profits and valuation, but also the attention of global competitors like PayPal. In its complaint, PayPal accused Paytm of having “slavishly adopted the two-tone blue color scheme” of PayPal’s own logo in entirety, and especially where “The first syllable in each mark is in dark blue color and the second syllable in a light blue color”. Further, PayPal also noted that “both marks begin with the term ‘PAY’ which consumers tend to remember more than the second syllable, with the marks being of similar length.”

The Indian Trademark law requires an applicant to publish and advertise their logo for a period of 4 months in which objections can be raised by third parties. Paytm applied for a trademark registration on July 18, 2016 — which means its four month window expired on November 18, 2016. PayPal’s last-day complaint has thus raised many an eyebrow on why a company like PayPal — with ample legal resources at hand — would wait right until the end of the window to file the complaint. Needless to say, it was only after the demonetization that PayPal felt threatened (read jealous) by the rise of Paytm in a market that until now has been ignored, underserved and/

or underperformed by PayPal. It must be noted that PayPal had not registered its own trademark in India until after the demonetization — a fact that Paytm's lawyer will undoubtedly cite at trial.

Notwithstanding the timing and PayPal's motivations, the complaint and the subject matter do raise a few important points.

The names PayPal and Paytm are similar to the extent both start with the word "Pay" — however given that both companies operate in the electronic transactions space, PayPal would have a tough time winning the argument based on just the word "Pay" in the name. In fact, there is precedent strongly in favor of Paytm here. In Micronix India Vs. Mr. J.R. Kapoor, for example, the Supreme Court observed that micro-chip technology being the basis of many of the electronic products, the word "micro" has much relevance in describing the products and therefore no one can claim monopoly over the use of the said word. Applying the same logic in this case, the word "Pay" has little distinctive relevance in the market to which PayPal and Paytm cater.

PayPal's stronger argument lies in the use of a similar color combination. Even a brief look at the two logos betrays that similarity between the two. The color tones while not identical — are undoubtedly similar — the first syllable is a darker shade of blue while the second syllable is light blue.

Technically, the Paytm logo uses color codes #042e6f (dark blue) and #00baf2 (light blue) while PayPal uses #002d8b (dark blue) and #009be1 (light blue) — so one could argue that the colors are not exactly identical. The difference is more easily seen if you compare just the colors side by side. It will remain to be seen if the difference is big enough for consumers and more importantly for the court.

The Indian Trademark Law does protect colors to the extent the colors or combination of colors confer a distinctive characteristic to a product or service. Schedule 10 of the Trade Marks Act, 1999, pertains specifically to use of colors :

- (1) A trade mark may be limited wholly or in part to any combination of colors and any such limitation shall be taken into consideration by the tribunal having to decide on the distinctive character of the trade mark.*
- (2) So far as a trade mark is registered without limitation of color, it shall be deemed to be registered for all colors.*

PayPal will undoubtedly argue that the differences in the two sets of colors is minimal and inconsequential to the consumer's eye — an ordinary consumer will not be able to discern the difference and naturally confuse between the two logos. This approach gives more weight to the overall look and feel of the brand — and at least partly abandons the question on whether PayPal has a trademark right over use of the particular colors.

It also opens up the discussion to whether the whole package — name, font and colors — used by Paytm and PayPal are similar enough for ordinary consumers in India to be deceived into buying the wrong product.

Consumer perception can be a tricky territory for PayPal, especially after Paytm's

customer base increased manifold over the last five weeks. The key question the court should ask is :

Would an ordinary consumer intending to use PayPal be confused into using Paytm instead ?

The fact of the matter is that ordinary consumers like regular workers, grocers and Uber drivers use and hear the word Paytm all day every day — most of which would not even know about PayPal. PayPal's foray into India has been limited largely to eBay shoppers, freelancers and IT software developers that are exposed to global economy much more than the ordinary consumer — which means that if PayPal and/or Paytm were to conduct a survey, it would likely result strongly in favor of Paytm.

However, had PayPal chosen to file a trademark infringement lawsuit before the demonetization move was announced (or perhaps anytime in 2011-2014) when Paytm had not yet established its household name status, it would have been a much easier battle (albeit also bearing much less rewards). PayPal would however be much better placed to win this dispute in virtually any other country (if and when Paytm expands its operations in those countries) — where PayPal still is recognized as a global payments leader.

Questions :

- (a) What prompted PayPal file complain on last day against Paytm though it had ample legal resources but waited until the end of the window ? (10 marks)*
- (b) Is Paytm and PayPal branding similar ? Would you way PayPal & Paytm have similar trademarks ? What is the extent of similarity ? (10 marks)*
- (c) Can colors or color combinations be trademarked in India ? Would an ordinary consumer be confused ? (15 marks)*
- (d) Does Paytm deceive consumers away from PayPal ? Are Paytm and PayPal Competitors ? Does arm to decide consumers to use Paytm ? (15 marks)*

Answer 1(a)

The relevant facts of the case (in brief) need to be analyzed before really answering the question as to what prompted PayPal file the complaint on the last day against Paytm though it had ample legal resources and still it waited till the end of the window. The facts are, that on November 18, 2016, Paypal Inc. had filed an objection at the Indian Trademark Office accusing Paytm of trademark infringement. The timings of filing of the objection is interesting since it has come very soon after the windfall business gains made by Paytm on account of the change in the cash-strapped nation moving rapidly towards a cashless normal.

It is further stated that for six years (since its incorporation) Paytm had steadily become a household name in India i.e., inhabited largely by the middle class till it got benefitted and hit the jackpot on November 8, 2016 when the Indian Prime Minister, Shri. Narendra Modi announced the decision of demonetization of currency notes in the denominations of Rs. 500 and Rs. 1000 respectively, thereby invalidating overnight 80% of the country's cash currency in circulation. It is important to note that the said

move was taken by the Government of India to tackle the problem of vast amounts of unaccounted “black” money operating in the Indian economy which was being inter alia used for illegal purposes like bribery, corruption, tax evasion and for funding separatists and terrorists as well, and thus the measure invoked strong emotions, both in favor as well as against the decision from all quarters including the media, the politicians and the citizens across the country. This also proves that Paytm got naturally benefited from this move being one of the only few players operating in the Indian market.

As per the facts, the direct consequence of demonetization was that there was an unprecedented increase in electronic transactions – with Paytm being the beneficiary was in the forefront. As per the statistics available, there was an addition of over half a million users per day, and Paytm also saw its daily transactions grow from 2.5 million to over 7 million a day and a 10-fold increase in the amount of money added to Paytm accounts in the initial first 14 days after the demonetization was announced.

Rapid growth in that short a time earned Paytm not only great profits and valuation, but also the attention of global competitors like PayPal. In its complaint, as per the facts available, PayPal has accused Paytm of having “*slavishly adopted the two-tone blue color scheme*” of PayPal’s own logo in entirety, and especially where “*The first syllable in each mark is in dark blue color and the second syllable in a light blue color*”. Further, PayPal also noted that “*both marks begin with the term ‘PAY’ which consumers tend to remember more than the second syllable, with the marks being of similar length.*”

Needless to say it was only after the demonetization that PayPal felt threatened (read jealous) by the rise of Paytm in a market that until now had been ignored, underserved and /or underperformed by PayPal. Another important fact is that PayPal had not registered its own trademark in India until after the demonetization and thus its intention to carry out a huge business in India is suspect.

Coming to the position of law on the subject, it is important to note that while the law, Limitation Act, 1963 in particular, prescribes different limitation periods for filing of different suits, appeals and applications in the court of law (for their respective causes of action), it does not prohibit one from filing the same even on the last day of the end of period of limitation. Furthermore, it is only in cases wherein the limitation period is not prescribed by the statute that the court is to look into the facts of the case to ascertain if there were bottlenecks or an unreasonable delay.

Therefore, in the facts of the case, PayPal is entitled to file its objections / complaint even on the last day of the period of limitation and all facts provided by the other party are extraneous to the issue at hand. No adverse inference can be drawn from the said facts against PayPal. The objection being filed within the period of limitation (prescribed period) merits consideration (by the Tribunal) from the limitation standpoint.

Answer 1(b)

The names ‘PayPal’ and ‘Paytm’ are undoubtedly similar but the similarity is to the extent that both start with the word “Pay” and relying only on the fact that both companies operate in the electronic transactions space, PayPal would have a tough time winning the argument based on the presence of just the word “Pay” in both the names. In fact, the precedent provided in the facts of the case is strongly in favor of Paytm here. Thus, in the case of *Micronix India v. JR Kapoor*, MANU/SC/1166/1994 : 1994 Supp (3) SCC

215 : 1994 (3) SCALE 732, the Supreme Court had observed that “*micro-chip technology being the base of many of the electronic products, the word “micro” has much relevance in describing the products. Further, the word ‘micro’ being descriptive of the micro technology used for production of many electronic goods which daily come to the market, no one can claim monopoly over the use of the said word.*” Applying the same logic to the case at hand, the word “Pay” has little distinctive relevance in the market to which PayPal and Paytm cater.

In the given set of facts, PayPal has also argued and insisted on the use of a similar color combination by Paytm as that of PayPal to make a case for non-grant of Trade Mark rights to Paytm. It is however provided in the facts of the case that even a brief look at the two logos betrays such similarity between the two. The color tones, while not identical, are undoubtedly similar – the first syllable is a darker shade of blue while the second syllable is light blue.

It is further provided in the facts that, technically speaking, the Paytm logo uses color codes #042e6f (dark blue) and #00baf2 (light blue), while PayPal uses #002d8b (dark blue) and #009be1 (light blue). Therefore, one could argue that the colors are not exactly identical. The difference is thus more easily seen if one compares just the colors side by side.

From the legal standpoint, section 2(h) of the Trade Marks Act, 1999 defines the term ‘Deceptively similar’ as: ‘*A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion.*’ Further, Section 11 of the Trade Marks Act, 1999 lays down the relative grounds for refusal of registration wherein it is stated that ‘*a trade mark shall not be registered if, because of (a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.*’

In the facts of the case, PayPal had not registered its trade mark in India prior to the application for registration by Paytm. Furthermore, it is stated that the Ordinary consumers like regular workers, grocers and uber drivers use and hear the word Paytm throughout the day on daily basis and most of which would not even know about Paypal. Paypal’s foray into India has been limited largely to eBay shoppers, freelancers and IT software developers that are exposed to global economy, which means that if Paypal and Paytm were to conduct a survey, it would likely result strongly in favor of Paytm.

Taking the aforementioned facts and the law into consideration, it is very difficult to conclude that the branding of Paytm and Paypal are similar or to say that both have similar trademarks. The similarity between the two is not substantial to cause the customer of one brand to confuse it with the other one.

Answer 1(c)

The Indian Trademark Law (Trade Marks Act, 1999) does protect colors to the extent the colors or combination of colors confer a distinctive characteristic to the trade mark applied to the product or service. Section 10 of the Trade Marks Act, 1999, pertains specifically to use of colors. It lays down that :

‘A trade mark may be limited wholly or in part to any combination of colors and any

such limitation shall be taken into consideration by the tribunal having to decide on the distinctive character of the trade mark.'

So far as a trade mark is registered without limitation of color, it shall be deemed to be registered for all colors.

In the facts of the present case, PayPal can argue that the difference in the two sets of colors is minimal and inconsequential to the consumer's eye, thus, an ordinary consumer will not be able to discern the difference and shall naturally be confused between the two logos. This approach, however, gives more weight to the overall look and feel of the brand and at least partly abandons the question on whether PayPal has a trademark right over use of the particular colors. Thus, in my opinion, it is not the correct approach or a fair reading of the Trade Mark Law in India.

It also opens up the discussion as to whether the whole package – name, font and colors, used by Paytm and PayPal, are similar enough for ordinary consumers in India to be deceived into buying the wrong product. In the facts of the case, it has been clearly provided that the difference between the colors in the two trademarks is more easily seen if one compares just the colors side by side.

Therefore, it is clear that though color and color combinations can be a subject matter of Trade Mark in India, in the facts of the present case, it is highly unlikely that the consumers may be trapped into the error of confusing Paytm's trade mark as that of PayPal's trade mark.

Answer 1(d)

The answer to the question regarding Consumer perception wrt the services provided by Paytm and PayPal is really subjective. However, the key question the court should ask itself is: *Has the expansion of business by Paytm in India been on account of any misconception in the minds of the customers as to the real identity or the origin of Paytm and has there been any confusion in the minds of the customers between the business of Paytm and PayPal.* In short, would the consumers confuse Paytm as PayPal while deciding to avail its services.

As provided in the facts, ordinary consumers like regular workers, grocers and Uber drivers use and hear the word Paytm throughout the day on daily basis. Most of them would not even know about PayPal. As further provided, PayPal's foray into India has been limited largely to eBay shoppers, freelancers and IT software developers that are exposed to global economy much more than the ordinary consumer – which means that if PayPal and / or Paytm were to conduct a survey, it would likely result strongly in favor of Paytm.

However, had PayPal chosen to file a trademark infringement lawsuit before the demonetization move was announced (or perhaps anytime in 2011-2014) when Paytm had not yet established its household name status, it would have been a much easier battle (albeit also bearing much less rewards). PayPal would however be much better placed to win this dispute in virtually any other country (if and when Paytm expands its operations in those countries) – where PayPal is still recognized as a global payments leader.

Thus, it is not correct to say that Paytm has either deceived consumers away from Paypal or that Paytm and Paypal are competitors in the Indian market.

Question 2

- (a) *Statement : Customs has lost power to interdict Patent violating goods at the Border. It can stop imports of trade mark infringement but not patents*

By Notification Nos. 56-Customs (NT) and 57-Customs (NT) dated 22 June, 2018 the Customs has lost its power to interdict patent infringing goods at the time of customs clearance.

In the previous dispensation, a patent registered with the customs, was automatically enforced at the border by an alarm triggered by the EDI computer which raised a flag from the inward manifest when goods with registered patents entered a port. The infringing goods import was prohibited under Sec. 11 of Customs Act, 1962.

The offence could result in confiscation of the goods and their destruction.

What is the impact of the above on technology import and domestic manufacturing? Discuss. (10 marks)

- (b) *Several unpublished Ph.D. dissertations and television documentary are lying idle in university library. A publishing house interested to publish these unpublished Ph.D. dissertations in the form of book and reproduce these television documentary but the problem is copyright. Can the publishing house apply for compulsory licence for these academic resources like compulsory licence for patented drug ? (10 marks)*
- (c) *Farmers in developing countries particularly in India are very confused and do not understand the concept of intellectual property right. Some people are misguiding them and creating panic and rumour that the patent law will prevent them to use seeds for cultivation. If you are an IPR expert how you will clear farmers' doubt about the patent law that it will not affect their livelihood and still they can use the seeds for cultivation as usual. (10 marks)*

Answer 2(a)

Many multinationals secured Patent protection at the border without having taken the pains to go to the Court of Law to get an adjudication as regards infringement of the Patent. This provision in the border rules was deliberately inserted in the 2007 law by certain vested interests in the customs who wanted a source of income from legal practice of Patent law after their retirement. They went beyond the TRIPs Agreement at WTO which allowed waiver of Patent enforcement at the border to Developing Countries.

(The fact that Indian Border Rules on Patent enforcement go beyond WTO TRIPs was first pointed out by the Academy Business Studies in 2007. It has taken 11 years for the Government to amend the rules and bring with the special treatment offered to developing countries by WTO).

Many Indian manufacturers, who were earlier harassed by the Customs Authority on the ground that the goods imported infringe somebody's registered Patent, shall get

relief from the present notification. The imposters in India who registered false Patents with an intent to blackmail the importers will also lose ground due to the present notification. The Ramkumar case of 2007 is of relevance here. In that case an “inventor” from Madurai registered a false Patent for dual sim mobile phones of suitcase size. He demanded and secured, some 60 crore rupees from the reputed company (an importer in this case) like Samsung, as licence fee to import dual sim phones. Finally, the law caught hold of him, and the IP Appellate Board overturned his Patent and thus the Customs Authority allowed free import of the dual sim phones without Ram Kumar’s NOC (No Objection Certificate).

The amendment brought into the Border Rules (the present notification in particular) are not intended to say that India shall not provide protection to the Patent Rights of Inventors. A regular Court of Law as well as the IP Appellate Board (IPAB) is required to be moved by such Patent holder in order to secure an injunction to stop any infringement of his rights at the point of sale / import of an infringing article.

In the two notifications reference to Patent Act, 1970 have been omitted and in the registration as well as enforcement system. Other IPRs like copyright, designs, and trademark will however continue to get protection at the border.

Since the notification is made effective prospectively, all past cases shall, however, continue to be adjudicated at the customs border as per the old law.

Answer 2(b)

The law on this particular point can be ascertained from the language of section 31 and section 31A of the Copyright Act, 1957. Section 31 of the Copyright Act, 1957 provides that:

‘if at any time during the term of copyright in any work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work (a) has refused to re-publish or allow the re-publication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or (b) has refused to allow communication to the public by broadcast of such work or in the case of a sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable, the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a license to republish the work, perform the work in public or communicate the work to the public by broadcast, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine.’

Compulsory License in Unpublished or Published Works

Further, section 31A of the Copyright Act, 1957 provides that:

‘Where, in the case of any unpublished work or any work published or communicated to the public and the work is withheld from the public in India, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a license to publish or communicate to the public such work or a translation thereof in any language.’

Section 31A further provides that before making an application to the Copyright Board, the applicant is required to publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

The section continues to lay down that the Copyright Board after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a license to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the license to the applicant in accordance with the direction of the Copyright Board.

In the facts of the present case, generally, the ownership over the dissertation belongs either to the University or the Student itself (if agreed to by the University). The publishing house is thus not entitled to approach the Copyright Board asking for grant of a compulsory license to publish the work, at the first instance. It has to first approach the Copyright Owner / Holder seeking its permission for such publication / republication. However, if later it is found that the Copyright owner/holder is unreasonable in withholding or refusing to grant its consent for such publication or re-publication of the work, then a case can be made out before the Copyright Board who shall consider and decide the matter on its own merits.

Answer 2(c)

The law on the subject is contained in the Protection of Plant Varieties and Farmers' Rights Act, 2001 where under the concept of Plant Breeders' Rights has been provided legal sanction / authority. There is undoubtedly a need to provide incentives to the Plant Breeders who are engaged in the creative work of research which sustains agricultural progress through returns on investments made in research and to persuade the researchers to share the benefits of their creativity with the society.

The issue of enacting a law relating to Plant Varieties Protection and Farmers' Rights in India assumed importance particularly in the wake of TRIPS agreement under WTO which seeks to promote effective protection of Intellectual Property Rights in all fields of technology. Article 27 of TRIPS Agreement defines "Patentable subject matter" and requires member countries to provide for the protection of plant varieties whether by patenting or by an effective *sui generis* system or by any combination thereof.

With a view to provide for the establishment of an Authority to give an effective system of protection of the rights of plant breeders and farmers, and to encourage the development of new varieties of plants and to give effect to the provisions of TRIPS Agreement, the Parliament enacted the *Protection of Plant Varieties and Farmers' Right Act, 2001*. The Act seeks to stimulate investment for research and development both in the public and private sectors for the development of new plant varieties by ensuring appropriate returns on such investments. It also seeks to facilitate the growth of the seed industry in the country through domestic and foreign investment to ensure the availability of high-quality seeds and planting material to Indian farmers.

It also recognizes the role of farmers as cultivators and conservers and the

contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution through benefit sharing and protecting the traditional rights of the farmers. The Act also provides for setting up of the Protection of Plant Varieties and Farmer's Rights Authority to promote and develop new varieties of plants and promote rights of the farmers and breeders.

Considering the above, it is not correct to say that the Patent Law prohibits the Farmers from using seeds (for cultivation) which are not a subject matter of grant of a right under the *Protection of Plant Varieties and Farmers' Right Act, 2001*. In fact, the law is meant to provide protection to the farmers' rights over the inventions that they are able to come up with and disclose them for the benefit of the common public at large.

Question 3

Geographical indications are the new WTO compatible measure to protect well known traditional knowledge and established trade name. Discuss with reference to Alphonso mango case. (5 marks)

Answer 3

Alphonso Mango from Ratnagiri, Sindhudurg and other adjoining areas in Maharashtra, finally got the status (and thus the legal protection) of a Geographical Indication (GI) Tag. A Geographical Indication or a GI is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to their origin. Such a name conveys an assurance of quality and distinctiveness which is essentially attributable to its origin in that defined geographical locality.

Darjeeling Tea, Mahabaleshwar Strawberry, Blue Pottery of Jaipur, Banarasi Sarees, and Tirupati Laddus are some of the GIs.

GI products can benefit the rural economy in remote areas, by supplementing the incomes of artisans, farmers, weavers and craftsmen. Our rural artisans possess unique skills and knowledge of traditional practices and methods, passed down from generation to generation, which need to be protected and promoted.

Recently, Union Minister of Commerce and Industry, Suresh Prabhu, launched the logo and tagline for the Geographical Indications (GI) of India and said that the GI will give the rightful share in the intellectual property to the artisan and the place of origin of the product. He emphasised that it's an area of strength and optimism for India, whereby GI tag has given protection to a large number of hand-made and manufactured products, especially in the informal sector.

The Department of Industrial Policy and Promotion has also taken several initiatives in this regard and is actively involved in promotion and marketing of GIs with a vision to enhance the horizon, both socially and economically for GI producers.

The king of mangoes, Alphonso, better known as 'Hapus' in Maharashtra, is in demand in domestic as well as the international markets not only for its taste but also for pleasant fragrance and vibrant colour. It has long been one of the world's most popular fruits and is exported to various countries including Japan, Korea and Europe. New markets, such as, USA and Australia have been recently opened up for it.

The first product to get a GI tag in India was the Darjeeling tea in 2004 and there are a total of 325 products from India that carry this indication / recognition.

Question 4

Can stamps, Labels, tokens, cards be considered an article for the purpose of registration of Design ? If yes, why and if no, why not ? (5 marks)

Answer 4

The answer to the question is 'No' since, once the Design i.e., the ornamentation is removed only a piece of paper, metal or like material remains and the article referred to ceases to exist. For Design protection, the article must have its existence independent of the Designs applied to it. [Design with respect to label was held not registrable, by an Order on civil case No. 9-D of 1963, Punjab, High Court]. So, the Design applied to an article should be integral with the article itself.

Question 5

Companies are investing huge amount of money in research and development for creation of intellectual properties may be in the form of new technology, drug discovery, trade secret etc. The major concern for the companies are how to protect the IPR. Suggest the strategies for maintenance and protection of confidential information. (5 marks)

Answer 5

Intellectual Property Rights are the key elements needed to maintain a competitive edge in the market in today's dynamic and competitive business environment. Intellectual property is undoubtedly a business asset and an integral part of the business process. Effective acquisition, management and protection of intellectual property can mean the difference between success and failure in businesses today. Thus, it is important that companies take appropriate steps to protect such a valuable asset so as to get the possible commercial results from its ownership.

The various statutes that have been enacted provide an adequate mechanism of protection to intellectual property rights. In the case of Patents, a patent can provide an inventor/corporates with a 20-year government approved monopoly and once his 20 years of protection gets exhausted, the invention can be freely accessed and commercially exploited for the larger good of society by any player who is capable of doing it. However, it is equally true that some ideas cannot be patented, and indeed, some innovators do not want to patent their ideas / inventions, as for instance, trade secret or confidential information. Today more than ever, intellectual property also includes confidential business information, trade secrets, and know-how and key business relationships.

If a trade secret is really kept a secret, the monopoly on an idea or product may never end. But once the jinny is out of the bottle, you won't get it back in, if it is lost it is lost forever and the companies are unlikely to extract sufficient damages from whoever breaches their confidentiality. Trade secrets need to be prevented from being disclosed. Though it is difficult indeed, but not an impossible task. The text book examples that included the recipe for Coca-Cola and the formulation of the alcoholic beverage Chartreuse, which was only known by two monks.

The need to protect these vital assets is more critical than ever. Knowledge has become the key strategic differentiator. If it is valuable to the company, it is valuable to

its competitors as well. Most sophisticated business enterprises (whether small, medium, or large) recognize the need to protect this vital Intellectual Property. But little real attention is paid to protecting or securing these less formal types of intellectual property. It has been observed that many companies surprisingly are oblivious to the fact that these vital intellectual property assets are walking out their front door on a daily, weekly or monthly basis, and heading across the street to rival competitors.

It is important for them to recognize this reality and take steps like creating awareness of the need to protect the company's most valuable strategic assets without which no effective risk management program can be initiated; take stock of company's core intellectual property. It is important for a company to know that what differentiates them from their rivals and gives them a strategic advantage over them in the market place.

There are two principal sources of leakage of trade secrets or confidential information to competitors or other third parties, that is, disclosure and departure.

Disclosure - Trade Secrets can be leaked advertently or inadvertently to the competitors or third parties through careless or deliberate disclosure by company's representatives. For example, when a sales representative or accounts manager meets with a potential supply chain provides about pooling resources to go after a new market or business opportunity. During the meeting, proprietary and confidential information are susceptible to be disclosed.

The business purpose of the disclosure or exchange of information might be quite legitimate, but the legal effect of disclosing confidential information without the benefit of a confidentiality or non-disclosure agreement could be disastrous. Corporate must make it both a corporate policy and business practice not to engage in commercial negotiations with third parties (whether direct competitors or not) without first ensuring that they have a signed Confidentiality or Non-Disclosure Agreement in place.

Departure – The other source of leakage of confidential business information is the exit of Executive(s) or key employees from the Organization. After their employment ceases, the Employee retains the right to use any general skill, experience and knowledge that he has acquired in the course of performing his normal duties, in order that he can continue to earn a living. This has to be balanced against the employer's right to protect its confidential information from any disclosure by such an employee. If the employee retains any confidential information pertaining to the employer or its business, then such an employee is not entitled to use or convey that information without the employer's authority / consent.

Question 6

Many life saving drugs are patented by multinational pharmaceutical companies and many time there is shortage of these medicines in the market. In this context explain working of patented invention and can government issue licence for protection of general public. (5 marks)

Answer 6

Section 83 of the Patents Act, 1970 deals with general principles applicable to

working of Patented Invention. It provides that in exercising the powers conferred for working of Patents and Compulsory Licenses, regard shall be had to the following general considerations, namely:

- a. That patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;
- b. That they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;
- c. That the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;
- d. That patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest especially in sectors of vital importance for socio-economic and technological development of India;
- e. That patents granted do not in any way prohibit Central Government in taking measures to protect public health;
- f. That the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and
- g. That patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

Compulsory Licenses

The provisions for Compulsory Licenses are made in the Patents Act, 1970 to prevent the abuse of grant of Patent as a monopoly and to make the way for commercial exploitation of the invention by any 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 of grant of that 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 License may be made by any person notwithstanding that he is already the holder of a license under the Patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not worked in the

territory of India or that the patented invention is not available to the public at a reasonably affordable price by reason of any admission made by him, whether in such a license or otherwise or by reason of his having accepted such a license.

Thus, while law confers some exclusive monopoly rights upon the individuals (Patent Holders) in respect of their inventions as a credit or reward for the time, efforts and capital spent by them in coming up with such an invention, it equally draws a balance by making provisions thereby ensuring that grant of such a right does not run counter to the interest of society / general public and thus in case there is a shortage of any life saving drug which is a subject matter of Patent by a Multinational Corporation, the Government is entitled to direct such Patent Holder or itself grant the right to a potential player to carry on production of such life saving product to ensure that there is no short supply of it in the public.

INTERNATIONAL BUSINESS LAWS AND PRACTICES (Elective Paper 9.5)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Case Study :

GLOBAL STRATEGY AT BLUNDSTONE

A great Australian name has gradually but firmly become a global celebrity. The famous Australian workboot, Blundstone, is worn by many a well-heeled person in Los Angeles, New York and London. The company has worked hard to survive, counting on innovation, investment, and clear corporate values and culture to make it into the 21st century. Great public relations and famous names do no harm. The American male fashion magazine, Men's Journal, listed the Blundstone 500 Series as a 'must-have'. Television presenter Rosie O'Donnell wore a pair to the opening of The boy from Oz, the Broadway musical starring Australia's Hugh Jackman, and the Australian Idol star, Shannon Noll, toured the Tasmanian factory to be fitted with a new pair of boots. Blundstone is an iconic brand that suits such characters : individualist, running against the fashion trends and tough in their own right.

Blundstone's chief, Steve Gunn, noted that the working-class image fits well with the company philosophy. While the boots have remained close to their working-class roots, they have ventured in other directions. They are featured in fashion shoots with A\$2000 men's Hugo Boss suits and A\$500 women's Calvin Klein zipped jackets. In Canada, the company released the Canada Eh! Boot, selling for about A\$260, to celebrate Blundstone's ten years in that market. The boot features a maple leaf on the elastic siding of the boot. The boot has even featured in crime details : in a murder case, the defendant's barrister noted that a size nine Blundstone boot print had been found near a murder scene, the defendant denied ever having owned Blundstone boots.

A long-term association with the iconic Australian tap group, Tap Dogs, has taken the boot far. Started in 1995, the group is a worldwide hit - always wearing their Blunnies. And it is not by accident : Blundstone has been sponsors from the beginning. These associations are not uncommon. Blundstone also supports the Monash Science Centre's commitment to science education and credits this link and others, such as the one with Australia's highprofile science research institute CSIRO, with its ability to continue its hi-tech innovations that translate into important intellectual property advantages.

Blundstone sells about 1.6 million pairs of shoes each year, at an average A\$100 per pair. The core product is a solid, high-quality workboot, which far more than 100 years has been aimed at the working man. Termed 'the industrial safety market', the Australian market is worth about A\$150 million per year. Blundstone has a 35

per cent share. But the so-called 'urbanwear' category that has created much of the buzz for the brand.

But what is a Blunnie ? It is a tough, rubber soled leather boot with an elastic side panel to allow users to get it on and off easily. The boots last for years and come in many designs to suit all kinds of working conditions.

The Blundstone venture got under way in 1892 when John Blundstone was making boots from a factory in Hobart and had taken his son into the business. John Blundstone and Son was formed in 1902, and in 1932 the concern was purchased by the Cuthbertson family. This brought additional expertise to the Blundstone brand : the Cuthbertson family company was experienced in tanning and shoemaking as well. The manufacturing operations were combined under the Blundstone name and the Cuthbertson name was kept for the tannery enterprise that the Cuthbertsons also owned.

The Blundstone Group has had a long-held vision and strategy and is explicit about its values include :

Respecting the dignity of our people

Active legal compliance

Responsible community membership

Outstanding product quality

Outstanding customer service

Non-discriminatory employment

Safe and healthy workplaces

Active industry membership.

To this end, Blundstone has entered a sponsorship agreement with the women of the Urapuntja Artists, an indigenous Australian art community and the art centre of the Utopia homelands in the Northern Territory. The women artists have design, presentation and merchandising input into the Women's Work range of Blundstone boots. In return, the Urapuntja Artists receive royalty payments and an improved profile, plus business experience and the credibility of joint-venture success.

A recent launch highlights the Blundstone aims. Called Xtreme, it combines the traditional elastic sides with a steel cap and a polyurethane moulded sole. The renowned marketing and PR skills link with the innovation and process efficiency.

One additional unexpected challenge from the move offshore by many Australian footwear manufacturers is that the suppliers have either moved offshore or stopped that portion of their businesses. Therefore, Blundstone has had to find alternative sources of materials, often at higher prices. The company has put a lot of its effort into long-term development and ensuring survival. Sharon Teuma, who recently became export and corporate marketing manager, with long-term involvement in new product development at Blundstone, notes that in some ways the growth and expansion of the company has been at the expense of profits. Other factors, such

as fluctuating conditions in the Australian cattle trade, affect business too. For example, in 2002, the concern, which has a vertically integrated production process, was stocking up on partly processed hides, so that it could capitalise on the influx of cattle into Tasmania because of the milder conditions there, away from the drought-stricken mainland. Such actions fit with the firm's long-term focus.

Blundstone has purchased a rival New Zealand company, John Bull, and used the New Zealand label to launch two new ranges, Matador and Warrior. Steve Gunn, the country born and bred Australian CEO of Blundstone, suggested the boots were a marriage of technology and design. As with the new product launches at Blundstone, the design team was led by Sharon Teuma, who had had previous hits with Blundstone's Women's Work boots, Blunnies For Kids and Mountain Master. Indeed, the Mountain Master brand grew from a revival of a logo that Teuma found when she was researching company archives. The Mountain Master is a hi-tech boot range launched in collaboration with the Australian travel guide company, Lonely Planet. Lonely Planet has been a huge success in publishing and felt that a collaboration with Blundstone would be a natural fit. Indeed, Australian backpackers wearing Blundstone boots, had originally literally taken the Blundstone boot on its global odyssey. The two companies have compatible brand attributes and plan to push the link-up, with Lonely Planet providing a booklet, Walk the planet, to be included in the Mountain Master packaging.

There is a fine line, however, between leveraging the firm's strengths and moving away from those strengths. Exports have been very successful for the Blundstone. During roughly 1992-2002, the percentage of exports had risen from basically zero to about 20 per cent of earnings. The United States is the biggest market, while Canada, Israel and the UK have worked well too. Many new products have been developed and released but always around the footwear theme. The firm has resisted the temptation to diversify the brand into noncore business. Clothing, thought by some to be the brand natural extension, has been resisted. The move, however, has not been completely ruled out, so long as any shifts do not damage the Blundstone name.

Blundstone is a poster organisation for proactive strategic business approaches. In 2000, the Australian government released its recommendations for the textiles, 'clothing, footwear and leather industry. Under the government's long-term plan, the industry was increasingly subjected to direct foreign competition; over time all trade barriers to imports were being removed. Therefore, Australian manufacturers, suppliers and retailers competed essentially on the open market against fierce competitors from places such as China and India. The United States had taken the approach of limiting clothing imports to their markets using quotas. When the World Trade Organization required that these quotas be lifted, the US government set about using other means to protect the local industry. Australia however took the sink or swim approach : compete head-on or die.

The recommendations took an interesting tack. While towards 2010 report noted that imports would continue to create an, environment where many enterprises would fail, it also noted that globalisation and the opening of markets worldwide should give Australian enterprises access, to overseas markets, in developed and developing countries. So it suggested not only that Australian firms could compete against the tide but also that this was an opportunity. Michael Porter, the strategy guru, notes

that a paradox of competing in a global economy lies increasingly in local changes such as knowledge relationships and motivation that distant rivals cannot match.

The proposed strategy was to achieve an industry environment in Australia that stimulates innovation and cultural change through a focus on leadership, fostering innovation, effective supply chain management, overcoming entry barriers and IT.

Blundstone appeared to have taken these directives to heart. A 2002 report by the Tasmanian Electronic Commerce Centre (TECC) cited Blundstone as a poster company for advancement, especially in IT. In a case study in its submission to the Tasmanian government, TECC notes that Blundstone had long been an innovator in the use of technology. For example, its early use of barcoding and touchscreen terminals for production and inventory management had long helped in the battle to survive. However, Blundstone realised early on that online services would be a key in its national and international long-term growth plans. To realise its global aspirations and service its international customers, the firm knew that customers would need to have continuous access to it. So it looked to provide 24 hour real-time account and service capabilities. Blundstone realised the importance of using e-commerce as a competitive tool. The approach : think marketing and customer servicing by online services. Blundstone had as a goal reducing workload and focusing on technology as a way to add value for both itself, in terms of its brand and product, and customers, in terms of access, timeliness and efficiency. The firm provides value using the Internet in three key ways : a website containing its products and distributor contact details, an online ordering and account system for distributors and an internal online document management system for staff.

The outcome has been that the electronic trading system allows for a real-time interactive and integrated online interface with partners and suppliers. The most important outcome, however, is that the use of IT provides a tangible competitive advantage. By being ahead of the curve in product innovation, clever marketing and PR and close working relationships with distributors (which are treated as partners), the firm creates a global network that is hard for competitors to emulate. These types of relationships, often directly with niche distributors in key exports markets, are also too expensive for huge footwear concerns to create (and not advantageous to bother with) and too, complex and costly for smaller firms to implement. The system allows partners to place and track orders, manage account details and access all invoicing data, all online, using Blundstone's infrastructure.

Blundstone has been expanding in specific key ways. It has bought the safety footwear division Protector Technologies and taken over John Bull in New Zealand, one of its rare direct foreign investment efforts. In April, after many rumours that the firm would move production offshore, it invested a further A\$2 million in its Hobart factory to make as efficient as possible. The rationale is partly that the boot is strongly linked to its Australian origins and an Australian boot, 'Made in China', might lose part of its reputation and so dent the brand's value. Not all agree that this would make a difference. Australian customers, for instance : Blundstone has lost domestic sales to Chinese lookalike imports, so clearly some Australian consumers prefer value in the form of lower prices over the intrinsic brand and quality advantages of Blundstone. It also constantly seeks to build its international distribution network, entering distribution alliances with key partners in key markets.

Blundstone's market entry success has been adopted by R.M. Williams, a testament to the 'imitation as flattery' story. R.M. Williams, along with Akubra and Drizabone, round out the Australian icon apparel brands. R.M. Williams have chosen the long-term Blundstone distributor in the US marketplace to distribute their products. Blundstone have used the company, Fletcher Ltd., for many years. Fletcher has helped Blundstone achieve a strong market presence. Other key outlets for Blundstone were also adopted by R.M. Williams.

R.M. Williams, however, has a different target market (the products are often three times the price and fit more the luxury image, especially overseas) and has its own extensive retail network in Australia and some of its own stores (in New York for example).

It also makes hard decisions when needed : when entering the 2003 Christmas trading period, it realised there was a stock glut. Production was shut down one day a week from September and 25 workers were made redundant to help ensure the future of the company.

The origin and image of Blundstones link with the quality and uniqueness of the product, which is why the product seems to appeal in particular international markets. When Greg Cromwell, a Canadian visitor to Australia, saw the boots, he realised the potential for his home country. With the help of the Toronto Austrade office, eventually he and a group of partners set up Blundstone Canada, which operates three stores, a warehouse and a large distribution system. Blundstone Canada is the authorised Canadian distributor for Blundstone boots.

Steve Gunn, who joined the Tasmanian company as a human resources manager in 1996, was promoted to CEO in December, 2001. During his first five years at Blundstone, he introduced new systems and policies, including in-house training and competency systems that were linked to quality and safety systems. As a result, the company has been able to grow and become more global. This growth has been organic, through acquisition and with international distribution alliances. So the company exports to more markets and importantly sources supplies from a wide range of countries.

A recent report notes that footwear production is almost extinct in Australia except for the important, albeit niche, market of bootmakers. Most important of these are Blundstone and R.M. Williams. Hardly a surprise, however, that these should be survivors: Australia's traditional strengths have long been connected physically and psychologically to the land, in terms of primary products and mining related outputs.

Referring to the above case study, answer the following questions :

- (a) Analyze the market entry strategies of Blundstone for global expansion and to capture global market. (10 marks)*
- (b) How has Blundstone capitalised on its core strengths to establish the company as successful shoe maker ? (10 marks)*
- (c) How has the firm sought to turn threats into opportunities ? (10 marks)*
- (d) What direction should Blundstone take in terms of further leveraging its brand ? (10 marks)*
- (e) From the analysis of this case study what are the long-term prospects for the firm ? (10 marks)*

Answer 1(a)

In this case, the company has put a lot of its effort into long-term development and sustainability. Sharon Teuma, export and corporate marketing manager, with long-term involvement in new product development at Blundstone, mentioned that the growth and expansion of the company has been at the expense of profits. Other factors, such as fluctuating conditions in the Australian cattle trade, affect business too.

In 2002, which has a vertically integrated production process, was stocking up on partly processed hides, so that it could capitalise on the influx of cattle into Tasmania because of the milder conditions there, away from the drought-stricken mainland. Such actions fit with the firm's long-term focus.

Blundstone also purchased a rival New Zealand company, John Bull, and used the New Zealand label to launch two new ranges, Matador and Warrior. Steve Gunn, the country born and bred Australian CEO of Blundstone, suggested the boots were a marriage of technology and design. As with the new product launches at Blundstone, the design team which was led by Sharon Teunta, who had had previous hits with Blundstone's Women'sWork boots, Blunnies for Kids and Mountain Master. Indeed, the Mountain Master brand grew from a revival of a logo that Teuma found when she was researching company archives. The Mountain Master is a hi-tech boot range launched in collaboration with the Australian travel guide company, Lonely Planet. Lonely Planet gained tremendous success in the field of publication and so that foraying into a collaboration with Blundstone would be an appropriate approach. Indeed, Australian backpackers wearing Blundstone boots, had originally literally taken the Blundstone boot on its global odyssey. The two companies have compatible brand attributes and plan to push the link-up, with Lonely Planet providing a booklet, Walk the planet, to be included in the Mountain Master packaging.

Exports have been very successful for the Blundstone. During the period 1992 to 2002, the percentage of exports had risen from almost zero to about 20 per cent of earnings. The United States is the biggest market, while Canada, Israel and the UK have also provided substantial business. Blundstone has been expanding in some specific businesses. It has bought the safety footwear division Protector Technologies and taken over John Bull in New Zealand, one of its rare direct foreign investment efforts.

The proposed strategy that Blundstone adopted was innovation and cultural change through focus on fostering leadership, effective supply chain management and surmounting local barriers. Therefore the paradox of competing in a global economy lies in increasing local changes such as knowledge relationship and motivation that distant rival cannot change.

Answer 1(b)

Blundstone's chief, Steve Gunn, directed the company in a way that the working-class image fits well with the company philosophy. While the boots have remained close to their working-class roots, they have ventured in other directions. A long-term association with the iconic Australia Tap group, Tap Dogs, has taken the boot far. Started in 1995, the group is a worldwide hit i.e., always wearing their Blunnies and it is not by accident. Blundstone has been sponsors from the beginning. Blundstone also supports the Monash Science Centre's commitment to science education and credits this link and others, such as the one with Australian's high-profile Science Research

Institute CSIRO, with its ability to continue its hi-tech innovations that translate into important intellectual property advantages.

Blundstone sells about 1.6 million pairs of shoes each year, at an average \$100 per pair. The core product is a solid, high-quality workboot, which for more than 100 years has been aimed at the working man. Termed the industrial safety market, the Australian market is worth about A\$150 million per year. Blundstone has a 35 percent share. But the so-called 'urbanwear' category that has created much of the buzz for the brand.

The Blundstone venture got under way in 1892 when John Blundstone was making boots from a factory in Hobart and had taken his son into the business. John Blundstone and Son was formed in 1902, and in 1932 the concern was purchased by the Cuthbertson family. This brought additional expertise to the Blundstone brand. The Cuthbertson family company was experienced in tanning and shoemaking as well. The manufacturing operations were combined under the Blundstone name and the Cuthbertson name was kept for the tannery enterprise that the Cuthbertsons also owned.

The Blundstone Group has had a long-held vision and strategy and is explicit about its values include:

- Respecting the dignity of our people.
- Active legal compliance.
- Responsible community membership.
- Outstanding product quality.
- Outstanding customer service.
- Non-discriminatory employment.
- Safe and healthy workplaces.
- Active industry membership.

To establish company as a successful shoemaker by its association with Tap Group. Blundstone has been sponsors from the beginning. It has association with research centers like MSC (Monash Science Centre & CSIRO) to continue its Hi-Tech innovation.

Answer 1(c)

Blundstone has entered a sponsorship agreement with the women of the Urapuntja Artists, an indigenous Australian art community and the art centre of the Utopia homelands in the Northern Territory. The women artists have design, presentation and merchandising input into the Women's Work range of Blundstone boots. In return, the Urapuntja Artists receive royalty payments and are able to improve their business profile, plus business experience and the credibility of joint-venture success.

A recent launch highlights the Blundstone aims. Called Xtreme, it combines the traditional elastic sides with a steel cap and a polyurethane molded sole. The renowned marketing and PR skills link with the innovation and process efficiency.

Blundstone has purchased a rival New Zealand company, John Bull, and used the New Zealand label to launch two new ranges, Matador and Warrior. Steve Gunn, the country born and bred Australian CEO of Blundstone, suggested that the boots were a

marriage of technology and design. As with the new product launches at Blundstone, the design team was led by Sharon Teuma, who had previous hits with Blundstone's Women's Work boots, Blunnies for Kids and Mountain Master. Indeed, the Mountain Master brand grew from a revival of a logo that Teuma found when she was researching company archives. The Mountain Master is a hi-tech boot range launched in collaboration with the Australian travel guide company, Lonely Planet. Lonely Planet has gained a huge success in publication and thought that collaboration with Blundstone would be an appropriate approach.

Blundstone had long been an innovator in the use of technology. For example, its early use of barcoding and touchscreen terminals for production and inventory management had helped immensely in its battle for survival. Blundstone realised early on that online services would be a key in its national and international long-term growth plans. To realise its global aspirations and service its international customers, the firm knew that customers would need to have continuous access to it. So it looked to provide 24 hour real-time account and service capabilities. Blundstone realized the importance of using e-commerce as a competitive tool. The approach: Think Marketing and Customer Servicing by Online Services was espoused by Blundstone.

The company has put a lot of its effort into long-term development and ensuring survival. Sharon Teuma, who recently became export and corporate marketing manager, with long-term involvement in new product development at Blundstone, notes that in some ways the growth and expansion of the company has been at the expense of profits. Other factors, such as fluctuating conditions in the Australian cattle trade, has also affected the business. For example, in 2002, the concern, which has a vertically integrated production process, was stocking up on partly processed hides, so that it could capitalise on the influx of cattle into Tasmania because of the milder conditions there, away from the drought-stricken mainland. Such actions fit with the firm's long-term focus.

Answer 1(d)

Blundstone has entered a sponsorship agreement with the women of the Urapuntja Artists, an indigenous Australian art community and the art centre of the Utopia homelands in the Northern Territory. The women artists have design, presentation and merchandising input into the Women's Work range of Blundstone boots.

A recent launch highlights the Blundstone aims. Called Xtreme, it combines the traditional elastic sides with a steel cap and a polyurethane moulded sole. The renowned marketing and PR skills link with the innovation and process efficiency.

Australian CEO of Blundstone, suggested the boots were a marriage of technology and design. As with the new product launches at Blundstone, the design team was led by Sharon Teuma, who had had previous hits with Blundstone's Women's Work boots, Blunnies for Kids and Mountain Master. Indeed, the Mountain Master brand grew from a revival of a logo that Teuma found when she was researching company archives.

The Mountain Master is a hi-tech boot range launched in collaboration with the Australian travel guide company, Lonely Planet. Lonely Planet has been a huge success in publishing and felt that a collaboration with Blundstone would be a natural fit. Indeed, Australian backpackers wearing Blundstone boots, had originally literally taken the

Blundstone boot on its global odyssey. The two companies have compatible brand attributes and plan to push the link-up, with Lonely Planet providing a booklet, Walk the planet, to be included in the Mountain Master packaging.

Many new products have been developed and released but always around the footwear theme. The firm has resisted the temptation to diversify the brand into noncore business. Clothing, thought by some to be the brand natural extension, has been resisted. The move, however, has not been completely ruled out, so long as any shifts do not damage the Blundstone name.

Answer 1(e)

In future, the company may grow organically and through acquisitions in various international markets like USA, Canada, UK and Israel. The company needs to work on consolidating its supply chain and manufacturing in different parts of the world. The company may associate with major online B2C platform in different countries and have a better understanding for demand patterns using IT applications.

The origin and image of Blundstones link with the quality and uniqueness of the product, which is why the product seems to appeal in particular international markets. When Greg Cromwell, a Canadian visitor to Australia, saw the boots, he realised the potential for his home country. With the help of the Toronto Austrade office, eventually he and a group of partners set up Blundstone Canada, which operates three stores, a warehouse and a large distribution system. Blundstone Canada is the authorised Canadian distributor for Blundstone boots.

Steve Gunn, who joined the Tasmanian Company as a human resources manager in 1996, was promoted to CEO in December 2001. During his first five years at Blundstone, he introduced new systems and policies, including in-house training and competency systems that were linked to quality and safety systems. As a result, the company has been able to grow and become more global. This growth has been organic, through acquisition and with international distribution alliances. So the company exports to more markets and importantly sources supplies from a wide range of countries.

A recent report notes that footwear production is almost extinct in Australia except for the important, albeit niche, market of boot makers. Most important of these are Blundstone and RM. Williams.

Therefore the long-term prospects of the Company lies with the human resource manager turned CEO. His policies and competency systems made company more global.

Question 2

- (a) *If you were representing a company negotiating investments in Indonesia, what steps would you take to manage (or reduce) the potential political risks associated with these investments ?* (5 marks)
- (b) *“Containerization’s Benefits can’t be contained.” Explain this statement with reference to Logistic Management.* (5 marks)
- (c) *XYZ Ltd. Company offers “products that is ready for immediate use”, which project is considered as a best practice in this regard. State your answer with suitable examples.* (5 marks)

- (d) *How can local competitors in India use antidumping procedures as a competitive tool against foreign competitors ? (5 marks)*
- (e) *Government set up various advisory bodies for promotion of trade. Elaborate the advisory bodies role in promoting the trade and their effectiveness. (5 marks)*
- (f) *Since all trade terms are basically the same there is no need of using them in export sales contracts. Discuss. (5 marks)*

Answer 2(a)

Companies operating in International Market function in a highly competitive environment and require strategies to differentiate their products and enhance their perceived value.

Political environment refers to the type of government, the legislations, govt. rules and regulations under which a foreign firm operates.

Every country in the world follows its own legal systems. A foreign company operating in that particular country has to abide with the systems of law as long as it is operating in that country.

A particular concern of international firms is the degree of political risk in a foreign location. Political risk refers to the likelihood of government activity that has unwanted consequences for the firm. These consequences can be dramatic as in forced divestment, where a government requires the firm to give up its assets, or more moderate, as in unwelcome regulations or interference in operations. In any case the risk occurs because of uncertainty about the likelihood of government activity occurring. Generally, risk is associated with instability and a country is thus seen as more risky if the government is likely to change unexpectedly, if there is social unrest, if there are riots, revolutions, war, terrorism, and so on. Firms naturally prefer countries that are stable and that present little political risk, but the returns need to be weighed against the risks, and firms often do business in countries where the risk is relatively high. In these situations, firms seek to manage the perceived risk through insurance ownership and management choices, supply and market control, financing arrangements, and so on. In addition the degree of political risk is not solely a function of the country, but depends on the company and its activities as well- a risky country for one company may be relatively safe than another. Thus, in analyzing political-legal environment of country like Indonesia, a Government organization may broadly consider the following aspects:

- Political system governing the business;
- Government approaches towards business;
- Facilities and incentives offered by the govt.;
- Legal restrictions such as licensing requirement, reservation to a specific sector like public sector, private or small-scale sector;
- Restrictions in importing technical know-how, capital goods and raw materials;
- Restrictions in exporting products and services;
- Restrictions on pricing and distribution of goods;
- Procedural formalities involved in setting up of the business.

Answer 2(b)

First of all selection of container would depend on the type of cargo. Then calculate the quantity of cargo that needs to be transported. Now, depending on the quantity, the size of the container that suits the cargo needs is decided. The length of most cargo containers are 10 ft., 20 ft., 30 ft., 40 ft., 45 ft., 48 ft., and 53 ft. Containers that are 20 ft and 40 ft in length are commonly used in ocean freight. Standard width of these containers are 8 ft, while standard height is 8.5 ft. Containers are also available as half height (approx. 4.3) or as high cube (9.5 ft.). One has to make sure that the weight of the cargo does not exceed the containers' rating, which is the maximum permissible weight of a container plus its contents. Now choose the container type from the options available. The benefits of containers are:

- Standardized Style and locking system.
- Ease of loading and unloading.
- Convenience in Portability.
- Affordability in Shipping Operations.
- Eco-Friendliness.
- Durability and Toughness for cargo operations.

Factors to be considered in choosing a cargo container include cost and the convenience of loading and unloading the cargo. It is also necessary to ensure that the cargo containers once decided to be put in use meets all federal and international regulations. Containers should be properly labeled and have proper documentation. Especially tight restrictions are in place concerning the transportation of hazardous and dangerous cargo. There are numerous laws regulating the carriage of cargo at state and international levels. Depending on the type of cargo, there are specific laws for the cargo carried.

FCL means Full Container Load. Here the container consists of cargoes meant for one party, i.e. consignee only. The cargo is stuffed at shipper's warehouse and is de-stuffed at consignee's warehouse. Here the responsibility of stuffing, stowing of cargo inside the container is of the shipper. Stuffing charges are on account of the shipper and the de-stuffing charges on account of the consignee.

LCL means Less Container Load. Here the container consists of cargoes meant for different parties. The carrier collects cargoes from various shippers and stuffs all of them into a container at the pier. At destination, the carrier's agents de-stuff the cargoes from the container and deliver the cargoes to respective consignees.

FCL / LCL means a shipment of goods in which the merchant is responsible for packing into the container and the carrier is responsible for unpacking the container.

LCL/FCL means a shipment of goods in which the carrier is responsible for packing into the container and the merchant is responsible for unpacking out of the container.

Answer 2(c)

The companies which are handling “turnkey projects” are dealing in something which are ready for immediate use. The term which is very common in the construction industry where we commonly use a term “Ready to move flats” which refers bundling of materials and labour by sub-contractors.

A “turnkey” job by a plumber would include the parts (toilets, tub, faucets, pipes, etc.) as well as the plumber’s labour, without any contribution by the general contractors.

This is commonly used in motorsports to describe a car being sold with drive train (engine, transmission, etc.) as a racer may prefer to keep the pieces to use in another vehicle to preserve a combination.

Similarly, this term may be used to advertise the sale of an established business, including all the equipment necessary to run it, or by a business-to-business supplier providing complete packages for business start-up. In a turnkey business transaction, different entities are responsible for setting up a plant or equipment (e.g. trains/ infrastructure) and for putting it into operation. It can include contractual actions - at least through the system, subsystem, or equipment installation phase. It may also include follow-on contractual actions, such as testing, training, logistical, and operational support. It is often given to the best bidder in a procurement process. Turnkey projects can also be extended, known as turnkey plus, where there is perhaps a small equity interest by the supplier and it will later on continue its operation through a management contract or licensing. Turnkey is often used to describe a home built ready for the customer to move in. If a contractor builds a “turnkey home” they frame the structure and finish the interior. Everything is completed down to the cabinets and carpet.

Answer 2(d)

Anti-dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti-dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti-dumping measure as an instrument of fair competition is permitted by the WTO. In fact, anti-dumping is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry. It provides relief to the domestic industry against the injury caused by dumping. In fact, anti-dumping is a trade remedial measure to counteract the trade distortion caused by dumping and the consequential injury to the domestic industry. Only in this sense, it can be seen as a protective measure. It can never be regarded as a protectionist measure.

Local competitors are those producers whose collection output constitutes a major proportion of total India production.

India can use antidumping procedures as a competitive tool against foreign competitors by having relief in the domestic industries in the form of anti-dumping duties and price undertakings.

1. *Anti-Dumping Duties* : Duties are imposed on a source specific basis and can be expressed either on ad valorem or specific basis.
2. *Lesser Duty Rule* : Under the GATT provisions, the national authorities cannot impose duties higher than the margin of dumping.

3. *Injury Margin* : Under the Indian Laws, the govt. is obliged to restrict the anti-dumping duty to lower of the dumping margin and the injury margin which is the difference between the fair selling price due to the domestic industry and the landed cost of the product under consideration. Landed cost for this purpose is taken as the assessable value under the Customs Act and the basic customs duties.
4. *De Minimis Margins* : Any exporter whose margin of dumping is less than 2% of the export price shall be excluded from the purview of anti-dumping duties even if the existence of dumping, injury as well as the causal link are established.
5. *Price Undertakings* : The Designated Authority may suspend or terminate investigation if the exporter concerned furnished an undertaking to revise his price to remove the dumping or the injurious effect of dumping as the case may be. No undertaking can however be accepted before preliminary determination is made.

Answer 2(e)

Terms of reference of the Board of Trade are :

- To advise the Government on Policy measures for preparation and implementation of both short & long term plans for increasing exports in the light of emerging national and international economic scenario;
- To review export performance of various sectors, identify constraints and suggest industry specific measures to optimize export earnings;
- To examine the existing institutional framework for imports and exports and suggest practical measures for further streamlining to achieve the desired objectives; and
- To review the policy instruments and procedures for imports and exports and suggest steps to rationalize and channelize such schemes for optimum use.

Inter State Trade Council

The Inter State Trade Council was setup with a view to serve as a mechanism for institutionalized dialogue between the Union and the States in matters relating to trade facilitation and to create a framework for making States partners in India's export effort.

Answer 2(f)

The Incoterms rules are an internationally recognized standard and are used worldwide in international and domestic contracts for the sale of goods so as to determine the sharing of costs and risks. Incoterms are a set of three-letter standard trade terms most commonly used in international contracts for the sale of goods. Incoterms are accepted by governments, legal authorities and practitioners worldwide for the interpretation of the most commonly used terms in international trade. They either reduce or remove altogether uncertainties arising from different interpretations of such terms in different countries. Incoterms rules provide internationally accepted definitions and rules of interpretation for most common commercial terms. They help traders avoid costly misunderstandings by clarifying the tasks, costs and risks involved in the delivery of goods from sellers to

buyers. Incoterms rules are recognized by UNCITRAL as the global standard for the interpretation of the most common terms in foreign trade.

Incoterms were first published in 1936 by the International Chamber of Commerce (ICC). The rules have been developed and maintained by experts and practitioners brought together by ICC and have become the standard in international business rules setting. Incoterms rules are periodically revised to ensure that they are kept up to date with current trade practices. Multiple versions of Incoterms like Incoterms 2000, Incoterms 2010 are available for use by contracting parties. The Incoterms 2010 rules are effective from January 1, 2011. It is recommended to use Incoterms 2010 after 2011. However parties can choose earlier version of Incoterms also. But it is important to clearly specify the chosen version of Incoterms.

Question 3

A European multinational company interested in foreign direct investment (FDI) and for FDI the company shortlisted two countries i.e. 'X' and 'Y'. These companies has little knowledge about FDI policy of 'X' and 'Y' therefore the company is seeking your help. So analyze the FDI policy of these two countries and submit your report so that the company can select the market accordingly for foreign direct investment. (5 marks)

Answer 3

Considering 'X' and 'Y' as Korea and Thailand respectively for analyzing the FDI policy for this European multinational.

Korea

The Korean government maintained distinctive foreign investment policies giving preference to loans over direct investment to supplement its low level of domestic savings during the early stage of industrialisation. Korea's heavy reliance on foreign borrowing to finance its investment requirements is in sharp contrast to other countries.

The Korean Government had emphasised the need to enhance absorptive capacity as well as the indigenisation of foreign technology through reverse engineering at the outset of industrialisation while restricting both Foreign Direct Investment (FDI) and foreign licensing. This facilitated Korean firms to assimilate imported technology, which eventually led to emergence of global brands like Samsung, Hyundai, and LG.

The Korean government pursued liberalised FDI policy regime in the aftermath of the Asian financial crisis in 1997-98 to fulfil the conditionality of the International Monetary Fund (IMF) in exchange for standby credit.

Several new institutions came into being in Korea immediately after the crisis. Invest Korea is Korea's national investment promotion agency mandated to offer one-stop service as a means of attracting Foreign Direct Investment, while the Office of the Investment Ombudsman was established to provide investment after-care services to foreign-invested companies in Korea. These are affiliated to the Korea Trade Investment Promotion Agency.

Korea enacted a new foreign investment promotion act in 1998 to provide foreign investors incentives which include tax exemptions and reductions, financial support for

employment and training, cash grants for R&D projects, and exemptions or reductions of leasing costs for land for factory and business operations for a specified period.

One of the central reasons for the delays in the construction process in Korea is said to be the lengthy environmental and cultural due diligence on proposed industrial park sites. (OECD, 2008).

Thailand

Thailand followed a traditional import-substitution strategy, imposing tariffs on imports, particularly on finished products in the 1960s. The role of state enterprises was greatly reduced from the 1950s and investment in infrastructure was raised. Attention was given to nurturing the institutional system necessary for industrial development. Major policy shift towards export promotion took place by early 1970s due to balance of payments problems since most of components, raw materials, and machinery to support the production process, had to be imported.

On the FDI front, in 1977 a new Investment Promotion Law was passed which provided the Board of Investment (BOI) with more powers to provide incentives to priority areas and remove obstacles faced by private investors. After the East Asian financial crisis, the Thai government has taken a very favourable approach towards FDI with a number of initiatives to develop the industrial base and exports and progressive liberalisation of laws and regulations constraining foreign ownership in specified economic activities.

The Alien Business Law, which was enacted in 1972 and restricted majority foreign ownership in certain activities, was amended in 1999. The new law relaxed limits on foreign participation in several professions such as law, accounting, advertising and most types of construction, which have been moved from a completely prohibited list to the less restrictive list of businesses.

To sum up, between Korea (X) and Thailand (Y), company should look for Korea as a market which has established it as an Export Led Manufacturing base for the world providing great ease in doing business and trading across borders. If company want to export to world markets, Korea is an attractive destination with low cost supply of steel and other allied eco-system for manufacturing and exports. Thailand has focused on import substitution and a service driven economy aimed at promoting employment and equitable wealth distribution. Choice is that of the company concerned where it wants to invest, manufacturing or services.

Question 4

“Strategic alliance is a strategic cooperation between two or more organization with the aim to achieve a result, one of the parties cannot (easily) achieve alone”. In context of strategic alliance explain the above statement with the best alliances in India. (5 marks)

Answer 4

Strategic alliances are becoming more and more prominent in the global economy. According to Peter F. Drucker, Father of Management Theory stated that the greatest change in corporate culture, and the way business is conducted may be witnessed through the growth of partnership.

Strategic alliances produce numerous press releases about companies forming alliances, and also produces several addresses for strategic alliances consulting companies. The number of strategic alliances almost doubled in past 10 years and expected to increase even more in future. Following business objectives are served by strategic alliances:

1. All-in-one solution.
2. Flexibility.
3. Acquisition of new customers.
4. Add strengths, reduce weaknesses.
5. Access to new markets plus technologies.
6. Common sources.
7. Shared risk.

In order to illustrate the point an example of strategic alliance between Air India and Lufthansa in India, is illustrated as under:

In the context of strategic alliances the goals and objectives adopted by Air India and Lufthansa are:

Lufthansa and Air India significantly improved their market leadership positions on India-Europe-USA routes with the Strategic Alliance agreement signed between Lufthansa & Air India.

From 1st October 2004, Air India has been a partner of Lufthansa. Within the scope of an extensive agreement covering a far-reaching bilateral cooperation, Wolfgang Mayrhuber, Chairman of the Executive Board of Deutsche Lufthansa AG, and V. Thulasidas, Chairman & Managing Director of Air India, signed a Strategic Alliance agreement in Mumbai. The objective of the partnership was expansion of the offer of flights between Germany and India. All flights between the two countries were operated by the two airlines in code-sharing basis, new routes were added.

Through the cooperation in the area of frequent flyer programmes, customers on flights of both airlines can collect and redeem miles for the respective programmes - Miles & More and Flying Returns. Air India has been accorded the IOSA10 Audit Certificate by IATA11 which puts it in the league of a dozen Airlines conforming to quality standards required for joining Global Alliances.

India - Germany / Europe and India-USA are very important markets for Air India which it plans to serve over Frankfurt in 10. IOSA (International Civil Aviation Organisation) – A specialized agency of the United Nations whose objective is to develop the principles and techniques of international air navigation. IATA (International Air Transport Association) – A trade association serving airlines, passengers, shippers, travel agents alliance with Lufthansa.

In addition to the code-sharing between Germany and India, the code of Air India will also be bookable on Lufthansa connecting flights from Frankfurt to Berlin, Munich, Stuttgart and Düsseldorf to Amsterdam, Geneva, Zurich and Lyon as well as to Washington, Denver, Detroit, Chicago and Los Angeles. This cooperation agreement results from a Memorandum of Understanding which the two carriers signed on 26th August 2003. As

per the Memorandum of Understanding, cooperation in the area of sales and marketing is also foreseen as well as cooperation in the medium term in other areas, for example, in the area of IT.

Lufthansa which was flying from Frankfurt to Delhi (once daily), Mumbai (once daily), Chennai (once daily) and Bangalore (five times a week) as well as from Munich to Delhi (three times a week) would fly further six weekly flights between Frankfurt and Mumbai as well as three weekly flights between Frankfurt and Delhi which are operated by Air India and can be booked with a Lufthansa code. Air India served up to 33 destinations from Mumbai and Delhi, including, among others, Frankfurt, Chicago and New York. The fleet of Air India consists of 33 wide bodied aircraft and it had planned to add more to make its Los Angeles & Chicago flights daily. It has therefore, Lufthansa- Air India the way for joint-development of air services on India-Europe-USA route. Thus it can be opined that Lufthansa Air India Strategic alliance agreement was one of the crucial ways for developing air services on India-Europe-USA route.

Question 5

India is a member of UNCTAD and WTO. WTO is concerned for multilateralism in trade, protection of intellectual property rights, resolution of trade disputes, etc. When most of the global trade issues are handled by WTO then why India should continue its membership with UNCTAD, will you advice India to ignore the role of UNCTAD and leave this institution. (5 marks)

Answer 5

WTO is a permanent institution with its own secretariat. WTO commitments are full and permanent. In addition to goods, the WTO covers trade in services and trade-related aspects of intellectual property. The agreements which constitute the WTO are almost all multilateral, thus involve commitments for the entire membership.

Dispute settlement is the central pillar of the multilateral trading system. WTO dispute settlement is faster, more automatic and much less susceptible to blockages. The system is based on clear and defined rules. Transparency and non-discrimination are central to dispute resolution. Principles of dispute settlement of WTO are based on the following principles –

- Equitable,
- Fast,
- Effective,
- Mutually acceptable.

While in case of UNCTAD which was established in 1964 to promote the development-friendly integration of developing countries into the world economy, UNCTAD has progressively evolved into an authoritative knowledge-based institution whose work aims to help shape current policy debates and thinking on development, with a particular focus on ensuring that domestic policies and international actions are mutually supportive in bringing about sustainable development. The organization works to fulfill this mandate by carrying out three key functions-

- It functions as a forum for intergovernmental deliberations, supported by

discussions with experts and exchanges of experience, aimed at consensus building.

- It undertakes research, policy analysis and data collection for the debates of government representatives and experts.
- It provides technical assistance tailored to the specific requirements of developing countries, with special attention to the needs of the least developed countries and of economies in transition. When appropriate, UNCTAD cooperates with other organizations and donor countries in the delivery of technical assistance.

As recognized in its founding mandate, UNCTAD is the focal point of the United Nations for the integrated treatment of trade, investment, technology, finance, commodities and interrelated issues, in advancing inclusive growth and sustainable development.

Therefore we cannot suggest India to separate from UNCTAD and become a member of only WTO.

Question 6

A small and medium enterprise firm got export order from a foreign buyer but the company does not know anything about the nitty-gritty of export and even does not know how to get IEC code number. The company hired you as an export management consultant and asked you to help the company in getting the IEC code so that the company can fulfill the export order in time. How will you help the company in this regard ? (5 marks)

Answer 6

Once all the research and analysis are done by the exporting organization, it has to get registered with the various government authorities. First and foremost is license for exports which is issued by DGFT. In this regard registration to IEC is important for export which is a unique 10 digits code issued by DGFT (Director General of Foreign Trade), Ministry of Commerce, Government of India to Indian Companies, business firms (Proprietorship/ Partnership/Company/ LLP/HUF/Trust).

To import and export in India, IEC Code is mandatory. No entity shall make any Import or Export without IEC Code Number.

If I would have been selected as an export management consultant for getting an IEC Code to fulfill its export order on time. I would initiate to apply for IEC Code by following the guidelines to apply for IEC:

(i) Mandatory Requirements to apply for IEC Code Number

Application can be submitted only on DGFT Website electronically on after registering with ECOM Section by person/by Authorised Employee of the Company at the R & I counters in the office or it can be sent by post/courier.

(ii) Processing of IEC Code Application

The application can be submitted electronically by person at the office or it can be sent through Post/Courier. An acknowledgement in form of a receipt having File Number is generated on receipt of application. The file number is used for

any correspondence/query regarding the IEC application submitted to the office. The application is then sent to IEC section where it is processed. If the application is found complete in all aspects (as per requirements prescribed) an IEC is generated, or else a deficiency letter stating the nature of deficiency is prepared and sent to the applicant. Replies are awaited in cases where deficiency letter is issued and after due compliance by the applicant the IEC is allotted.

(iii) Issue and Dispatch of IEC Code

IEC allotment letter is sent through post at the registered office mentioned by the applicant in the application. Similarly deficiency letters are sent to applicant by post.

(iv) About IEC Application Status

A new option to know the file number has been introduced for all exporters who are sending their application through Post / Courier. The applicant has to input PAN number to get the file number. The applicant can know the status of the IEC application using option "Status of IEC Application" on the website of of the Additional Director General of Foreign Trade (CLA).
