

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

DECEMBER 2017

MODULE 3



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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

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

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

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(i)

NOTE : Guideline Answers of the last Sessions may require updation in the light of changes and references given below :

PROFESSIONAL PROGRAMME

UPDATING SLIP

ADVANCED TAX LAWS AND PRACTICE

MODULE – 3 – PAPER 1

<i>Examination Session</i>	<i>Question No.</i>	<i>Updatons required in the answers</i>
All Previous Sessions	—	<p>The Income Tax, GST and Customs Laws are subject to changes by the Annual Finance Acts. In order to update all the answers, the students are advised to refer to the latest law keeping in mind the following amendments for June 2018 examination.</p> <ul style="list-style-type: none">(i) For Direct taxes, Finance Act, 2017 is applicable.(ii) Applicable Assessment year is 2018-19 (previous year 2017-18).(iii) Wealth Tax Act, 1957 has been abolished w.e.f. 1st April, 2016. The questions from the same will not be asked in examination from December 2015 session onwards.(iv) For Indirect taxes (GST and Customs Law), all changes made by the Finance Act, 2017 are also applicable.(v) Students are also required to update themselves on all the relevant Circulars, Clarifications, Notifications, issued by CBDT / CBEC/ Central Government etc. which became effective, on or before 6 months prior to the date of the respective examination. <p>The questions based on case laws, in conflict with the latest law be treated as of academic interest only.</p>

(ii)

UPDATING SLIP

DRAFTING, APPEARANCES AND PLEADINGS

MODULE – 3 – PAPER 2

<i>Examination Session</i>	<i>Question No.</i>	<i>Updates required in the answers</i>
All Previous Sessions	—	Provisions of Companies Act, 2013.

(iii)

UPDATING SLIP

BANKING LAW AND PRACTICE

MODULE – 3 – ELECTIVE PAPER 9.1

<i>Examination Session</i>	<i>Question No.</i>	<i>Updates required in the answers</i>
All Previous Sessions	—	All relevant amendment pertaining to Banking Laws and Notification/Circulars issued thereunder upto 6 months prior to the date of examination.

(iv)

UPDATING SLIP

CAPITAL, COMMODITY AND MONEY MARKET

MODULE – 3 – ELECTIVE PAPER 9.2

<i>Examination Session</i>	<i>Question No.</i>	<i>Updates required in the answers</i>
All Previous Sessions	—	In accordance to amended Regulations covering Capital Commodity and Money Market.

(v)

UPDATING SLIP

INSURANCE LAW AND PRACTICE

MODULE – 3 – ELECTIVE PAPER 9.3

<i>Examination Session</i>	<i>Question No.</i>	<i>Updates required in the answers</i>
All Previous Sessions	—	All notifications issued by Insurance Regulatory and Development Authority of India (IRDA).

(vi)

UPDATING SLIP

INTELLECTUAL PROPERTY RIGHTS — LAW AND PRACTICE

MODULE – 3 – ELECTIVE PAPER 9.4

<i>Examination Session</i>	<i>Question No.</i>	<i>Updates required in the answers</i>
All Previous Sessions	—	In accordance with revised laws, rules under TRIPs and World Intellectual Property Organization (WIPO) and National Intellectual Property Rights Policy.

(vii)

UPDATING SLIP

INTERNATIONAL BUSINESS - LAWS AND PRACTICES

MODULE – 3 – ELECTIVE PAPER 9.5

<i>Examination Session</i>	<i>Question No.</i>	<i>Updates required in the answers</i>
All Previous Sessions	—	In accordance with revised laws and rules under WTO, IMF, UNCTAD, etc, if any.

PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2017

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 2017-18, unless stated otherwise.

PART A

Question 1

(a) Discuss the taxability or otherwise of the following income in the context of provisions contained under the Income Tax Act, 1961 :

- (i) Agricultural Income of ₹2,50,000 earned by Ms. Divita, a non resident from land in Barmer in Rajasthan.
- (ii) Amount of ₹7,00,000 withdrawn by Mr. Rajesh, a resident individual, from Public Provident Fund as per relevant rules.
- (iii) Mr. Abhiman received ₹1,30,000 on 31.03.2017 towards maturity proceeds of the insurance policy issued on 1.04.2013. The annual premium and capital sum assured are ₹23,000 and ₹1,20,000 respectively.
- (iv) Mr. Dinesh received ₹3,60,000 as partner share of profit in the income of limited liability partnership.
- (v) ₹2,50,000 received by Mr. Rohan from Central Government as compensation on account of disaster taken place in Uttrakhand.

(1 marks each = 5 marks)

(b) Work out the taxable income and the tax payable thereon for A.Y. 17-18 of a partnership firm engaged in retail trade business from the following particulars :

- (i) Net profit of ₹3,65,000 arrived at after debit of interest on capital of partners of ₹1,80,000 and salaries paid to the working partners of ₹4,80,000.
- (ii) Total capital of the partners on which interest paid as debited in the profit and loss account was ₹10,00,000.
- (iii) Both the payments of interest on capital and the salary to the working partners have been authorised by the deed. (5 marks)

(c) Specify the tax incentives for start-ups as amendments effective from 1st April, 2017 and accordingly apply in relation to the assessment year 2017-18 and subsequent assessment years. (5 marks)

Answer 1(a)(i)

Agriculture Income from land situated in India is exempt under section 10(1) both in case of resident as well as non-residents. Therefore, agriculture income of ₹ 2,50,000

from agriculture land situated in Barmer in Rajasthan would be exempt in the hands of Ms. Divita, a non-resident.

Answer 1(a)(ii)

Amount withdrawn from Public Provident Fund 'PPF' is exempt under section 10(11). Therefore, amount of ₹ 7,00,000 withdrawn by Mr. Rajesh, a resident individual, from PPF in accordance with rules is exempt from tax.

Answer 1(a)(iii)

Section 10(10D) exempts, any sum received (otherwise than on death) under a life insurance policy, other than any sum received under an insurance policy issued on or after 01.04.2012 in respect of which the premium payable for any of the years during the term of the policy exceeds 10% of the capital sum assured. Therefore ₹ 1,30,000 received by Mr. Abhiman towards maturity proceeds of the life insurance policy would be chargeable to tax since the premium paid ₹ 23,000 exceeds 10% of the capital sum assured i.e. ₹ 1,20,000 and policy is issued on or after 1-4-2012.

Answer 1(a)(iv)

Partner's share of total income of the firm is exempt in the hands of the partners under section 10(2A). The term Firm includes a Limited Liability Partnership 'LLP' and Partner includes partner of a limited liability partnership firm. Therefore, ₹ 3,60,000 being Dinesh's share of profit in the limited liability partnership would be exempt in the hands of partners.

Answer 1(a)(v)

As per section 10(10BC), any amount received or receivable as compensation by an individual or his/her legal heir on account of any disaster from the Central Government/ State Government or a local authority is exempt from tax, except to the extent such individual or legal heir has already been allowed a deduction under this Act on account of such loss or damage caused by such disaster. Accordingly, the amount of ₹ 2,50,000 received by Mr. Rohan from Central Government as compensation on account of disaster taken place in Uttarakhand is exempt from tax.

Answer 1(b)

Computation of Taxable Income & Tax Liability of Partnership Firm for Assessment Year 2017-18

<i>Particulars</i>	<i>Amount (INR)</i>	<i>Amount (INR)</i>
Net Profit as per Profit and Loss account	3,65,000	
Add: Interest on Capital	1,80,000	
Less: Interest on capital allowable @ 12% on ₹ 10,00,000	(1,20,000)	
Add: Salaries to Partners	4,80,000	
Book Profits		9,05,000

<i>Particulars</i>	<i>Amount (INR)</i>	<i>Amount (INR)</i>
Admissible amount of Salary as a percentage of Book Profits or actual paid whichever is lower		
i) 90% of ₹ 3,00,000 = ₹ 2,70,000	4,80,000	
ii) 60% of ₹ 6,05,000 = ₹ 3,63,000		
Total = ₹ 6,33,000		
Or		
Actual Paid ₹ 4,80,000		
Whichever is lower		
Taxable Income		4,25,000
Tax Payable @ 30.9 %		1,31,325
Tax Payable (rounded off)		1,31,330

Answer 1(c)**Tax Incentives to startups**

Eligible Start-up : As per section 80-IAC, "Eligible start-up" means: a company or a limited liability partnership engaged in eligible business, which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property; and fulfils the following conditions:

- (a) it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2019
- (b) the total turnover of its business does not exceed twenty-five crore rupees in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021; and
- (c) it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government

With a view to providing an impetus to start-ups and facilitates their growth in the initial phase of their business, the following incentives are allowed by Finance Act, 2016 from AY 2017-18:

Deduction under Section 80-IAC : A deduction of 100% of the profits and gains derived by an eligible start-ups is allowed for 3 years out of initial 5 years. The conditions specified in section 80-IAC must be fulfilled to claim deduction.

Capital gains exemption for investment in units of start-up funds : In order to promote the start-up ecosystem in the country, it is envisaged in 'start-up India Action Plan' to establish a Fund of Funds which intends to raise ₹ 2500 crores annually for four years to finance the start-ups. Keeping this objective in view, Amendment is made to insert a new section 54EE to provide exemption from capital gains tax if the long term

capital gains proceeds are invested by an assessee in units of notified specified fund (start-up funds) subject to maximum limit of ₹ 50 lakh and minimum lock-in of 3 years.

Exemption on selling house, if net consideration invested in setting-up start-up company : With an objective to provide relief to an individual or HUF willing to set-up a start-up company by selling a residential property, an amendment has been made in section 54GB to provide that long term capital gains invested in subscription of shares of an eligible start-up company shall be exempt from tax, subject to certain conditions.

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

Question 2

- (a) *Discuss the deductibility or otherwise of the following expenditure incurred by Sumit Agro Industries, while computing its business income for the year ended 31.03.2017.*
- (i) *Land & Building acquired for scientific research related to the business in September, 2016 for ₹ 22,50,000 consisting of cost of land ₹ 9,50,000 and balance for building. (2 marks)*
- (ii) *Contribution to the account of employees as per pension scheme referred to in section 80CCD amounted to ₹ 35,00,000. Amount above 10% of the salary of employees in ₹ 5,80,000. (2 marks)*
- (iii) *Tax on non-monetary perquisites provided to the employees and borne by the employers of ₹ 4,50,000. (1 mark)*
- (b) *Mr. Beeta, aged 30 years, resident in India and a musician derived income of ₹ 5,00,000 from concerts performed outside India. Tax of ₹ 1,00,000 was deducted at source in the country where the concerts were given by Mr. Beeta. India does not have any agreement with that country for avoidance of double taxation. Indian income of Mr. Beeta during the year was of ₹ 3,00,000. Work out of the amount of tax payable and relief due to him under section 91 for the Assessment Year 2017-2018. (5 marks)*
- (c) *State the powers exercised by the Authority for Advance Ruling under the Income Tax Act, 1961. (5 marks)*

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Mr. Bewaja, grows sugarcane and uses the same for the purpose of manufacturing sugar in his factory. 35% of the sugarcane produce is sold for ₹ 20 lacs and the cost of cultivation of such sugarcane is ₹ 7 lacs. The cost of cultivation of the balance sugarcane (65%) is ₹ 13 lacs and the market value of the same is ₹ 35 lacs. He after incurring ₹ 3.5 lacs in the manufacturing process on the balance sugarcane, sold the sugar for ₹ 45 lacs. Is he liable to tax on any income for A.Y. 2017-18 and if, yes, compute the taxable income and the agricultural income? (5 marks)*
- (ii) *Define the term 'Mat Credit' under section 115JAA of the Income Tax Act. And also calculate the tax payable by the company in the assessment year 2017-*

18, if the book profits of a company in the previous year 2016-17 computed in accordance with section 115 JB is ₹20 Lakhs. The total income computed for the same period as per the provisions of the Income Tax Act, is ₹7.5 Lakhs. You are also required to indicate whether the company is eligible for any tax credit. (5 marks)

- (iii) Nadal, a professional tennis player and a non-Indian citizen during the Financial Year 2016-17 participated in India in a Tennis Tournament and won the prize money of ₹25 lacs. He contributed articles on the tournament in a local newspaper for which he was paid ₹3 lakh. He was also paid ₹7,50,000 by a Soft Drink Company for appearance in a TV advertisement. All his expenses in India were though met by the sponsors, but he had incurred ₹ 5,00,000 towards his travel cost to India. He was a non resident for tax purposes in India during the financial year 2016-17.

What would be his tax liability in India for A.Y. 2017-18 ? Is he required to file his return of Income ? (5 marks)

Answer 2(a)(i)

As per section 35(1)(iv) read with section 35(2), if any capital expenditure (other than expenditure on acquisition of land) is incurred on scientific research related to the business carried on by the assessee, the whole of such capital expenditure is allowable as deduction in the previous year in which it is incurred.

Therefore, ₹ 13,00,000 (i.e. ₹ 22,50,000 – ₹ 9,50,000 being the cost of land) is allowable as deduction for the AY 2017-18.

Answer 2(a)(ii)

The employer's contribution to the account of an employee under a pension scheme referred to in section 80CCD, is allowable as deduction under section 36(1)(iva) while computing business income only upto 10% of salary of the employee in the previous year. Accordingly, ₹ 29,20,000 would be allowed as deduction under section 36(1)(iva).

Disallowance under section 40A(9) would be attracted only in respect of the amount in excess of 10% of salary. Therefore, ₹ 5,80,000 would be disallowed as per section 40(A)(9).

Answer 2(a)(iii)

The tax of ₹ 4,50,000 borne by employer on non-monetary perquisites provided to the employees is disallowed under section 40(a)(v).

Answer 2(b)

Computation of Total Income and Tax Liability of Mr. Beeta for the AY 2017-18

Particulars	Amount (INR)	Amount (INR)
Indian Income	3,00,000	
Foreign Income	5,00,000	
Total Taxable Income	8,00,000	

<i>Particulars</i>	<i>Amount (INR)</i>	<i>Amount (INR)</i>
Tax including EC+SHEC		87,550
Average rate of tax in India (87,550 / 8,00,000*100) = 10.94 %		
Foreign tax rate (1,00,000 / 5,00,000 * 100) = 20%		
Doubly Taxed Income	5,00,000	
Relief under section 91 (on ₹ 5,00,000 @ 10.94%) i.e. rate 10.94 % or 20 % whichever is lower		54,700
Tax Payable		32,850

Answer 2(c)

As per section 245U, the Authority for Advance Ruling shall have all the powers which are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters namely:

- (i) Discovery and inspection
- (ii) Enforcing the attendance of any person, including any officer of a banking company and examining him on oath.
- (iii) Compelling the production of books of account and other documents, and
- (iv) Issuing commissions.

Answer 2(A)(i)

Sugarcane is an agricultural produce and therefore, income from the sale of sugarcane gives rise to pure agricultural income.

However, in case of cultivation of sugarcane and use of sugarcane to manufacture sugar, the income would be partly business and partly agricultural. As per Rule 7 of the Income-tax Rules, 1962, taxable business income would be computed after deducting market value of any agricultural produce utilised as a raw material in such business, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind.

The relevant workings as under:

Business Income : Sales – Market Value of 65% of sugarcane produce – manufacturing expenses.

45 lakhs – 35 lakhs – 3.5 lakhs = 6.5 lakhs

Agriculture Income : Market Value of sugarcane produce – Cost of cultivation of the sugarcane

= [20 lakhs + 35 Lakhs] – [7 lakhs + 13 Lakhs]

= 55 lakhs – 20 lakhs

= 35 lakhs

Answer 2(A)(ii)

MAT Credit under section 115JAA: Where tax payable on books profits (18.5% of book profits) exceeds tax payable as per normal provisions viz. MAT exceeds Normal tax, then, such excess tax paid is allowed as credit under Section 115JAA to be set-off in subsequent years; such credit is called as MAT Credit. MAT Credit can be used only if normal tax is higher and even after allowing credit, tax payable cannot be less than MAT.

Calculation of tax payable by the Company for the AY 2017-18

<i>Particulars</i>	<i>Amount (INR)</i>
Tax on Total Income @ 30.9% including cess (7.5 lakh @ 30.9 %)	2,31,750
Tax on Book Profits @ 19.055 % including cess (20 lakhs @ 19.055%)	3,81,100
Since tax on book profits exceeds normal tax, hence,	
(a) deemed total income = book profits i.e.	20,00,000
(b) tax payable = MAT	3,81,100
(c) excess tax paid i.e., Tax on Book Profits – Tax on Total Income as per normal provision of the Income Tax Act, 1961 = ₹ 3,81,100 – ₹ 2,31,750 = ₹ 1,49,350 would be allowed as MAT Credit	1,49,350
(d) The Tax Credit can be adjusted in 10 subsequent assessment year from the assessment year 2018-19.	

Answer 2(A)(iii)

Since the incomes have accrued or arisen or received in India, hence, the same is liable to income-tax in India and includible in total income. Said receipts are taxable as per Section 115BBA, —

1. No expenditure is allowable against such receipt;
2. Hence, total income = prize money of ₹ 25 lakhs + amount received from news paper of ₹ 3 lakhs + amount received towards TV advertisement of ₹ 7,50,000 = ₹ 35,50,000
3. Rate of tax chargeable under section 115BBA = 20% plus 3% education cesses = 20.6%
4. Tax liability of Nadal = 20.6% on ₹ 35,50,000 = ₹ 7,31,300.
5. He is not required to file his return of Income if (a) his total income during the previous year consists only of income arising u/s 115BBA and (b) the tax deductible at source under the provisions of Chapter XVII-B have been deducted from such income by the payers.

PART B**Question 3**

(a) Answer the following independent issues in the context of provisions contained under the GST Act, 2017 ?

- (i) The different applicable rates of GST which also apply to IGST.
- (ii) GST Council.
- (iii) Point of Taxation.
- (iv) SGST cannot be levied in a Union Territory and to plug this loophole, the GST Council had decided to have which legislature.
- (v) Name the Act and the period which provides compensation to the States for the loss of revenue because of implementation of GST. (5 marks)

(b) Nargis Agro Traders located at Jaipur and engaged in the business as retail traders provides the following details of its purchases and sales made during the month of July, 2017 :

Items	(Amount in Rupees)	
	Purchase	Sales
(i) Sugar Candies	1,00,000	1,20,000
(ii) Chocolate Bars	80,000	1,00,000
(iii) Wafers Packets	75,000	60,000
(iv) Biscuits	50,000	50,000

The rate of tax under GST on the items are 5%, 12%, 12% and 18% respectively. You are required to calculate the amount of GST payable and the date by which the due tax is to be paid by the trader for the month of July, 17 after availing the Input Credit. (5 marks)

(c) A person makes an unauthorised import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose fine (in lieu of confiscation) equal to 50% of margin of profit.

The following particulars are made available :

- (i) Assessable value : ₹15,00,000
- (ii) Total duty payable : ₹6,00,000
- (iii) Market value : ₹25,00,000

You are required to narrate the provision and calculate amount of fine and total payment to be made by importer to clear the consignment. (5 marks)

(d) From the following informations you are required to determine the Export Duty and explain your assumptions :

- (i) FOB Price of goods US \$ 120000
- (ii) Shipping Bill presented electronically on 26.04.2017
- (iii) Proper officer passed the order permitting clearance and loading of goods for export on 05.05.2017

(iv) Rate of exchange and rate of export duty are as under :

Date	Rate of exchange	Rate of Export Duty
26.04.2017	1 US \$ = ₹60	9%
05.05.2017	1 US \$ = ₹61	10%

(v) Rate of exchange is notified for export by Central Board of Excise and Customs. (5 marks)

(e) What do you mean by the following specific terms used within the meaning of the customs Act, 1962 :

- (i) Adjudicating Authority
- (ii) Baggage
- (iii) Coastal goods
- (iv) Beneficial Owner
- (v) Customs Area

(5 marks)

Answer 3(a)

- (i) The rates of GST (CGST+ SGST/ UTGST) applicable for goods are **Nil, 5%, 12%, 18%, and 28%**. Some goods are also liable to tax at 0.25% and 3%.
- (ii) GST Council means the council established under article 279A of the Constitution of India having Union Finance Minister as Chairperson, Union Minister of State-incharge for Finance and State Finance Minister of every State as its member.
- (iii) Point of Taxation is not used under GST. The termed used is 'Time of Supply'. The expression 'time of supply' is not defined. The **liability to pay GST arises at the 'time of supply'** determined in accordance with GST Acts.
- (iv) The **Union Territory Goods and Service Tax Act, 2017** provides for levy of GST in Union Territories instead of State Goods and Services Tax (SGST).
- (v) The **Goods and Service Tax (Compensation to States) Act, 2017** for a period of **5 years**.

Answer 3(b)

Note : Since GST Acts require that GST is to be charged separately, hence, all prices are taken as 'value' before taxes. Due credit may be given if a candidate has assumed that prices are inclusive of GST.

1. Calculation of Tax Payable by Nargis Agro Traders on the sales during July, 2017.

Item	Value in ₹	Rate	Tax in ₹
Sugar Candies	1,20,000	5%	6,000
Chocolates Bars	1,00,000	12%	12,000
Wafers Packets	60,000	12%	7,200
Biscuits	50,000	18%	9,000
			34,200

2. Calculation of Tax paid on Purchase as Input Tax

<i>Item</i>	<i>Value in ₹</i>	<i>Rate</i>	<i>Tax in ₹</i>
Sugar Candies	1,00,000	5%	5,000
Chocolates Bars	80,000	12%	9,600
Wafers Packets	75,000	12%	9,000
Biscuits	50,000	18%	9,000
Total Input Tax Credit			32,600

Amount of Tax Payable

Tax to be paid —

- $34,200 - 32,600 = ₹1600/-$ as CGST of ₹800/- and SGST of ₹800/-
- by 20/08/2017.

Answer 3(c)**Computation of amount of redemption fine and total payment to be made by the importer**

Assessable Value or Purchase cost of goods	₹15,00,000	
<i>Add</i> : Customs Duty	₹6,00,000	
Total Cost of goods	₹21,00,000	
Market Value of Goods	₹25,00,000	
Margin of Profit	₹4,00,000	
Proposed Amount of fine = 50% of margin of profit	₹2,00,000	
Maximum fine : As per proviso to sub – Section (1) of Section 125 of the customs Act, 1962. Redemption fine should not exceed the market price of the goods confiscated minus the duty chargeable there on maximum Redemption fine = Market price of goods Confiscated – Duty chargeable = ₹ 25,00,000 - ₹6,00,000	₹19,00,000	
Since, the proposed amount of fine is less than the maximum amount of fine permissible, The redemption fine payable by the importer would be	₹ 2,00,000	
The total payment to be made by the importer to clear the consignment = ₹ 6,00,000 duty + ₹ 2,00,000 fine	₹ 8,00,000	

Answer 3(d)**Computation of Export Duty**

<i>Particular</i>	<i>Amount</i>	
Transaction Value of exports = FOB price of Goods. No further, addition of landing charges is to be made.	US\$ 1,20,000	
Rate of exchange [The rate of exchange notified by CBEC on the date of presentation of shipping bill as per section 14 of the customs act.]	₹60 per \$	
Value in Indian Currency (US \$ 1,20,000 x ₹60)	₹72,00,000	
Rate of Duty [The rate of duty on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered]	10%	
Export Duty @ 10% (No education cess is levied on exports)	₹7,20,000	

Answer 3(e)

- (i) “*Adjudicating Authority*” means any Authority competent to pass any order on decision under this act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.
- (ii) “*Baggage*” includes unaccompanied baggage but does not include motor Vehicles [Section 2 (3)]
- (iii) “*Coastal Goods*” means goods, other than imported goods, transported in a vessel from one port in India to another [Section 2(7)]
- (iv) “*Beneficial Owner*” means any person on whose behalf the goods are being imported or exported or who exercised affective control over the goods being imported or exported [Section 2(3A)]
- (v) “*Customs Area*” means the area of a customs station and includes any area in which imported goods or export goods are ordinary kept before clearance by customs Authorities, Customs area includes work house [Section 2(11)]

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

Question 4

- (a) Narrate all those advantages which will be available to Trade because of implementation of GST. (5 marks)
- (b) Explain the mechanism under the CGST Act, 2017 for claiming Input Tax Credit while making payment of Taxes. (5 marks)

- (c) Miss Priya imported certain goods weighing 1000 kgs having CIF value of US \$ 40,000. Exchange rate of 1 USD was ₹65 on the date of presentation of bill of entry. Basic customs duty chargeable is @ 10% and education cess as applicable. There is no excise duty payable on these goods, if are being manufactured in India. However, vide Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to the difference between amount calculated @ USD 60 per kg and the 'landed value' of goods.

You are required to compute the amount of custom duty and of the antidumping duty payable by Miss Priya. (5 marks)

OR (Alternate question to Q. No. 4)

Question 4A

- (i) Explain the following terms used under the Central Goods and Services Tax Act, 2017 :
- (i) Causal Taxable Person
 - (ii) Input Service Distributor
 - (iii) Manufacture (2 Marks each = 6 marks)
- (ii) Explain in the context of CGST Act, 2017 the following :
- (i) The liability on composite and mixed supplies
 - (ii) Composition levy (2 Marks each = 4 marks)
- (iii) Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following independent cases :
- (a) Jaggi Mehta imported a car from U.K. for his personal use and paid ₹4,50,000 as import duty on the car. However, the car was being re-exported immediately without bringing it into use by Mr. Mehta.
 - (b) Meenakshi imported a music player from Dubai and paid ₹12,000 as import duty. She used it for four months and there after re-exported the same after four months. (5 marks)

Answer 4(a)

The advantages because of applicability of GST to trade are:-

- (i) Reduction in multiplicity of taxes
- (ii) Mitigation of cascading/ double taxation
- (iii) More efficient neutralization of taxes especially for exports
- (iv) Simpler tax regime with fewer rates and exemptions
- (v) Increase in cost competitiveness for domestic industries with reduction in tax cost and also reduced cost of compliance.

Answer 4(b)**Eligibility and Conditions for taking Input Tax Credit**

1. **General Power to take credit [Section 16(1)]** : Every registered person shall, subject to such conditions and restriction as may be prescribed and in the manner specified in section 49, be entitled to take credit or input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
2. **Conditions for taking credit [Section 16(2)]** : Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless;
 - (a) *Invoice* : He is in possession of a tax invoice or debit not issued by supplier registered under this Act, or such other tax payment documents as may be prescribed;
 - (b) *Receipt* : He has received the goods or services or both.
 - (c) *Tax actually paid* : Subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
 - (d) *Return furnished* : He has furnished the return under section 39.

The following points may also be taken:

1. *Receipt of goods in lots against an Invoice* : where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment.
2. *ITC availed to be paid along with interest if payment not made in 180 days of date of invoice* : 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, in such manner as may be prescribed.
3. *Credit can be availed if Payment is made subsequently* : The recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.
4. *Section 16(3) - ITC not allowed in respect of tax component of capital goods if depreciation claimed on in under Income tax Act* : Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

5. *Section 16(4)-Time limit for availing of Input Tax Credit* : A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Answer 4(c)

IMPORTANT: - The question does not any information about GST Rates, etc. and hence, it is assumed that the question is based on pre-GST position. Hence, question is answered based on position prior to 1-7-2017. This view is further supported by mention of 'excise duty'.

Duties leviable : The question clearly states that only basic customs duty, EC and SHEC thereon and anti – dumping duty are leviable on the goods in question. Hence, other duty viz. additional duty of customs u/s 3(5) is not leviable. Since excise duty is NIL, hence, there is no duty under Section 3(1) of Customs Tariff Act, 1975. No EC and SHEC is imposable on anti – dumping duty.

The calculations are as presented below —

	<i>(Amount in ₹)</i>
CIF Value of the Consignment (In Indian ₹) [US \$ 40,000 x 65]	26,00,000
<i>Add</i> : Landing Charges @ 1%	26,000
Assessable Value under Customs Laws	26,26,000
<i>Add</i> : Basic Customs Duty @ 10.3% [10% + 3% EC/SHEC on BCD]	2,70,478
Landed Value/ Cost of the Goods (I)	28,96,478
[For the purpose of the notification imposing anti – dumping duty, “landed value” mans the assessable value as determined under the customs Act, 1962 and includes all duties of customs except duties levied u/s 3, 8 B, 9 and 9A of the said Customs Tariff Act, 1975.]	
Cost of Commodity for the purposes of anti- dumping notification [1000 Kg. x US \$ 60 Per kg. 65 Per dollar] (II)	39,00,000
Anti dumping duty [(II) — (I)]	10,03,522
Total Customs Duties [BCD + Anti-dumping]	12,74,000

Answer 4A(i)

- (i) "Casual Taxable Person" Means a person
 - a. who **occasionally undertakes** transactions involving supply of goods or goods or services or both in the course of furtherance of business, whether as principal, agent or in any other capacity,
 - b. **in a State or a Union territory where he has not fixed place or business;**
- (ii) "Input Service Distributor" Means
 - a. **an office of the supplier** of goods or services or both which receives tax invoices issued under section 31 **towards the receipts of input services** and
 - b. issue a prescribed document for the purposes of **distributing the credit** of central tax, state tax, Integrated tax or Union territory tax paid on the said services **to a supplier of taxable goods or services or both having the same permanent Account number** as that of the said office;
- (iii) "Manufacture" Means—
 - a. processing of raw material or inputs in any manner
 - b. that results in emergence of a new product having a distinct name, character and use and the term "manufacture" shall be construed accordingly.

Answer 4A(ii)

- (i) The tax liability on a composite or a mixed supply shall be determined in the following manner;
 - (a) a composite supply Comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. **Hence, in case of composite supply, tax rate as applicable to principal supply would apply to entire supply;** and
 - (b) A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax. **Hence, in case of mixed supply, highest tax rate as applicable to any single supply would apply to all supplies forming part of mixed supply.**
- (ii) Composition levy is an optional alternative method of levy of tax designed for small taxpayers—
 - (a) Threshold limit viz. aggregate turnover in state of taxable person should not exceed Rs. 75 lakh (or 50 Lakh in special category states)
[Limits are as amended upto cut-off date of 30th June, 2017]
 - (b) Rates of composition levy i.e. 2% of turnover for manufacturers, 1% of turnover for traders, and 5% of turnover for restaurants.

There are other conditions, which need be fulfilled to avail of composition levy and further, there are restrictions as to input tax credit.

Answer 4A(iii)

Computation of duty drawback is as follows:-

(a) Drawback at 98% [4,41,000]

As per Section 74 of the customs Act, 1962 when any identifiable imported goods are re- exported, 98% of the import duty is re- paid as drawback provided—

- the goods are identified to the satisfaction of the Assistant / Deputy Commissioner of Customs as the goods which were imported and
- the same are entered for export within two years from the date of payment of the import duty.

Thus, Jaggi Mehta can claim duty drawback of ₹ 4,41,000/- (98% of ₹ 4,50,000) on the presumption that aforesaid conditions are fulfilled.

- (b) As per section 74 of the Customs Act, 1962, in respect of a motor car or goods imported by a person for his personal and private use, drawback of duty = Import duty paid in respect of such motor car or goods as reduced by 4%, 3%, 2.5% and 2% for use for each quarter or part there of duty the period of first year, second year, third year and fourth year respectively.

Since goods have been used for 4 months i.e. 2 quarters, hence, Meenakshi can claim duty drawback = 100% — 4% × 2 quarters = 92% of 12,000 = ₹ 11,040. It is assumed that all other conditions are fulfilled.

Question 5

- (a) *The transitional provisions enable the existing tax payers to migrate to GST in transparent and smooth manner under the GST Act, 2017 on and from the appointed day being 1.7.2017. Explain. (3 marks)*
- (b) *What do you understand with the term “Container” used under Customs Act, 1962 ? (3 marks)*
- (c) *Bholaram imported certain goods in November, 2015 and an ‘into bond’ bill of entry was presented on 28th November, 2015. Assessable value was US \$ 1,00,000. Order permitting the deposit of goods in warehouse for 3 months was issued on 2nd Dec. 2015. Bholaram neither obtained extension of warehousing period nor cleared the goods within the permitted warehousing period of 1st March, 2016. Only after a notice was issued under section 72 of the Customs Act, 1962 demanding duty and other charges, Bholaram removed the goods on 15th April, 2016.*

Compute the amount of duty payable by Bholaram while removing the goods from warehouse, assuming that no additional duty or special additional duty is payable. You are supplied with the following information :

	28.11.2015	01.03.2016	15.04.2016
Rate of exchange per USD	'56	'55	'54
Rate of basic customs duty	15%	10%	5%

(3 marks)

(d) *KRY Logistics Ltd., a steamer agent authored Import General Manifest and acted on behalf of the master of the vessel (the person-in-charge) before Customs Authorities to conduct all affairs in compliance with the Customs Act, 1962. The Steamer agent filed Import General Manifest, affixed the seal on the containers and took charge of the sealed containers. It also dealt with the Customs Department for appropriate orders that had to be passed in terms of section 42 of the Customs Act, 1962. Penalty under section 116 of the Customs Act, 1962 was imposed by the Department on the steamer agent for short landing of goods.*

Examine with the help of a decided case law, if any, whether the Department is justified in imposing a penalty on the steamer agent ? (3 marks)

(e) *Write short notes on the following :*

(i) *Common Portal*

(ii) *Deemed Export*

(iii) *Taking Assistance from an Expert (3x1 = 3 marks)*

Answer 5(a)

1. **Migration of registration** : As per CGST Act, on and from the appointed day, (22-6-2017 in cases of registration and composition and 01.07.2017 in other cases), every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis subject to specified conditions.
2. **Migration of Cenvat Credit or VAT Credit** : Provisions have been made in the Central Goods and Services Tax (CGST) Act, 2017 to ensure that Cenvat Credit or VAT Credit balance lying in books and other eligible credits are migrated to GST.
3. **Clarity to transactions having some relation to pre-GST period** : In case of transactional chain occurring partly before and partly after introduction of GST, provisions are made in Central Goods and Services Tax (CGST) Act, 2017 to clarify how will they be dealt with i.e., whether they would be liable to old taxes or GST and how will refunds/credits, etc. will be dealt. Similarly, provisions have been made in case of goods were sent for job-work prior to GST.

Answer 5(b)

Word 'container' is not defined in the Customs Act. In normal sense, —

1. A container is simply a box. It is no more complex than a truck body, a railway freight van or a ship's hold. Containers are made of aluminum, steel, fibre glass or plywood for lightness with steel frames to give strength. Standard sizes for containers are 40, 20, or 10 feet long, 8ft, wide and 8 ft, in height. Some have open tops or sides for loading special cargo.
2. Liquids are carried in boiler shaped tanks surrounded by rectangular frame work.
3. Other containers are insulated or refrigerated and are constructed according to International standards and inspected by Insurance companies.

Answer 5(c)

Amount of duty payable by Bholaram:-

	<i>Amount</i>
Assessable Value in \$	\$1,00,000
Rate of Exchange [As per section 14, rate of exchange in force on date of presentation of bill of entry for warehousing shall apply. Hence, rate in force on 28-11-2015 would apply.]	₹56 per USD
Assessable Value is	₹56,00,000
Rate of duty [Since goods remained in warehouse beyond permitted period, hence, as per section 72, they are deemed to be removed on expiry of warehousing period on 1-3-2016. Hence, rate of duty in force on date of such deemed removal would apply as per Kesoram Rayon (SC) and SBEC Sugars (SC)]	10%
BCD @ 10.3% of assessable value [10.3% of ₹56,00,000]	₹5,76,800

Answer 5(d)

The issue in the given case is that whether penalty for short landing of goods under Section 116(a) of the Customs Act, 1962 which is imposable on the person-in- Charge of the conveyance, can be imposed on the steamer agent.

1. Under section 148 of the customs Act, 1962, agent appointed by the person – in charge of the conveyance and any person who represents himself to any officer of customs as an agent of any such person- in- charge is liable for fulfillment of all obligations imposed on such person-in-charge under the Customs Act and to penalties and confiscation, if any. As per section 2(31) of the Customs Act, 1962 in case of a vessel, master of the vessel is the person – in- charge.
2. The High Court in the case of *Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA) [2013] 293 ELT 342 (Mad.)* has observed that when the assessee affixed seal on containers and took their charge, he stepped into shoes of/acted on behalf of master of vessel (the person –in – Charge). It held that conjoint reading of the relevant provisions of the Customs Act makes it clear that penalty imposable on person-in charge in case of short- landing of the goods can also be imposed on the agent appointed by him.

Hence, in view of the aforesaid position of law, Department is justified in levying penalty for short-landing of goods on steamer agent.

Answer 5(e)

- (i) **Common Portal** : The Government may, on the recommendations of the Council, notify the common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement

of integrated tax, way bill and for carrying out such other functions and for such purposes as may prescribed. Common portal is www.gst.gov.in.

- (ii) **Deemed Exports** : The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.
- (iii) **Taking Assistance from an Expert** : Any officer not below the rank of Assistant commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

Question 6

- (a) *Explain the procedure of furnishing details of outward supplies and of revision for rectification of errors and omissions as per CGST Act, 2017. (5 marks)*
- (b) *Who are required to file Annual Return under CGST Act 2017 ? Also explain the time limit for filing such return. Is there any requirement of furnishing of the audited annual accounts ? (5 marks)*
- (c) *The proceedings under the CGST Act, 2017 before the authorities including the Appellate Tribunal can be attended by the "Authorized Representative". Explain who can act as an authorized representative under the Act. (5 marks)*

Answer 6(a)

1. **Due date** : Every Registered taxable person (other than an Input Service Distributor, a non- resident taxable person and a person paying tax under section 10 (composition scheme) or section 51 (TDS) or section 52 (TCS) by e- commerce operator) shall furnish —
 - electronically details of outward supplies of goods or services or both effected during the tax period
 - by 10th of the month succeeding the tax period.
2. **Contents** : Details of outward supplies will include invoice relating to zero rated supplies, inter-state supplies, intra state suppliers, Goods/ Services return, Exports, Supplementary invoices, debit notes and credit notes.
3. **No revision, but, rectification allowed in subsequent returns** :
 - Once return is filed / uploaded it cannot be revised. The mechanism of filing revised returns for any correction of errors / omissions has been done away with. The rectification of errors/ omissions is allowed in the subsequent returns.
 - However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Answer 6(b)

- (i) **Person liable to file annual return** : Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or Section 52, casual taxable person and a non – resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed.
- (ii) **Due date is 31st Dec. after end of year** : Annual return shall be filed on or before the 31st day of December following the end of such financial year.
- (iii) **Persons liable to Audit : Audit report to be furnished along with reconciliation statement** : Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub- section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

Answer 6(c)

For the purposes of this Act, the expression “authorized representative” shall mean a person authorized by the person referred to in section 116(1) to appear on his behalf, being:-

- (a) his relative or regular employee; or
- (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- (c) any Chartered Accountant, a Cost Accountant or a Company Secretary who holds a certificate of practice and who has not been debarred from practice; or
- (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years. However, such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or
- (e) any person who has been authorized to act as a goods and services tax practitioner on behalf of the concerned registered person.

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

Comment on the following :

- (a) *Things that should be avoided while drafting a document.*
- (b) *Drafting and Conveyancing have same meaning and are interchangeable words.*
- (c) *How is a del credere agent different from other types of agents ?*
- (d) *Rules of Interpretation.* *(5 marks each)*

Answer 1(a)

Things that should be avoided while drafting a document

The following things should be avoided while drafting the documents:

- (a) Avoid the usage of words of same sound. For example, the words “Employer” and “Employee”;
- (b) When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, “in clause 2 above” and so on.
- (c) Negative in successive phrases would be very carefully employed.
- (d) Draftsman should avoid the use of words “less than” or “more than”, instead, he must use “not exceeding”.
- (e) If the draftsman has provided for each of the two positions to happen without each other and also happen without, “either” will not be sufficient; he should write “either or both” or express the meaning of the two in other clauses.

While writing and typing, the following mistakes generally occur which should be avoided:

1. “And” and “or”;
2. “Any” and “my”;
3. “Know” and “now”;
4. “Appointed” and “Applied”;
5. “Present” and “Past” tense.

Answer 1(b)

Both the terms “Drafting and Conveyancing” provide the same meaning although

these terms are not interchangeable. Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas “drafting” gives a general meaning synonymous to preparation of drafting of documents. Document may include documents relating to transfer of property as well as other “documents” in a sense as per definition given in Section 3(18) of the General Clauses Act, 1897 which include any matter written, expressed or described upon any substance by means of letters, figures or mark, which is intended to be used for the purpose of recording that matter.

For example, for a banker the document would mean loan agreement, deed of mortgage, charge, pledge, guarantee, etc. For a businessman, document would mean something as defined under Section 2(4) of the Indian Sale of Goods Act, 1930 so as to include a document of title to goods i.e. “Bill of lading, dock-warrant, warehouse-keepers’ certificate, wharfingers’ certificate, railway receipt multi-modal transport document warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.”

As per Section 2(36) of the Companies Act, 2013 the term "document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form. Thus, drafting may cover all types of documents in business usages.

In India, the 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.

Answer 1(c)

There is a special type of agency, which combines agency with guarantee. This is known as del credere agency. A del credere agent is one who, for an extra remuneration undertakes the liability to guarantee the due performance of the contract by the buyer. By reason of his charging a del credere commission he assumes responsibility for the solvency and performance of the contract by the vendee and thus indemnifies his principal against loss. He, therefore, gives an additional security to the seller, but he does not shift the responsibility of payment from the buyer to the seller. A commission del credere is the premium or price given by the principal to the agent for guarantee, which presupposes a guarantee.

A del credere agent like any other agent, is to sell according to the instructions of his principal, to make such contracts as he is authorised to make for his principal and be bound, as soon as he receives the money, to hand it over to the principal. He is distinguished from other agents simply in this that he guarantees that those persons to whom he sells perform the contracts which he makes with them.

Answer 1(d)

Rules of Interpretation

Interpretation means the art of finding out the true sense of an enactment by giving

the words of the enactment their natural and ordinary meaning. It is the process of ascertaining the true meaning of the words used in a statute. The Court is not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts. These principles are sometimes called 'rules of interpretation'.

The following rules of interpretation may be applied to formal written agreements:-

1. Law forbids contradictions, addition, variance or subtraction in document by extrinsic evidence.
2. The Court can examine the facts and surrounding circumstances to which the language relate.
3. Clear and unambiguous words will prevail over hypothetical considerations.
4. The words would be given their normal, natural and prime meaning.
5. Actual life situation, social practices and prevailing conditions are relevant to decide the ambiguity.
6. In case of difference between preliminary and final contract than the terms of final contract will prevail.
7. If later clause in a contract destroy earlier clause than earlier clause will prevail.
8. The words would be interpreted in their popular natural and ordinary sense.
9. The Courts should not look at technical rules of construction but should look at the whole matter and documents.
10. If the terms of deed are otherwise clear than recitals are not looked into.

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

Question 2

Write notes on the following :

- (a) *Subrogation of Surety to the right of Creditors*
- (b) *Shrink Wrap Agreement*
- (c) *Pre-incorporation Contracts*
- (d) *Onerous Gift.*

(4 marks each)

OR (Alternale question to Q. No. 2)

Question 2A

Write notes on the following :

- (i) *Slump Sale agreement*
- (ii) *Plaint structure*
- (iii) *Rules of Adverse Inference*
- (iv) *Consent Order*

(4 marks each)

Answer 2(a)

When the debt guaranteed by the surety falls due or there has been a default by principal debtor to perform a guaranteed duty and the surety has to pay money or perform the duty as stipulated in the agreement. In such situation the surety steps into the footsteps of creditor and shall be invested with all rights that are available to creditor against the principal debtor.

After the payment of the debt to the creditor, the surety is subrogated to the rights of the creditor i.e., he has the same rights as those of the creditors. Therefore, he can sue the principal debtor to exercise those rights. Thus if the surety has performed his promise towards the creditor, all the rights of the principal debtor against the creditor devolve upon him.

Answer 2(b)

Shrink wrap contracts are boilerplate or license agreements or other terms and conditions which are packaged with the products. The usage of the product deems the acceptance of the contract by the consumer. The term 'Shrink Wrap' describes the shrink wrap plastic wrapping which coats software boxes or the terms and conditions which come with products on delivery.

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software. The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking.

Answer 2(c)

Companies Act, 2013 does not contain any provisions about Promoter's Contract. The promoters of a company usually enter into contracts to acquire some property or right for the company which is yet to be incorporated; such contracts are called preliminary or pre-incorporation contracts. The promoters generally enter into such contracts as agents for the company about to be formed. The legal position is that since presence of two consenting parties is necessary for a contract, and the company before incorporation is a non-entity, the promoters cannot act as agents for the company, which has yet to come into existence. As such, the company is not liable for the acts of the promoters done before its incorporation.

When the company comes into existence, it is not bound by the pre-incorporation contracts even when it takes the benefit of the work done on its behalf. However, specific performance of a contract between a third party and the promoters may be successfully claimed by the third party against the company, when the company enters into possession of the property on the faith of the promoters' contract.

Similarly, the company, after incorporation, cannot enforce any contract made before its incorporation, which means the company cannot sue the other party to the contract if the other party fails to carry out the contract. Promoters remain personally liable on the contract.

The pre-incorporation agreements entered into by the promoters acting on behalf of the intended company with third party cannot always be avoided for various reasons. These agreements affect the operations of the incorporated company.

Answer 2(d)

Onerous gift refers to a gift that is subject to conditions. These conditions are imposed on the recipient of the gift. Sometimes, onerous gift takes the nature of a sale because it involves the element of consideration.

Transfer of Property Act describes onerous gift. Section 127 states that where a gift is in the form of a single transfer to the same person of several things of which one is and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully. Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Besides, a donee not competent to contract and accepting the property burdened by any obligation is not bound by his acceptance but if after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound, subject to these provisions of Section 127 of the Act. Where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of property comprised therein. A company can make gift of its movable and immovable property provided it had been vested with requisite power of doing so in objects clause in its Memorandum of Association and Articles of Association. It would require sanction of shareholders in general meeting under Section 181 of the Companies Act, 2013.

Answer 2A(i)

Slump Sale agreement means transfer of entire business or part of business as a going concern. The entire transfer is done on a lumpsum consideration. The assets and liabilities are not evaluated individually. The concept of 'slump sale' was incorporated in the Income Tax Act, 1961 by the Finance Act, 1999 with the inclusion of Section 2(42C).

In slump sale the value of consideration cannot be bifurcated and it can be bifurcated than it would not cease to fall under category of slump sale. For example, in a transaction of slump sale, some value is assigned to land for purpose of stamp duty than the transaction will continue to be treated as slump sale.

The slump sale involves finding a buyer, making valuation for slump sale, making valuation for slump sale, making the term sheet and entering into an MOU with prospective buyer, discharge of lump sum consideration and execution of agreement. The executed agreement needs to be registered and stamp duty paid.

Answer 2A(ii)

A suit is instituted by filing a plaint, which is the first pleading in a civil suit. It is a statement of the plaintiff's claim and its object is simply to state the grounds upon, and the relief in respect of which he seeks the assistance of the court.

Order VII of the Civil Procedure Code, 1908 deals with plaint. As per Order VII, R.1 C.P.C. every plaint must contain the following things:

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

Answer 2A(iii)

Adverse interest rule refers to a principle that if a party fails to produce a witness who is within its power to produce and who should have been produced, that failure gives rise to an inference that the evidence is unfavorable to him. The adverse inference rule applies only when a party has relevant evidence within its control which it fails to produce. The logic supporting the adverse inference rule is that a party fails to produce evidence in its control in order to conceal adverse facts.

It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party. [*Ms. Shefali Bhargava v. Indraprastha Appollo Hospital & Anr.*, 2003 NCJ 787 (NC)].

It is equally incumbent upon a party to produce evidence of some expert where the issue involved is a complex or difficult one as for instance, issues pertaining to engineering, medical, technology or science etc. Since the court cannot constitute itself into an expert body and contradict the claim/proposition on record unless there is something contrary on the record by way of expert opinion or there is any significantly acclaimed publication or treatise on which reliance could be based. [*Dr. Harkanwaljit Singh Saini v. Gurbax Singh & Anr.*, 2003 NCJ 800 (NC)].

Answer 2A(iv)

Securities Exchange Board of India has brought the concept of consent order into force for resolving the disputes in a smoother manner through negotiations and discussions instead of lengthy litigation.

Consent Order is an order settling administrative or civil proceedings between the regulator and the party who may prima facie be found to have violated securities laws.

If the adjudication authority has passed order with the consent of parties, it is not appealable before Securities Appellate Tribunal.

When proposal of settlement is submitted by the party, it would be examined by a high powered committee headed by a retired High Court judge. In case of inadequacy, the committee may ask to revise the consent order. After that the committee will forward its views to adjudicating officer.

After passing the consent order it will be published through a press release and would be put on SEBI website. Violation of consent order may revive the pending action on which consent order was passed.

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

Question 3

Distinguish between the following

- (a) *FIR and Complaint*
- (b) *Lease and License*
- (c) *Memorandum of Association and Articles of Association*
- (d) *Conveyance and Contract* (4 marks each)

OR (Alternate question to Q. No. 3)

Question 3A

- (i) *What is an affidavit ? What are the rules that should be remembered while drafting an affidavit ?* (2+4 marks)
- (ii) *'A' has filed a suit against 'B' for recovering possession of an agricultural land amounting to rupees 5 Lakh. 'B' contends that he is the owner of property and not a tenant. In first instance Court rejects the defence of 'B' and passes a decree for possession of property in Execution.*
Now 'B' has filed an appeal against execution of decree. 'B' wants the execution of decree to be stayed. Draft an application as an advocate of 'B'. You are at liberty to choose the necessary details. (10 marks)

Answer 3(a)

The First information is different from a Complaint, and the following are the points of distinction between two:-

1. A Complaint is an allegation made orally or in writing to a Magistrate. The first information is given in writing or orally to a police officer.
2. The Magistrate can take cognizance of an offence on a complaint, but not on first information.
3. Any person can give the first information, but a complaint can be given only by a person authorized under law under certain circumstances. It take cognizance of it. The first information on the other hand, only empowers the police officer to start investigation in cases of cognizable offences.

4. A Complaint can be made for Cognizable and Non-cognizable offence while FIR can be made for Cognizable offence only.

Answer 3(b)

The cardinal distinction between a lease and a license is that in a lease there is a transfer of interest in the premises, whereas in the case of a license there is no transfer of interest, although the licensee acquires a right to occupy the premises. When premises are given out on lease or tenancy basis the legal possession of the premises in these cases is also deemed to be transferred to the lessee and tenant respectively.

Whether an agreement to occupy the premises between the landlord and tenant is allowed to occupy was an agreement to lease or an agreement of leave and license has been a subject of many Supreme Court & High Court rulings.

“In order to determine whether a document created a license or a lease the real test is to ascertain the intention of the parties i.e. whether they intended to create a license or a lease. If the document creates an interest in the property entitling the transferee to enjoyment, then it is a lease; but if it only permits another to make use of the property without exclusive possession, then it is a license.” [*Rajbir Kaur & Anr. v. M/s S Chokesiri & Co.*, 1988 (2) SCJ 316].

From the judgments of various Courts, it appears that the main factors to decide whether the agreement is a lease or a license are (i) the intention of the parties and (ii) whether the agreement creates an interest in the property.

Answer 3(c)**Memorandum of Association and Articles of Association**

1. The memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated. The articles of association are the internal regulation of the company.
2. Memorandum lays down the area beyond which the activities of the company cannot go. Articles provide for regulations inside that area. Thus, memorandum lays down the parameters for the articles.
3. Memorandum of association can be altered only under certain circumstances and in the manner provided in the Act but articles can be altered by the members by passing a special resolution only.
4. Memorandum of association cannot include any clause contrary to the provisions of the companies Act. The articles of association are subsidiary both to the Companies Act and the memorandum of association.

Answer 3(d)

Conveyance is not a contract. The distinction between conveyance and contract is quite clear. Contract remains to be performed and its specific performance may be sought but conveyance passes on the title to property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right. There may be cases where the transaction may pertain both contract as well as conveyance. For example, lease, whereby obligation is created while possession

of the property is transferred by lessor to lessee. More so, contracts are governed by provisions of the Indian Contract Act, 1872 whereas the cases of transfer of immovable property are governed by the Transfer of Property Act, 1882 in India. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property but the deed of mortgage or sale would operate as conveyance of such interest. In other words, once the document transferring immovable property has been completed and registered as required by law, the transaction becomes conveyance. Any such transaction would be governed under the provisions of the Transfer of Property Act, 1882.

Answer 3A(i)

Affidavit

An affidavit is a written statement sworn before a person who has got authority to administer on oath. By the rules and practices of the court, the facts are proved by affidavits. Its rules are laid down in order XIX rule 1 of Civil Procedure Code. An affidavit being a statement or declaration on oath by the deponent, is an important document and the consequences of a false affidavit are serious. Therefore, great care is required in drafting it.

Rules to be remembered while drafting an affidavit

- (1) Not a single allegation more than is absolutely necessary should be inserted;
- (2) The person making the affidavit should be fully described in the affidavit;
- (3) An affidavit should be drawn up in the first person;
- (4) An affidavit should be divided into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct portion of the subject;
- (5) Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;
- (6) When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words “I affirm” or “I make oath and say”;
- (7) Affidavit should generally be confined to matters within the personal knowledge of the declarant, and if any fact is within the personal knowledge any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words “I am informed by so and so” before every allegation which is so verified. If the declarant believes the information to be true, he must add “and I believe it to be true”.
- (8) When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced, and his information and belief as to the truth of facts disclosed in such documents;
- (9) The affidavit should have the following oath or affirmation written out at the end:
“I swear that this my declaration is true, that it conceals nothing, and that no part of it is false”.

or

"I solemnly affirm that this my declaration is true, that it conceals nothing and that no part of it is false".

Any alterations in the affidavit must be authenticated by the officer before whom it is sworn.

An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn.

An affidavit shall be authenticated by the deponent in the presence of an Oath Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose.

- (10) Affidavits are chargeable with stamp duty under Article 4, Schedule I, Stamp Act, 1899. But no stamp duty is charged on affidavits filed or used in Courts. Such affidavits are liable to payment of Court fee prescribed for the various Courts.

Answer 3A(ii)

Application for stay of Execution
 In the court of District Judge Karnal
 Civil appeal number.....of 2017

B, S/o.....R/o.....

Appellant
(Orig. Defendant)

V/S

A, S/o.....R/o.....

Respondent
(Orig. Plaintiff)

This humble petition of the above named appellant is as under:

1. The appellant has filed this appeal against the judgement and decree passed by civil judge Karnal ordering possession of the agricultural land situated at.....details.....to the Respondent.
2. The Respondent has been declared as the owner of property by the lower court.
3. The Respondent has filed an application for execution of decree in the lower court (Application No.....of 2017) before the civil judge attempting to take possession of the land. If this possession is granted to the respondent, the appellant will be put to an irreparable loss as material facts have been ignored by the learned judge while arriving at his decision against which appeal has been made in this honourable court vide No.....of 2017.
4. Appellant is prepared to tender such security to the satisfaction of the court for the performance of said decree.
5. The appellant therefore pray that execution of decree in suit no.....of 2017 be stayed during the pendency of this appeal.

Sd/-
Advocate

Sd/-
Appellant

Verification

Place:

Date:

Question 4

- (a) *Draft a Sale Deed by a Liquidator of XYZ limited in Voluntary Liquidation ? Assume Facts. (8 marks)*
- (b) *Define Gift. Discuss procedure for making a gift. Draft a specimen deed of Gift for Love and affection. (8 marks)*

Answer 4(a)

THIS SALE DEED is made on this 2nd day of January, 2018 by voluntary liquidator of XYZ Ltd., (in voluntary liquidation) (hereinafter called "the vendor") of the one part, in favour of Shri A son of Shri B, Occupation (Business) resident of PQR at STU Colony (hereinafter called "the purchaser") of the other part, under the terms and conditions mentioned below:

WHEREAS by a special resolution passed by the shareholders of XYZ Ltd., at an Extraordinary General Meeting held on the..... day of....., of which notice as prescribed by law had been duly given, and it was resolved that the company be wound up voluntarily;

WHEREAS the said vendor was appointed its voluntary liquidator on..... the notice whereof was duly submitted to the Registrar of Companies..... as prescribed by law, on the..... day of.....;

AND WHEREAS in a meeting of the shareholders of the said company held in accordance with the provisions of the Companies Act, it was resolved that the properties mentioned in the Schedule annexed hereto be sold by the vendor after publishing a notice for sale in..... and....., daily newspapers twice within a period of a fortnight, and pursuant to such resolution, the vendor had duly advertised the sale of the said properties in the issues of..... dated respectively and issues of dated respectively and pursuant thereto have received offers, the highest whereof was that of the said purchaser;

AND WHEREAS the said vendor agreed to sell and the said purchaser agreed to purchase the said properties on the terms and conditions mentioned herein and incorporated in an agreement to sell dated..... between the said vendor and the said purchaser.

NOW THIS DEED OF SALE WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

That pursuant to the agreement dated..... aforementioned and in consideration of the sum of Rs..... (Rupees.....) paid by the purchaser before the Sub-Registrar,..... on presentation of this Deed of sale for registration thereof (the receipt whereof the vendor hereby acknowledges) the vendor hereby transfers by way of sale and conveys on behalf of the said company all those items of the property mentioned more particularly in the Schedule attached hereto, unto the said purchaser, his heirs and assigns to have and to hold the same absolutely and forever.

IN WITNESS WHEREOF the parties aforementioned have signed this Deed of Sale on the date, month and the year aforementioned.

Witness: 1.

Vendor

Witness: 2.

Purchaser

Schedule

Item Nos.	1.	2.
	3.	4.

Answer 4(b)

Gift has been defined under Section 122 of the Transfer of Property Act, 1882. Section 122 states that ‘Gift’ is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, this gift is void.

For the purpose of making gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

For the purpose of making gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

Gift should be made only for the existing property as gift of future property is void under Section 124 of the Transfer of Property Act, 1882. Because gift of future property is mere promise and cannot be enforced. Section 125 provides that the gift of a thing to two or more donees of whom one does not accept it, is void as to the interest which he would have taken had he accepted. The intention conveyed under this Section is that a gift is personal to the donee and therefore if a gift made to two persons jointly and one of them does not accept it, the other cannot accept the whole.

Stamp Duty and Registration

The value of the property gifted must be set forth in the deed of gift. Stamp Duty is payable on gift deed as on the conveyance as per amount of value of the property as mentioned in the deed or as per market value of such property whichever is greater as per Article 23 of the Indian Stamp Act, 1899. If the value of the property is intentionally omitted or under-valued with a view to defraud the revenue, prosecution may be invited under Section 64 of Indian Stamp Act (Muhamad Muzaffar Ali ILR 44 Allahabad 339 FB). Further, penalty provisions under Gift-tax Act may also be attracted.

Gift deed of immovable property is compulsorily registrable as per Section 123 of the Transfer of Property Act and Section 17(i)(a) of the Registration Act, 1908, whatever may be the values.

Deed of Gift for Love and Affection

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

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

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the natural love and affection of the donor for the donee, the donor transfers to the donee free from encumbrances ALL the property described in the Schedule TO HOLD the same to the donee absolutely for ever.
2. The donee accepts the transfers.

IN WITNESS WHEREOF, etc.,

The Schedule above referred to

Signed, sealed and delivered

AB

CD

Question 5

- (a) *Draft a Special Leave Petition (SLP) before Supreme Court of India with assumed data.* (12 marks)
- (b) *What are the guide Lines for professional dress code of members of the Institute of Company Secretaries of India.*
 - (i) *Dress code for Male members*
 - (ii) *Dress code for Female members*
 - (iii) *Dress code before the tribunals*
 - (iv) *Dress code while in employment* (4 marks)

Answer 5(a)

CIVIL APPELLATE JURISDICTION

IN THE MATTER OF:

Special Leave Petition under Article 136
of the Constitution of India

AND

IN THE MATTER OF:

ABC Company Ltd., a company registered under the Companies Act, 2013 through..... Chairman/Managing Director, the company having its registered office at.....

.....Petitioner

Versus

1. S/o..... R/o.....
2. Union of India through the Secretary, Ministry of Corporate Affairs, New Delhi.
3. The Registrar of Companies.....

...Respondents

May it please the Hon'ble Chief Justice of India and His Lordship's Companion Judges of the Supreme Court.

The petitioner-appellant-(company)

MOST RESPECTFULLY SHOWETH:

- 1. That the petitioner is a company duly incorporated under the provisions of the Companies Act, 2013 having its registered office at..... and is challenging by way of this Special Leave petition the judgment and order of the High Court of..... dated in proceeding under Section of the Companies Act, 1956.
- 2. That the questions of law involved in this matter are as follows:
 - (a) Whether the High Court has fallen into error in taking the view that.....
 - (b) Whether it would be a good ground for winding up of the petitioner-company that two of its directors are not on speaking terms and there is, thus, a deadlock in the administration of the affairs of the company.

or

[Here state any other ground that has been taken by the respondents or any of the respondents seeking the relief of winding up of the company from the High Court or any other relief.....].

- (c) Whether.....
- 3. That respondent No. 1 herein had filed a petition before the Hon'ble High Court of..... seeking the relief..... which petition was contested by the petitioner-company inter alia on the grounds that.....
- 4. That the High Court after hearing the parties through their respective counsel allowed the said petition, holding that sufficient grounds had been made out for winding up of the petitioner-company (or any other relief claimed in the petition before the High Court).
- 5. That the aforesaid findings and the final judgement/order of the High Court are assailed on the following, amongst, other.

GROUND:

- 5.1 That.....
- 5.2 That.....
- 5.3 That.....
- 6. That the petitioner has not filed any appeal or other proceeding relating to this matter in this Hon'ble Court or any other Court.

RELIEF

The petitioner-company accordingly prays that this Hon'ble Court be pleased to

grant Special Leave to Appeal in the matter and to allow the appeal, set aside the impugned judgement/order passed by the High Court and dismiss the petition filed by the respondent (No.) in the High Court.

PETITIONER

AFFIDAVIT

IN THE HON'BLE SUPREME COURT OF INDIA

IN THE MATTER OF:

.....

...Petitioner

Versus

1.
2.
3.

...Respondent

AFFIDAVIT

I,company through the petitioner in the Special Leave Petition titled as above do hereby solemnly affirm and state as under:

1. That I am the Chairman/Managing Director etc. of the petitioner-company and am fully aware of and conversant with the relevant facts concerning the matter in issue in this petition.
2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.
3. That no relevant fact has been concealed or kept back in the S.L.P.

I, further solemnly affirm at..... (place) this the..... day of..... that the above averments are true and correct. Nothing has been kept back or concealed.

DEPONENT

Answer 5(b)

(i) *Dress Code for Male Members*

The professional dress for male members as prescribed by the Institute of Company Secretaries of India is Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.

(ii) *Dress Code for Female Members*

The professional dress for female members would be saree or any other dress of a sober colour with a navy blue jacket.

(iii) *Dress Code before the tribunals*

Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

(iv) *Dress Code while in employment*

Members in employment will wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.

Question 6

(a) *Draft a notice of Suit Under Section 80, Code of Civil Procedure against a Public Officer of Government of Uttar Pradesh. Assume Data. (8 marks)*

(b) *Francis, aged 38 years, son of Anthony, Max house, Kunoor, Mysore, now residing at house No. 418, Bapu Bazar, New Delhi, is the Chief Administrative Officer of Standard Medical Laboratories, New Delhi. For the management of his properties at Mysore, he wants to empower Mr. Robert, aged 40 years, son of Josef, a business man, residing at Mary house, Kunoor, Mysore. Draft a General Power of Attorney (GPA). (8 marks)*

Answer 6(a)

**Notice of Suit under Section 80 of Code of Civil Procedure against Public
Official, Government of Uttar Pradesh**

By Speed Post

Date: ___ day of ___ 2018

To

Director Food & Civil Supplies
Government of Uttar Pradesh
Civil Secretariat
XYZ Area
Lucknow

Notice under Section 80 of Civil Procedure Code

Dear Sir,

Please take note that my client Mr. AB son of CD residing at EF with pin code intend to bring a suit against your office in State of Uttar Pradesh in a competent court of law on the cause of action stated herein under and for the relief appearing below:

1. That for last three months the area of XYZ Basti under this constituency is not distributing any ration to people in any of 3 shops in the area on the pretext that ration has not reached them.
2. Information under RTI Act reveals that these units have lifted their full quota for these months from Food Corporation of India and the goods have reached their godown.

3. That my client has handed over all these documents in person to your office on dated _____ and obtained a receipt thereon.
4. That till date no one has got ration from these three shops and no action has been taken against these establishments.

RELIEF SHOUGHT

By virtue of this notice, I call upon you to ensure start of distribution of ration from these three shops on or before----- date and take administrative action against them failing which my client shall be constrained to move an appropriate court of law entirely upon your risk and cost, that please be noted.

I have retained a copy of this communication for future reference and record.

Yours faithfully

PQR-Advocate

Answer 6(b)

Known all men by these presents that I, Francis, aged 38(thirty eight) year, son of Anthony of Max House, Kunoor, Standard Medical Laboratories, New Delhi, and presently residing at House No. 418, Bapu Bazar, New Delhi, here by nominate, constitute and appoint Mr. Robert aged 40(forty years), son of Joseph, Business man, residing at Mary House, Kunoor, Mysore District, Karnataka State as my true & lawful attorney for me, in my name, and on my behalf to do, execute and perform all or any of the following acts, deeds and things in relation to my property situated at Mysore.

- a. To manage, control, supervise, cultivate and develop ALL THAT PROPERTY belong to me, and specially and fully described in the schedule hereunder; and for that purpose to do all things required by law.
- b. To enter into the said properties, to inspect the same, and to avail or exercise and rights or remedies vested in me.
- c. To let out the shop building or part thereof, described as the second item to the Schedule hereunder on monthly tenancy basis, and to realize the rent thereof and to accept surrender of such lease.
- d. To demand, sue from recover and receive and give proper receipts and discharge for all money, debts, rents, profits and securities belong to me.
- e. To give notice to tenants and the occupiers of my properties to quite, or to repair any damage or to abate, any nuisance or to remedy and breach of covenants or contract.
- f. To commence, continue or defend any action or proceeding or execution of any decree concerning anything to which I may be a party, and to appear for and represent me in any Court of Tribunal or Registration Offices and to execute and verify legal documents and proceedings, and to accept notices and processes of law, and to withdraw and receive any documents or money from court, office, or party, and to do all such acts as may be necessary, and to appoint and engage any advocate whenever my said attorney deem it necessary and proper.

- g. To compromise, compound or withdraw cases or submit arbitration, all disputes and differences.
- h. To accept and withdraw compensation for acquisition or purchase or hiring of any property belonging to me, by the Government or any Authority or any person.
- i. To make repairs, constructions and addition to my property.
- j. To invest all surplus money in such manner and upon such security as my said attorney may deem fit and proper.

Provided always that the said attorney shall not have power to make alienation of my properties except with my express written consent on the behalf.

Provided also that the said attorney shall maintain a true, complete, correct and faithful account of all income and expenditure which shall be rendered to me every month.

And I do hereby agree and undertake to ratify and confirm all acts, deeds and things lawfully and bonafide done, executed and performed by my said attorney as if I was personally present despite the absence of my special power in that behalf.

SCHEDULE

(Description of the Property)

In witness whereof, the parties hereto have signed this deed on the date first above written in the presence of the following witness.

Signature.....

Francis (First Party)

Signature.....

Robert (Second Party)

BANKING LAW AND PRACTICE
(Elective Paper 9.1)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Following information is given on Ratios and the figures for Balance Sheet items of M/s Way to Wisdom Company as on March 31, 2017. Net Sales of the company for the Financial Year 2016-17 was Rs 20 lakh.

1	Debt Assets Ratio	0.6
2	Debtors Turnover Ratio based on Net Sales	2.0
3	Inventory Turnover Ratio	1.25
4	Fixed Assets Turnover Ratio	0.80
5	Net Profit Margin	5%
6	Gross Profit Margin	25%
7	Return on Investment	2%

Balance Sheet as at March 31, 2017

Liabilities	Amount (in Rs.)	Assets	Amount (in Rs.)
Equity	?	Net Fixed Assets	?
Long Term Debts	?	Inventory	?
Short Term Debts	1000000	Debtors	
		Cash	
Total	?	Total	?

On the basis of given details :

- (a) Compute the Balance Sheet items and prepare Balance Sheet of the Company as on March 31, 2017. (20 marks)
- (b) Calculate working capital requirement with a provision for contingencies 10% of net working capital. (10 marks)
- (c) Out of the 7 ratios mentioned, which are more important for working capital

lending and why? As a banker give your comments on these ratios of the company. (15 marks)

(d) *Do you agree that working capital is the long term investment in Operating Current Assets ?* (5 marks)

Answer 1(a)

Balance Sheet of M/S Way to Wisdom Company

As at March 31, 2017

(Amt in Rs.)

<i>Liabilities</i>	<i>Amount</i>	<i>Assets</i>	<i>Amount</i>
Equity	20,000,00	Net Fixed Assets	25,00,000
Long Term Debts	20,00,000	Inventory	12,00,000
Short Term Debts	10,00,000	Debtors	10,00,000
		Cash (balancing figure)	3,00,000
Total	50,00,000	Total	50,00,000

Working Notes:

Computation of Balance Sheet items:

(a) *Fixed Assets:*

Fixed Assets Turnover Ratio = Net Sales/Fixed Assets

0.80 = Rs. 20,00,000/Fixed Assets

Fixed Assets x 0.80 = 20,00,000

Fixed Assets = Rs. 20,00,000/0.80

Fixed Assets = Rs.25,00,000

(b) *Gross Profit:*

Gross Profit Margin = Gross Profit/Net Sales X 100

25% = Gross Profit / Rs.20,00,000 x 100

Gross Profit = Rs.20,00,000 x 0.25

Gross Profit = Rs. 5,00,000

(c) *Inventory:*

Inventory Turnover Ratio = Cost of Sales/ Inventory

Cost of Sales = (Rs. 20,00,000 - Rs. 5,00,000) / Inventory

Hence, 1.25 = Rs 15,00,000/ Inventory

$$\text{Inventory} = \text{Rs. } 15,00,000 / 1.25$$

$$\text{Inventory} = \text{Rs. } 12,00,000$$

(d) *Debtors:*

$$\text{Debtors Turnover Ratio} = \text{Net Credit Sales} / \text{Average Trade Debtors}$$

$$2.0 = \text{Rs. } 20,00,000 / \text{Debtors}$$

$$2.0 \times \text{Debtors} = \text{Rs. } 20,00,000$$

$$\text{Debtors} = \text{Rs. } 20,00,000 / 2.0$$

$$\text{Debtors} = \text{Rs. } 10,00,000$$

(e) *Net Profit:*

$$\text{Net Profit Margin} = \text{Net Profit} / \text{Net Sales} \times 100$$

$$5\% = \text{Net Profit} / \text{Rs. } 20,00,000 \times 100$$

$$\text{Net Profit} = \text{Rs. } 20,00,000 \times 0.05$$

$$\text{Net Profit} = \text{Rs. } 1,00,000$$

(f) *Investment:*

$$\text{Return on Investment} = \text{Net Profit} / \text{Investment} \times 100$$

$$2\% = \text{Rs. } 1,00,000 / \text{Investment} \times 100 \quad \text{Investment} = \text{Rs. } 1,00,000 / 0.02$$

$$\text{Investments} = \text{Rs. } 50,00,000$$

(g) *Total Debt:*

$$\text{Debt Asset Ratio} = \text{Total Debt} / \text{Total Assets (Investment)}$$

$$0.60 = \text{Total Debt} / \text{Rs. } 50,00,000$$

$$\text{Total Debt} = \text{Rs. } 50,00,000 \times 0.60 = \text{Rs. } 30,00,000$$

(h) *Capital (Equity):*

$$\text{Capital} = \text{Total Assets} - \text{Total Debt}$$

$$\text{Capital} = \text{Rs. } 50,00,000 - \text{Rs. } 30,00,000$$

$$\text{Capital} = \text{Rs. } 20,00,000$$

(i) *Short Term Debts:*

$$\text{Given in the question Rs. } 10,00,000$$

(j) *Long Term Debts:*

$$\text{Long Term Debts} = \text{Total Debts} - \text{Short Term Debts}$$

$$\text{Long Term Debts} = \text{Rs. } 30,00,000 - \text{Rs. } 10,00,000$$

$$\text{Long Term Debts} = \text{Rs. } 20,00,000$$

Answer 1(b)**Calculation of Working Capital Requirement**

In the absence of information on Components of Raw Material Consumption, Work-in Progress, Finished Goods etc. the working capital has been estimated on the basis of information compiled in Balance Sheet.

Statement showing Estimates of the Working Capital*(Amt in Rs.)*

CURRENT ASSETS	
Inventory	12,00,000
Debtors	10,00,000
Cash	3,00,000
A Total Current Assets	25,00,000
CURRENT LIABILITIES	
Short Term Debts	10,00,000
B Total Current Liabilities	10,00,000
C Working Capital (A-B)	15,00,000
<i>Add : 10% for Contingencies</i>	1,50,000
D Estimated Working Capital Requirement	16,50,000

Answer 1(c)

Following Ratios are more important for Working Capital lending:

1. *Debtors Turnover Ratio* : This ratio measures the efficiency of the receivables management of the firm. It is an indicator of how fast or slow the debtors are realised. It is calculated by dividing the net credit sales of a company by average debtors outstanding during the year. A higher ratio indicates faster collection of debts. This is also used for calculating average collection period.

Comments: Debtors Turnover Ratio is 2.0. It shows six month holding period of debtors. It also shows that collection from debtors is very slow and may include bad debts. In working capital lending bank creates charge on debtors. Normally bank does not allow lending against the debtors outstanding more than 6 months. Hence this ratio is not satisfactory.

2. *Inventory Turnover Ratio* : This is an indicator of how fast or slow is the movement of inventory. It is calculated by dividing cost of goods sold by average inventory. A higher ratio indicates faster movement of inventory. This is also used for calculating average inventory holding period. Also indicates a faster working capital borrowed and helps in lower interest liabilities.

Comments: Ratio is 1.25. It shows that inventory holding period is about 9 months. It implies that stock is not moving smoothly. Stock may contain unsalable stock or quality of stock is poor or not acceptable in the market. Bank creates charge on inventory at the time of lending of working capital loan. Bank will not accept this old or poor quality or non-movable stock. Hence it is not satisfactory.

3. *Fixed Assets Turnover Ratio* : This ratio is calculated by dividing Net Credit Sales by Fixed Assets. A higher fixed assets turnover ratio indicates that a company has more effectively utilize investments in fixed assets to generate revenues.

Comments : Ratio is 0.80. It shows that turnover is 80% of Fixed Assets. Sale is lower with compare to installed capacity (Fixed Assets). Stock and Debtors holdings of the company are also higher. Company has some issues in product or in its market. Lower ratio shows lower capacity utilisation, which is not good for the short term solvency of the company. It is not satisfactory.

4. *Net Profit Margin: Net Profit Margin = Net Profit / Net Sales x 100*

Company should have sufficient net profit margin as bank evaluate the profitability of firm at the time of working capital lending.

Comments : Ratio is 5%, which may be treated as satisfactory.

5. *Gross Profit Margin* : $Gross Profit Margin = \frac{Gross Profit}{Net Sales} \times 100$. Reflects earning margins of company. It is important to assess the short term viability of business.

Comments : Ratio is 25%, which may be treated as satisfactory.

Answer 1(d)

The Working Capital represents the investment of current assets, which have been financed by long term funds (either equity or long term debt). The rationale for financing a part of the current assets with long term finance is that a part of the current assets remains in stock throughout the life of the business. The core working capital, though made up of items which are rotated constantly, is maintained by the business on a long term basis. So, working capital is the long term investment in operating current assets. Even though the working capital reflects a margin of safety, an excessive amount of working capital would imply an inefficient use of the resources; say by means of accumulation of inventory and / or overdue receivables and/or idle cash etc, it is in this context that turnover of working capital gains significance.

Question 2

- (a) *Comments on the following :*

(i) *Know Your Customer (KYC)*

(ii) *Important Instruments of financial markets.* (5+5=10 marks)

- (b) *What are the objectives and guidelines for Corporate Governance in Banking System ?* (10 marks)

(c) *Presently the Biggest challenge before the Banks in India is Non Performing Assets (NPAs).*

What are the legal tools available with Banks for resolution of NPAs ?

(10 marks)

Answer 2(a)(i)

Know your Customer (KYC)

KYC establishes the identity and residential address of the customers by specified documentary evidences. One of the main objectives of KYC procedure is to prevent misuse of the banking system for money laundering and financing of terrorist activities. The 'KYC' guidelines also reinforce the existing practices of some banks and make them compulsory, to be adhered to by all the banks with regard to all their customers who maintain domestic or non-resident rupee or foreign currency accounts with them. All religious trust accounts and non-religious trust accounts are also subject to KYC procedure. RBI had advised banks that:

- No account is opened in anonymous or fictitious/benami name(s).
- Bank will not open an account or close an existing account if the bank is unable to verify the identity or obtain documents required by it due to non cooperation of the borrower.

Answer 2(a)(ii)

Following are the important instruments for raising funds from the market

Following are Capital Market Instruments: (Governed by SEBI)

- (i) *Equity Shares* : The equity share holders are the part owner of the company. These shares can be obtained either through the Initial Public Offerings (IPOs), Further/Follow-on-Public Offerings (FPOs), Qualified Institutions Placements (QIP)/Private Placements/Right Issues (Primary Markets) and can also be bought in the stock markets after the stocks are listed (Secondary Market). Issue of equity provide long-term capital in the company.
- (ii) *Preference Share* : Preference shareholders are entitled for fixed dividend over other equity shareholders and in case of surplus, preference is given in distribution of income, over equity shareholders. In case of liquidation, their claim would rank above the equity shareholders. Companies can issue redeemable preference shares.
- (iii) *Debenture* : A debenture holder enjoys a fixed rate of interest payable half yearly/yearly, on a fixed date. The principal amount is repayable on the date of redemption. Debentures may be secured or unsecured. Debenture holders are creditors of the company.
- (iv) *Bond* : A bond is issued in the form of a negotiable certificate/document against indebtedness. Bonds and debentures are same . Government or Local Authorities issues bonds but corporate entities give name of such borrowings Debenture or Bond. Bonds are of various types based on security convertability etc.

Following are Money Market Instruments : (Governed by RBI)

- (v) *Commercial Paper (CP)* : CP is issued by companies with high credit ratings, in the form of promissory notes, at discount but repayable at par, to their holder at maturity.
- (vi) *Certificate of Deposit (CD)* : A CD is issued by a bank at discount to be redeemable at par on the maturity date. Minimum amount Rs 1,00,000 and period 7 days to one year. CDs are issued in the form of usance promissory note.

Answer 2(b)

Banks should have good Corporate Governance which should be much more than complying with legal and regulatory requirements. Good governance facilitates effective management and control of business, enables the Banks to maintain a high level of business ethics and to provide value additions to all their stakeholders.

The objective of Corporate Governance would cover:

- (i) To protect and enhance shareholder value.
- (ii) To protect the interest of all other stakeholders such as customers, employees and society at large.
- (iii) To ensure transparency and integrity in communication and to make available full, accurate and clear information to all concerned.
- (iv) To ensure accountability for performance and customer service and to achieve excellence at all levels.

Guidelines for Corporate Governance in Banking System

The Banks are guided by Reserve Bank Guidelines regarding Corporate Governance issues. Although, there are no specific code, RBI guidelines and the RBI Act inter alia covers various aspect likes, Number of Board of Directors, Minority Shareholders' Nominee, Voting rights of block shareholders, dividend declaration, Credit concentration etc. Listed banks are also subject to SEBI Guidelines entitled SEBI(Listing Obligation & Disclosure Requirements) Regulations, 2015. Overall, banks are expected to follow a high standard of corporate governance practice. The major requirements are briefly pointed out below:

Role of Board of Directors : Meet regularly and to provide effective leadership and insights in business and functional areas. Board should monitor Bank's performance.

- (i) Setting up of a framework of strategic control and continuously review the control mechanism.
- (ii) Overseeing the risk profile of the bank.
- (iii) Ensuring expert management and decision making, internal control and reporting requirement
- (iv) Maximising the interest of stakeholders.

Other Committees of Board

- (i) *Audit Committee of Board* : Functions as per RBI and SEBI guidelines. Induction of more independent directors.
- (ii) *Customer Service Committee* : Reviews quality of customer service provided by bank.
- (iii) *Special committee for monitoring large value frauds* : To monitor and review large value frauds with a view to identify systemic issues/risk, if any.
- (iv) *IT Strategy Committee* : To track the progress of the Bank's IT initiatives.
- (v) *Remuneration Committee* : For evaluating the performance of whole time directors of the bank.
- (vi) *Nomination Committee* : Carried out 'fit and proper' status of candidates filing nominations for election as Directors by shareholder.

Answer 2(c)

Following legal tools are available with banks for resolution of NPAs:

1. *Debt Recovery Tribunals (DRT)* : DRT is special court for recovery of the dues of Banks/Financial Institutions from the borrowers. The Act came into operation for 24.06.1993.

This Act is applicable for the debt due to any Bank or Financial Institution or a consortium of them, for the recovery of debt above rupees ten lakhs. Any aggrieved party can appeal to Debt Recovery Appellant Tribunal (DRAT) against the decision of DRT, subject to fulfillment of some conditions.

2. *Lok Adalats* : Lok Adalats are organised under the Legal Services Authorities Act, 1987. They are intended to bring about a compromise or settlement in respect of any dispute or potential dispute. Lok Adalats derive jurisdiction by consent or when the court is satisfied that the dispute between the parties can be settled at Lok Adalats. It should be guided by the principles of justice, equity, fair play and other legal principles. In case of settlement, the award should be binding on the parties to the dispute. No appeal should be lie in any court against the Award.

3. *SARFAESI Act, 2002* : This Act empowers the Banks and Financial Institutions (FI) to recover their Non Performing Assets (NPAs) without the intervention of court. If the borrower and/or guarantor fail to comply with the 60 days' notice issued by the Bank or FI in repayment of full dues, then the Bank/FI can:

- Take possession or the management of secured assets of the borrower without the intervention of Court/DRT.
- Appoint person to manage the taken over secured assets.
- Bank/FI may sell the secured assets giving 30 days notice after possession.

Special features : Under certain circumstances properties cannot be attached, such as:

- (i) Any security interest securing repayment of any financial assistance not exceeding rupee one lakh.

- (ii) Security interest not registered under the Act.
 - (iii) Any security interest created in agriculture land.
 - (iv) A pledge of movables.
4. Govt. of India came out with new recovery tool for bank through "The Insolvency and Bankruptcy Code 2016". The Act allows Banks, to apply for insolvency of borrower on the default of loan. If borrower is Corporate, Bank will apply to NCLT and in other cases Bank will apply to DRT.

Question 3

Answer the following questions in brief :

- (a) 'Cross Border Risk' and 'Currency Risk' in relation to international banking business.
- (b) Bretton Woods System paved the way for the formation of three important multilateral international institutions. Name them. (3+2=5 marks)

Answer 3(a)

'Cross Border Risk' and 'Currency Risk'

Cross Border Risk : The Cross border risk arises on account of trade and investment activities between two or more countries. This is one of the major risks the international banks face. This type of risk also called as country risk.

Currency Risk : When an international trade and /or financial transaction take place, it would result in a currency deal. In view of the additional deal (involvement of foreign currency) a new risk arises called currency risk. Two or more than two currencies (in case of cross rates) are involved and due to the market fluctuations the exchange rate (price) of the currencies results in a risk called "foreign exchange risk" as well.

Answer 3(b)

Bretton Woods System paved the way for the formation of three important multilateral international institutions. These are:

- (i) International Monetary Fund (IMF)
- (ii) International Bank for Reconstruction and Development (IBRD) popularly known as "World Bank".
- (iii) International Trade Organisation.

Question 4

Bank X entered into a spot Forex deal with Bank Y. Bank X agreed to sell US\$ 1 million to Bank Y at a particular exchange rate. On the date of delivery, Bank Y settle the equivalent rupee funds to Bank X. However Bank X could not deliver the US\$ 1 million.

Examine the above case with reference to Credit Risk and Market Risk involved.
(5 marks)

Answer 4

Credit Risk and Market Risk involved in the given case.

Credit Risk : In today's complicated international financial markets, the credit risk arises on account of non-performance of obligations by counterparty in respect of on Balance Sheet items as well as off-Balance Sheet contracts such as forward contracts, interest rate swaps and currency swaps and counterparty risk in the interbank market. These have necessitated prescribing maximum exposure limits for individual counterparties for fund and non-fund exposures.

Market Risk : Market Risk arises on account of the external factors, i.e., market forces of demand and supply factors. Market risk arises from the adverse movements in market price. Market risk can also be defined as the risk of losses on account of on-Balance Sheet and off-Balance Sheet positions due to the movements in market prices.

In the given case, Bank Y is facing a Credit Risk, also called Settlement Risk. This would lead to further risks for Bank Y. There would be shortage of funds in the Nostro account of Bank Y. Bank Y needs to fund the account and should (a) either arrange for a fresh deal and/or (b) borrow in US\$ at the market interest rate. The non-receipt of US\$ has created not only credit risk, but also liquidity as well as mismatch risk in the assets and liabilities of the bank Y.

Further on account of approaching the Forex market, to enter into a new forex deal and to borrow funds in the US\$, bank Y would also face market risks (viz, exchange rate risk and interest rate risk respectively).

Question 5

(a) *What are the Cyber Crimes ? How Cyber Crimes can be managed ?*

(b) *Narrate the Preventative Controls and Detective Controls to handle IT related issues and risks in Banks.* (3+2 = 5 marks)

Answer 5(a)**Cyber Crimes and its management**

A Cyber Crime can be defined as "criminal activity carried out by using computer and internet". A cyber crime can also be defined as "use of computers and/or other electronic devices via information system like computer network, internet to handle illegal activities like transfer of funds, withdrawal of funds through unauthorised access"

In cyber crimes computers are either used as tool and /or targets. So the computer which is an electronic device is used as a medium of cyber crimes.

Management of cyber crimes requires a holistic approach based on meaningful analysis of risk. The areas that require attention are Network security, Software security, Host security and Data Security. In general, control system can be classified as: Preventive Controls, Detective Controls, Corrective Controls, Physical Controls, Internal Control, Computer Control, Information System Audit and Information System Security.

Answer 5(b)**Preventative Controls and Detective Controls**

Preventative Controls : This type of control stops errors or irregularities. Preventative controls are designed to keep errors or irregularities from occurring in the first place. They are built into internal control systems and require a major effort in the initial design and implementation stages. Good design/screen layout reduces or stops the errors at the time of coding data or entering data from source document.

Detective Controls: Detective controls are practices, procedures and tool that are intended to uncover the existence of errors, inaccuracies, fraud that has already occurred. Identification of errors or irregularities happens after they occur. For example: An input validation program identifies data input errors.

Question 6

Which type of charge is more suitable in respect of each of the following security ?

(i) *Bank Deposits*

(ii) *Book Debts*

(iii) *Immovable Property*

(iv) *Movable Stock*

(v) *Plant and Machinery*

(5 marks)

Answer 6**Suitability of type of charge**

<i>Sr. No.</i>	<i>Security</i>	<i>Charge</i>
(i)	Bank Deposits	Lien
(ii)	Book Debts	Assignment of Debts
(iii)	Immovable Property	Mortgage
(iv)	Movable Stock	Pledge
(v)	Plant & Machinery	Hypothecation

CAPITAL, COMMODITY AND MONEY MARKET
(Elective Paper 9.2)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

ABC Textiles Limited places an order to buy textile machinery with an American company. As per the agreement ABC Textiles Limited will be paying US \$ 200000 after 180 days. As the fluctuation in the spot rate of the US dollar over next 180 days will impact the rupee cost of import, the Board of ABC Textiles Limited asks its finance manager to collect data from the currency forward market, money market, currency option market etc. The board also asked a consultant to assess various possible dollar spot rates after six months.

The various findings are as follows :

- (a) Possible spot rate of dollar after six months, as estimated by the consultant, is ₹ 47.25, ₹ 47.75, ₹ 48, ₹ 48.50, ₹ 48.90.
- (b) Spot rate of dollar as of today is 48/US \$
- (c) 180 day forward rate of dollar as of today is 48.48/US\$.
- (d) Interest rates are as follows :

	India	USA
For 180 days deposit rate (per annum)	7.50%	1.50%
For 180 days borrowing rate (per annum)	8.00%	2.00%

- (e) A call option on the dollar, which expires in 180 days, has an exercise price of ₹48/US \$ and premium ₹ 0.52/US \$.
- (f) A put option on dollar, which expires in 180 days, has an exercise of ₹ 48/US \$ and premium of ₹ 0.04/US \$.

Carry out a comparative analysis of the various outcomes (rupee cost of import) under the alternatives of

- (i) Not hedging (10 marks)
- (ii) Forward hedging (5 marks)
- (iii) Money market hedging (15 marks)
- (iv) Option hedging (15 marks)
- (v) Also give your recommendation that which of the above alternative will be beneficial to the ABC Textile Limited (5 marks)

Answer 1(i)

ABC textiles will need to purchase US \$ 200000 to fulfil its obligations. It will do so by making a purchase in the spot market (i.e., not hedging) after 180 days. ABC Textiles rupee outgo in this circumstances will be:

<i>Expected Spot Rate After 180 Days</i>	<i>Rupees Outgo to Purchase US \$ 200000</i>
RS. 47.25/US \$	Rs. 94,50,000
RS. 47.75/US \$	Rs. 95,50,000
RS. 48.00/US \$	Rs. 96,00,000
RS. 48.50/US \$	Rs. 97,00,000
RS. 48.90/US \$	Rs. 97,80,000

Answer 1(ii)**Forward Hedging**

Rupees needed to be buy US \$ 200000 with forward contract is US \$ 200000 x Rs.48.48/US \$ = Rs. 96,96,000.

Answer 1(iii)**Money Market Hedging**

1. Borrow Rupee, Convert to US Dollar, invest US Dollar to receive US \$ 200000 in 180 Days.
2. Amount of US Dollar to be invested
= US \$ 200000 / {1 + (0.015 x 180 / 360)} = US \$ 198511
3. Amount in Rupees that need to be converted into US dollar for investing
= US \$ 198511 x Rs. 48 / US \$ = Rs. 95,28,528
4. Interest and Principal owed in rupee loan to be returned after 180 days
= Rs. 95,28,528 {1 + (0.08 x 180 / 360)} = Rs. 99,09,669
5. Therefore, the rupee outgo for ABC Textiles will be Rs. 99,09,669

Answer 1(iv)**Option Hedging**

Purchase Call (Assuming that the option is to be exercised on the day the US dollar are needed) exercised price is Rs. 48/US \$; Premium is Rs. 0.52/US \$

<i>Possible Spot Rate After 180 Days (Rs.)</i>	<i>Premium Per Unit Paid for Option (Rs.)</i>	<i>Exercise Option</i>	<i>Total Price Paid Per Unit (Rs.)</i>	<i>Total Price Paid for US \$ 2,00,000</i>
47.25	0.52	No	47.77	Rs. 95,54,000
47.75	0.52	No	48.27	Rs. 96,54,000

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48.00	0.52	No	48.52	Rs. 97,04,000
48.50	0.52	Yes	48.52	Rs. 97,04,000
48.90	0.52	Yes	48.52	Rs. 97,04,000

Answer 1(v)

Recommendation

Forward Hedging will be recommended since the forward contract price (US \$ 200000 x Rs. 48.48/US \$ = Rs. 96,96,000) under this option is more beneficial than other available alternatives.

Question 2

(a) The following financial statistics is available in respect of a listed company:

Price earning (P/E) ratio	8 times
Number of equity shares	4 lakh
Earnings available to equity shareholders	₹40 lakh
Earnings per share	₹10
Market price per share	₹80

The company is currently considering whether it should use ₹ 20 lakh of its earnings to pay cash dividends or purchase shares at 85 per share. As a financial consultant to the company, you are expected to provide answers for the following situations :

- How many equity shares can be repurchased, using the funds that would have been disbursed to pay cash dividend ?
- Determine the EPS after the proposed share repurchase.
- Assuming no change in the current P/E Ratio, compute the market price after share repurchase.
- Compare the shareholders' positions under the dividend and repurchase alternatives.
- In case share repurchase price is higher than ₹85, which category of shareholder those who have sold their shares or those who have not-are financially better off? (10 mark)

The following is the information of JSP Limited listed on BSE :

- The paid up equity share capital of the company is ₹11,50,00,000 comprising of 1,15,00,000 equity shares of ₹10 each
- The promoters of the company viz. Mr. Jayanth together with his relatives and associate companies are holding 60,12,166 equity shares, representing 52.25% of the total paid up capital of the company as on 31-03-2011.

- (c) *The promoters intend to acquire further 15% (575000 equity shares) of total share capital of the company under regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred as "Takeover Regulations") in the financial year 2013-14.*
- (d) *Further, they are desirous of increasing their holding by further 5% equity shares (5,75,000) in each financial year of 2014-15, 2015-16, 2016-17 in terms of the regulations without making any public announcement, by way of purchase from the open market in normal segment on the stock exchange.*
- (e) *The said acquisitions shall also not be through bulk/block deal/negotiated deal or preferential allotment.*

In light of the above information, explain the following :

- (a) *Can the promoters of the company acquire additional 5% (575000 shares) during the financial year 2013-14 as per regulation 3(2) of the Takeover Regulation ?*
- (b) *Can the promoters further acquire 5% additional shares as per regulation 3(2) of the Takeover Regulations in each financial year 2014-15, 2015-16 and 2016-17 till reaching the level of 75% of the paid up share capital of the company. (10 marks)*

- (c) (i) *ABC Limited came out with an IPO of 10,00,000 shares, including 4,00,000 shares as offer for sale by an existing investor @ ₹200 each. 35% of the issue was reserved for retail investors who were given a discount of 5%.*

The Company incurred an expense of ₹70 lacs in completing the issue. Calculate the net amount received by the company from this IPO.

(5 marks)

- (ii) *An Investor purchased 1000 shares of HP Oil Limited on 1st April 2016 at a price of ₹1,200 each.*

The company allotted two shares against each share as bonus on 10th May 2016. The Company further issued Bonus shares in the ratio of one share against two shares held on 1st January 2017.

The investor sold all the shares of the company on 25th February 2017 @ ₹500 each.

What is the net gain to the investor presuming that the investor has to pay short term capital Gain Tax of 15% (5 marks)

Answer 2(a)

- (a) $\text{Rs. } 20,00,000 / \text{Rs. } 85 = 23,529$ shares to be repurchased
- (b) $\text{Shares outstanding after repurchase} = 4,00,000 - 23,529 = 3,76,471$ Shares
 $\text{EPS After proposed repurchase} = 40,00,000 / 3,76,471 = \text{Rs. } 10.625$ per share
- (c) $\text{Market Price of Share} = \text{Rs. } 10.625 \times 8 \text{ times} = \text{Rs. } 85$

- (d) Under the dividend alternative, the shareholders receive Rs. 5 per share. Given the market price of Rs. 80, their total receipts per share are Rs. 85. Under the repurchase alternative, the MPS is Rs. 85. In both cases, the effective receipts per share are identical.
- (e) If the repurchase price is more than Rs 85, those who have sold the shares will be financially better off.

It can be computed also:

$$P = (N_c \times \text{MPS}_c) / (N_c - \text{RS}) = 400000 \times \text{Rs. } 80 / 400000 - 23,529$$

$$= \text{Rs. } 320 \text{ lakh} / 3,76,471 \text{ Shares} = \text{Rs. } 85 \text{ per share.}$$

Answer 2(b)

The regulation 3(2) of the SEBI (Takeover) Regulations, 2011 provides for exemption from making a public announcement subject to the following conditions:

- (a) The shareholding of the Acquirer is between 25% of the total shares or voting rights of the company and the “maximum permissible non-public shareholding limit.”
- (b) Pursuant to the acquisition, to the shareholding of the Acquirer should not breach the maximum public shareholding limit.
- (c) For calculating the acquisition limit of 5% of shares or voting rights, as specified under regulation 3(2) of the Takeover Regulations, only gross acquisitions shall be taken into account. Any intermittent fall, in shareholding owing to disposal of shares by the acquirer or dilution of shareholding on account of fresh issue of share capital shall be ignored.
- (d) In case the acquisition has taken place by way of issue of new shares of the target company or where the target company has issued shares during a financial year, the difference between the pre-allotment and post-allotment voting rights shall be taken in to account for calculating the acquisition limit under regulation 3(2) of the Takeover Regulations.

Further the Promoters of the company are currently holding 52.28% shares in the company, which is within the eligible limit as stated at point 4(a) above. Further, the promoters want to increase their shareholding by 5% in each of the financial year 2011-12, 2012-13, 2013-14 and 2014-15. The precise query of the applicant is whether Promoters of the company are allowed to acquire 5% of shares only once, or tie facility to acquire 5% of shares is available for every financial year.

The language “*any financial year*” mentioned in regulation 3(2) of the Takeover Regulations should be read as “*every financial year*”. Therefore, the Promoters of the company are eligible to acquire upto 5% of shares of the company every financial year without attracting the obligation to make a public announcement as provided under regulations 3(2) of Takeover Regulations, subject to the fulfillment of other conditions mentioned therein.

Answer 2(c)(i)

Total Issue Size = 10,00,000 Shares

Price Per Share = Rs. 200 per Share

Shares reserved for retail (35%) = 3,50,000 Shares

Discount to be given to reverse shares @5% on Rs, 200 i.e. Rs 10 per share amounting to Rs. 35,00,000

Total Proceeds without Considering Discount to Retail Investor = 20,00,00,000
(10 Lacs x 200)

Then Discount to Retail Investor = 35,00,000

Net Proceeds = 19,65,00,000

Then Expenses = 70,00,000

Funds Received by the Company = 18,95,00,000

Then 40% to be given to the existing investor = 7,58,00,000

Net Receipt of Funds by the Company = 11,37,00,000

Answer 2(c)(ii)

<i>Date of Purchase/Bonus</i>	<i>Activity</i>	<i>Number of Shares</i>	<i>Cost</i>
01.04.2016	Purchase	1000 x 1200	12,00,000
01.05.2016	Bonus 2:1	2000 x 0	0
01.01.2017	Bonus 1:2	1500 x 0	0
Total		4500	12,00,000

Sale of Shares on 25/02/2017 = 4500 x 500 = 22,50,000

Cost = 12,00,000

Net Profit on Sale of Shares = 10,50,000

Since all the shares were sold before one year, the profit shall be subject to Tax on Short Term Capital Gain @ 15%

Tax on Capital Gain @ 15 on 10,50,000 = 1,57,500

Net Gain after Tax = 8,92,500

Question 3

The main function of Financial Intelligent Unit-India (FIU-IND) is to receive suspicious transaction reports, analyse them and, as appropriate, disseminate valuable information to enforcement department" - do you agree. Discuss. (5 marks)

Answer 3

The main function of Financial Intelligent Unit – India (FIU-IND) is to receive cash/suspicious transaction reports, analyze them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities.

Yes I agree with this statement and FIU-IND is playing following roles/functions with regards to enforcement department:

1. **Collection of Information** : Act as the central reception point for receiving Cash Transaction reports (CTRs) and Suspicious Transaction Reports (STRs) from various reporting entities.
2. **Analysis of Information** : Analyze received information in order to uncover patterns of transactions suggesting suspicion of money laundering and related crimes.
3. **Sharing of Information** : Share information with national intelligence/law enforcement agencies, national regulatory authorities and foreign Financial Intelligence Units.
4. **Act as Central Repository** : Establish and maintain national database on cash transactions and suspicious transactions on the basis of reports received from reporting entities.
5. **Coordination** : Coordinate and strengthen collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and related crimes.
6. **Research and Analysis** : Monitor and identify strategic key areas on money laundering trends, typologies and developments.

Question 4

MM Ltd has 1,00,000 fully paid-up shares of 100 each as on 31st March, 2017. The shareholding pattern of the MM Ltd is given below :

Shareholding Pattern	Number of Shares
<i>Shares held by promoter group</i>	<i>19,750</i>
<i>Strategic investment by the government</i>	<i>500</i>
<i>Independent public companies</i>	<i>10,000</i>
<i>Shares held by promoters through ADR</i>	<i>2,500</i>
<i>Cross holding of associate companies</i>	<i>125</i>
<i>Employee welfare trusts</i>	<i>1,475</i>
<i>Shares under lock-in category</i>	<i>14,000</i>
<i>Retail investors</i>	<i>51,650</i>

From the above, you are required to

- (a) *Define Investible Weigh Factors (IWFS)* (2 marks)
- (b) *Compute the IWF in terms of percentage ?* (3 marks)

Answer 4 (a)**Investible Weight Factors (IWFS)**

Investible Weight Factors (IWFS) is unit of floating stock expressed in terms of number available for trading and which is not held by the entities having strategic interest in a company. Higher IWF suggest greater number of shares held by the investors as reported under public category within a shareholding pattern reported by each company.

Answer 4(b)**Computation of IWF**

Total Shares		1,00,000
Less : Excluded Pattern of Shares		
Shares held by Promoter Group	19,750	
Strategic Investment by the Government	500	
Shares held by Promoters through ADR	2,500	
Cross Holding of Associate Companies	125	
Employee Welfare Trusts	1,425	
Shares under Lock-in-Category	14,000	38,350
Free Float Shares		61,650

$$\text{IWF\%} = \text{Free Float Shares/Total Shares} * 100$$

$$61650/100000 * 100 = 61.65\%$$

Question 5

"As per the SEBI (Foreign Portfolio Investors) Regulation 2014, Foreign Institutional investors (FII) and Qualified Foreign Investors (QFI) have been merged in the name of Foreign Portfolio Investors (FPI)" - As a Compliance Officer of the listed company, describe the various categories of FPI with its constituents. (5 marks)

Answer 5

Earlier, there were following categories namely

- (i) Foreign Institutional Investor
- (ii) Foreign Portfolio Investor
- (iii) Others which are not covered under (i) and (ii).

In order to simplify the guidelines, rules and regulations, SEBI decided to merge all these categories into one known as Foreign Portfolio Investor (FPI).

Categories of Foreign Portfolio Investor

Category I FPIs include:

Government and Government-related investors such as central banks, Governmental

agencies, sovereign wealth funds and international or multilateral organizations or agencies.

Category II FPIs include:

- Appropriately regulated broad based funds such as mutual funds, investment trusts, insurance/ reinsurance companies;
- Appropriately regulated persons such as banks, asset management companies, investment managers/ advisors, portfolio managers;
- Broad based funds that are not appropriately regulated but whose investment manager is appropriately regulated. However, the investment manager of such broad based fund should be registered as a Category II FPI and should undertake that it shall be responsible and liable for all acts of commission and omission of all its underlying broad based funds and other deeds and things done by such broad based funds under these regulations.
- University funds and pension funds; and
- University-related endowments already registered with SEBI as FII or sub-accounts.

Category III FPIs include:

It includes all other FPIs which not eligible under Category I and II of FPIs such as endowments, charitable societies, charitable trusts, foundations, corporate bodies, trusts, individuals and family offices.

Question 6

A commodity trader borrowed a sum of ₹ 6,50,000 @ 12% p.a. for a period of 3 months. This fund was used to buy 2 Kg gold @ ₹ 2,950 per gram and paid a sum of 5,90,000 towards cost of physical gold.

The Trader sold 2 kg gold in future of 3 months in the commodity exchange @ ₹3,000 per gram.

The Trader paid ₹60,000 to the broker towards margin as well as maintenance margin for this transaction.

After 3 months the Trader squared off the future transaction of gold @ ₹3,050 per gram.

The Trader also sold the physical Gold @ 3,050 per gram.

Calculate the Net gain/loss made by the trader.

(5 marks)

Answer 6

Funds Borrowed	6,50,000
Interest @ 12% for 3 months	19,500
Total Cost	6,69,500

Cost of Physical Gold – Rs. 2950 x 2000 = 5,90,000

Rs. 60,000 was paid to the Broker towards margin as well as maintenance margin for this transaction.

Loss of gold transaction in exchange:-

Rs. (3,050-3,000) x 2000 = 1,00,000

Profit in Physical Gold

Rs. (3050 -2950) x 2000 = 2,00,000

Profit in the Transaction = 1,00,000

Less Interest Paid on Borrowed Capital 19,500

Net Profit to the Trader in the Transaction = 80,500

INSURANCE LAW AND PRACTICE **(Elective Paper 9.3)**

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

NOTE : Answer ALL Questions.

Mr. Ajay a Company Secretary is also a fellow member of The Insurance Institute of India. He joined ABC Limited as a Manager in 2006 and got promoted as a Senior Manager in October, 2011. His promotion entitled him to buy a car. He bought a Hyundai EON car. He took lessons from a driving class and got a Learner's Driving licence. The car purchased and registered in October 2011 was insured with FG Insurance comprehensively.

During December, 2011 while reversing his new car (EON) parked on a gradient facing west east inside the company's car shed lost control over the vehicle and dashed the rear of an Esteem Vehicle (parked East West). Due to the impact ESTEEM vehicle had also touched another car Santro nearby. Esteem car was insured by the owner comprehensively with TAIG Insurance. Mr. Ajay immediately informed the security of the company ABC Limited as the parking shed belonged to ABC Limited and the executives and managers were authorised to park their vehicles in the big parking shed partly open and partly covered with asbestos sheets.

Mr. Ajay the insured had only a LLR (Learner's Licence) and yet to get a permanent driving licence. However at the time of accident he was accompanied by Mr. Sanjay who was having a permanent driving licence and sitting adjacent to Mr. Ajay while he was driving. Mr. Sanjay drove the vehicle after the accident to the dealer cum repairing centre and left the vehicle at dealer's garage to have the vehicle repaired.

As there was no injury to any person and the accident happened inside the parking shed owned by ABC Limited, it never occurred to Mr. Ajay that he should lodge a FIR/Panchnama.

Mr. Ajay took moral responsibility in taking the lead and reported the claim to TAIG Insurance (Insurer of ESTEEM) after ascertaining the name of the insurer and the insured from the records available with ABC Limited. As the ESTEEM vehicle was very old vehicle, total repair expenses exceeded the assessment of the surveyor and Mr. Ajay had to reimburse Rs. 10,000/- to the extent repair expenses exceeded the claim assessment of the surveyor and reimbursed by the insurer to the owner of ESTEEM vehicle.

The owner of Santro Vehicle did not prefer a claim with his insurers but claimed the repair expenses from Mr. Ajay, the owner of EON vehicle. Mr. Ajay reimbursed Rs. 5,000/- to the owner of the Santro vehicle.

Mr. Ajay got the repair expenses of EON from FG insurance. Repair expenses to the ESTEEM vehicle were reimbursed partially by TAIG Insurance to the extent assessed by the surveyor and repair expenses over and above the surveyor's

assessment was borne by Mr. Ajay (Rs. 10000/-) and similarly he had also paid Rs. 5,000/- to the owner of Santro vehicle as stated above.

Mr. Ajay got his EON car repaired and wanted FG insurance.

(i) To reimburse Rs. 10,000/- the excess of repairers' bill over and above what had been admitted by TAIG Insurance.

(ii) To reimburse Rs.5,000/- the amount of repair expenses paid to the santro owner.

The policy issued by FG Insurance for EON car was comprehensive and showed TPPD of Rs. 7,50,000/- and obtained premium for the same in addition to collecting OD premium for the car.

Mr Ajay contended that it was not any compromise to the third party(ies) (owners of ESTEEM and Santro vehicles) but had reimbursed the excess of the repairer's bill over and above allowed by TAIG Insurance for ESTEEM and since Santro owner did not prefer a claim with the insurers.

Please answer the following :

(a) Explain the principles of insurance with reference to Motor underwriting in detail explaining the different types of cover. Comprehensive, ACT only. (10 marks)

(b) Why did the owner of SANTRO vehicle did not prefer a claim with his insurers ? (5 mark)

(c) What is NCB in Motor underwriting parlance ? Will Mr. Ajay be entitled to NCB during the renewal of policy for EON ? What are the various slabs of NCB in motor insurance ? (10 marks)

(d) Why did FG Insurance admit the damages to the EON car while Mr. Ajay the owner cum driver had only a Learner's licence (LLR) and not a permanent licence? (5 marks)

(e) What is TPPD ? What prevented Mr. Ajay from filing a FIR./Panchnama ? (5 marks)

(f) Explain the process of preferring a Third party property Damage claim. (5 marks)

(g) Explore the possibility of FC Insurance repudiating/admitting the claim of Rs. 15000/- for reimbursement to the respective third parties for the property damage to their vehicles. (10 marks)

Answer 1(a)

Motor Insurance being a contract like any other contract has to fulfill the requirement of a valid contract as laid down in the Indian Contract Act 1872. In addition it has certain special features common to other insurance contracts. They are as under:

- (i) Principle of Utmost Good Faith
- (ii) Principle of Insurable Interest
- (iii) Principle of Indemnity
- (iv) Principle of Subrogation and Contribution
- (v) Principle of Proximate Cause
- (i) *Principle of Utmost Good Faith* : The principle of utmost good faith casts and obligation on the insured to disclose all the material facts These material facts must be disclosed to the insurer at the time of entering into the contract. All the

information given in the proposal form should be true and complete. e.g. the driving history, physical health of the driver, type of the vehicle etc. If any of the material facts declared by the insured in the proposal form are incorrect or inappropriate by the insurer at the time of the claim it may result in the claim being repudiated.

- (ii) *Principle of Insurable Interest* : In a valid insurance contract, it is necessary on the part of the insured to have an insurable interest in the subject matter of insurance. The presence of insurable interest in the subject matter of insurance gives the person right to insure. The interest should be pecuniary and must be present at inception and throughout the term of the policy. Thus the insured must be either benefitted by the safety of the property or must suffer a loss on account of damage to it.
- (iii) *Principle of Indemnity* : Insurance contracts are contracts of indemnity. Indemnity means making good of the loss by reimbursing the exact monetary loss. It aims at keeping the insured in the same position as he was before the loss occurred and thus prevent him from making any profit from the insurance policy.
- (iv) *Principle of Subrogation and Contribution* : Subrogation refers to transfer of insured's right of action against a third party who caused the loss. Thus the insurer who pays the loss can take up the insured's place and sue the party that caused the loss in order to minimize his loss for which he has already indemnified the insured. Subrogation comes in the picture only in case of the damage or loss due to a third party. The insurer derives this right only after the payment of damages to the insured.
Contribution ensures that the indemnity provided is proportionately borne by all the insurers in case of double insurance.
- (v) *Principle of Proximate Cause* : The legal doctrine of proximate cause is based on the principle of cause and effect. To be proximate the cause must be immediate effect but not a remote or distant one.

Different Types of Cover

The All India Motor Tariff governs motor insurance business in India. According to the Tariff all Classes of vehicles can use two types of Policy forms. They are :

Form A which is known as ACT Policy is a compulsory requirement of the Motor Vehicle Act. Use of vehicles without such insurance is a penal offence.

Form B which is also known as Comprehensive cover is an optional cover.

1. *Liability only Policy* : This covers third party liability and/or death and property damage. Compulsory personal accident covers for the owner in respect of owner driven vehicle is also included.
2. *Package Policy* : This covers loss or damage to the vehicle insured in addition to 1 above.
3. *Comprehensive Policy* : Apart from the above mentioned coverage it is permissible to cover private cars against the risk of fire and/or theft and their party/theft risks.

Every owner of motor vehicles has to take out a policy covering third party risks but insurance against other two risks is optional. When insurance policy covers third party

risks, third party who has suffered any damages, can sue the insurance company even though it is not a party to the contract of insurance.

Insurance policies for the vehicles subject to the purchase agreements, lease agreements and Hypothecation are to be issued in the joint names of the hirer and the owner, lessee and the lessor, owner and the pledgee respectively. In case of policy renewal a notice of one month in advance is issued by the insurer. The notice gives the details of premium payable for renewal.

Answer 1(b)

The owner of Santro Car might have opted to refrain claiming from his insurers on account of:

- (i) The policy taken might be only "ACT POLICY" not covering own damage portion of the car.
- (ii) The owner shall be deprived of "NCB" No Claim Bonus or a reduced slab of NCB should a claim be preferred.

Answer 1(c)

In motor insurance, No Claim Bonus (NCB), is the insurer's reward to the policyholder for not making a claim in the preceding years. That is, NCB - which is a discount ranging from 20-50% on premium payable cannot be claimed as a right but has to be earned by maintaining a claim-free record. When you buy your first comprehensive motor insurance policy, you are normally (except in the rare case of NCB transfer) not eligible for any NCB discount on the premium paid because you have no claim-free record as such.

Mr. Ajay shall not be entitled to No Claim Bonus (NCB) at the time of next renewal as it is a discount which is available for not making a claim in the preceding year but Mr. Ajay had taken a claim from FG Insurance covering Third party claim also.

The insured is entitled for No Claim Bonus (NCB) on the own damages section of the policy, if no claim is made or pending during the preceding year (s) as per the following table:

<i>Period of Insurance</i>	<i>% of NCB on Own Damage Premium</i>
No claim made or pending during the preceding full year of insurance	20%
No claim made or pending during the preceding 2 consecutive years of insurance	25%
No claim made or pending during the preceding 3 consecutive years of insurance	35%
No claim made or pending during the preceding 4 consecutive years of insurance	45%
No claim made or pending during the preceding 5 consecutive years of insurance	50%

No Claim Bonus will only be allowed provided the policy is renewed within 90 days of the expiry date of the previous policy.

Answer 1(d)

As per Motor insurance policies, when a learner is driving alone with Learner's license and met with an accident then he/she is not entitled for the claim and the company has the right to refuse for the claim but in case any person accompanying with him/her with permanent driving licence and expert in driving , then insurance company is entitled to give the claim to the insure. In this case, Mr. Ajay was accompanied by Mr. Sanjay who had a permanent driving licence and expertise in driving and sitting on the adjacent seat, therefore, Mr. Ajay is entitled to claim for the losses incurred due to accident.

Answer 1(e)

TPPD in Motor insurance refers to **Third Party Property Damage**. A third-party car insurance plan provides coverage against any legal liability arising out of injuries to a third-party when the policyholder is at fault. It covers damages and injuries caused by the insured vehicle, to a third-party person or property. As per the Motor Vehicles Act, 1988, it is mandatory for every motor vehicle owner to buy at least third-party insurance coverage in India.

Mr. Ajay did not file FIR/Panchnama because:

- (i) The accident took place inside the parking shed owned by ABC Limited.
- (ii) Nobody sustained any bodily injury.
- (iii) It did not occur to the insured that a FIR/Panchnama would be a pre-requisite for staking a claim with MACT (Motor Accident Claims' Tribunal).

Answer 1(f)

The following process should be followed in cases of third party loss/damage:

Insured should intimate to the police about the accident resulting into a third party damage.

In case the insured receives MACT's (Motor Accident Claims' Tribunal) notice from third party all such notice(s) should be forwarded by the insured to the insurance companies with following information :

- Details about the accident resulting in third party claim
- Insurance Policy Details
- Details of the Driver who was driving at the time of accident
- Driver's Driving licence particulars
- Any other information asked by the insurer.

The insurance company then generally deposes an investigator and advocate to investigate about the accident and present the insurance company's case before the MACT. Any award passed by the MACT is paid by the insurance company as per the policy terms and conditions.

Insurers can regret their inability to honour the third party property damage reimbursement directly settled by the insured under the pretext of compromise. Such claims are required to be received through the competent authority (MACT).

Answer 1(g)

FG Insurance can repudiate the claim stating their inability to honour TPPD reimbursement settled by insured as the claims are required to be received through the competent authority.

FG Insurance can also settle the claim as one time exception as ex-gratia after receiving a representation from the insured and getting a notarized affidavit from the concerned third party(ies) that their claims have been fully and finally settled by the insured and that they would not be staking any further claims in this regard. The competent authority to sanction such ex- gratia cases shall be Managing Director of insurance company. FG insurance should also satisfy themselves by getting the copy of the bank statement from the insured showing the debits with the respect to the payments made by third parties.

Question 2

- (a) *United Industries insured its factory assets as detailed below with Star General Insurance Company for the values given below under a Standard Fire Insurance and Special Perils Policy.*

The insurance was on market value (indemnity) basis,

Building Rs. 6,75,00,000

Machinery (Other than Boiler) Rs. 18,76,00,000

Boiler : Rs. 1,75,00,000

The boiler being subject to a loan agreement with National Bank was also insured by the bank under a separate Standard Fire and Special Perils Policy from Satellite Insurance Company for Rs. 2,75,00,000 which was the current replacement value of the boiler. This policy was also obtained on the market value basis only.

The policy deductible in respect of any one claim was Rs. 25000/- under each of the two policies.

In a major fire accident the insured factory was heavily affected. All the three assets namely Building, Machinery and Boiler were heavily damaged.

The surveyor appointed by the Star General Insurance Company whose appointment was also concurred by the Satellite Insurance Company assessed the loss on indemnity basis as below after taking into account the applicable depreciation.

Building Repairs : Rs. 1,25,00,000

Machinery Repairs and replacements : 2,50,00,000

Boiler Repairs : Rs. 75,00,000

As assessed by the surveyor the market value as on the date of loss of respective assets were as below :

Building : Rs. 9,00,00,000

Machinery other than boiler : Rs. 26,80,00,000

Boiler : Rs. 2,75,00,000

Work out the recovery obtainable from each of the two insurers under their respective policies based on the assessment done by the surveyors as above.

(20 marks)

- (b) Ricky has a personal accident policy that covers death by accident but excludes death by disease. He falls from his horse and suffers leg injuries. He is admitted to hospital but his leg wound turns septic and one week later he dies as a result of the disease septicaemia.*

Explain whether the personal accident insurers are liable under the policy referring to relevant case law in support of your answer.

(10 marks)

Answer 2(a)

Claims recoverable under the Star General Insurance Company's Policy

(I) BUILDING

If the declared sum insured is found to be less than the value of the property insured, then the claim amount is proportionately reduced. In Building this condition is applied so the losses assessed by the surveyors are reduced.

Market value of the Building as on the date of loss	:	Rs.9,00,00,000/-
Sum insured under the policy	:	Rs.6,75,00,000/-
Under Insurance	:	9,00,00,000/- (-) 6,75,00,000/- = 2,25,00,000/- 2,25,00,000/ 9,00,00,000 x 100= 25%
Building Repairs assessed by the surveyors	=	1,25,00,000/-
Net Claim before application of excess	=	1,25,00,000 x 75% = Rs. 93,75,000/-

(II) MACHINERY : Same above condition is applicable in Machinery also

Market value of machineries as on the date of loss	:	Rs.26,80,00,000/-
Sum insured under the policy	:	Rs.18,76,00,000/-
Under Insurance	:	Rs. 26,80,00,000 - 18,76,00,000 = 8,04,00,000/- = 8,04,00,000/ 26,80,00,000* 100 = 30%
Machinery repairs assessed by the surveyor	:	Rs. 2,50,00,000/-
Net admissible claim before application of excess	=	2,50,00,000 x 70%= Rs. 1,75,00,000/-

(III) BOILER

Market value of the Boiler as on the date of loss	:	Rs. 2,75,00,000/-
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There is no under insurance in the case of boiler as the total sum insured under both the policies put together is more than the market value.

Boiler repairs as assessed by the surveyors	=	Rs. 75,00,000/-
Net admissible claim for Boiler from Star General Insurance Company	=	$1,75,00,000/4,50,00,000$ $\times 75,00,000$ = Rs. 29,16,667/-
Total claim recoverable from Star General Insurance Company before applying excess	=	$93,75,000+1,75,00,000$ $+ 29,16,667$ = Rs. 2,97,91,667/-
Net claim form Star General Insurance Company after excess	=	$29,79,1,667 - 25,000$ = Rs. 2,97,66,667/-
Claim recoverable under Satellite Insurance Company's policy		
Admissible claim before excess	=	$27500000/45000000$ $\times 7500000$ = Rs. 4583333
Excess	=	Rs. 25000
Net claim after excess	=	$4583333 - 25000$ = Rs. 4558333

Answer 2(b)

The issue here is causation- the insurers would need to establish whether original accident was the proximate cause of Ricky's death or was his death as result of septicaemia.

Where there is a 'chain of events', the insurers are liable where the loss flows in an unbroken chain directly from an insured peril.

Equally, there is no liability if the loss flows from an excluded peril.

Etherington v Lancashire and Yorkshire Accident Insurance Company (1909)

The insured fell from the horse and suffered some injuries that force him to lie in cold and damp conditions so that he contracted pneumonia, of which he eventually died. It was held that the proximate cause of his death was the original 'accident' if the fall from the horse and not the disease that ultimately killed him (which was excluded).

Mardof v Accident Insurance Co.(1903)

The insured scratched his leg with his thumb nail while removing his socks, Six days later the wound turned septic, on the tenth day septicaemia set in and on the twentieth day the injured dies of septicaemia. The policy covered death by accident but excluded death by disease.

The court in this case held that the proximate cause of death was accident and not the ensuing disease.

In this scenario the 'chain of events' was unbroken in the sense that septicaemia was a natural consequence of Ricky falling from his horse and suffering the leg injury. The personal accident insurers would therefore be liable even though he died from septicaemia an excluded peril.

Question 3

Outline the areas on which the Statutory Auditor is required to express his opinion during Certification of Financial Statements of Insurance Companies. (5 marks)

Answer 3

The Statutory Auditor of an insurance company is required to express his opinion on:

1. (a) Whether the balance sheet gives a true and fair view of the insurer's affairs as the end of the financial year/period.
(b) Whether the revenue account gives a true and fair view of surplus or the deficit for the Financial year/period.
(c) Whether the Profit and Loss Account gives a true and fair view of the profit or loss for the financial year/period.
(d) Whether the receipts and payments account gives a true and fair view of the receipts and payments for the financial year/period
2. The financial statements are prepared in accordance with the requirements of the Insurance Act 1938, the insurance Regulatory and Development Authority Act, 1999 and the Companies Act, 2013, to the extent applicable and in the manner so required.
3. Investments have been valued in accordance with the provisions of the Act and regulations.
4. The accounting policies are appropriate and are in compliance with the applicable Accounting Standards and the accounting principles.
5. Certify the management report and that there is no apparent mistake or material inconsistencies with the financial statement.
6. He has to certify that he has verified the cash balances and securities relating to the insurer's loans reversions and life interest and investments.
7. Certify that the insurer has complied with the terms and conditions of the registration stipulated by the Authority.

A certificate signed by the auditors (which is in addition to any other certificate or report which is required by law to be given with respect to the balance sheet) certifying that:

1. They have verified the cash balances and the securities relating to the insurer's loans, reversions and life interests (in the case of life insurers) and investments;
2. The extent, if any, to which they have verified the investments and transactions relating to any trusts undertaken by the insurer as trustee; and
3. No part of the assets of the policyholders' funds has been directly or indirectly applied in contravention of the provisions of the Insurance Act, 1938 (4 of 1938) relating to the application and investments of the policyholders' funds."

Question 4

In aggressive sale of business, Insurance Companies are experiencing a severe problem of "Lapsation" (non-continuation of premium payment), which is hindering the growth of life insurance business. Identify some (any five external or internal) causes of the Lapsation of Life Insurance Policies. (5 marks)

Answer 4

Ganesan committee identified that the early lapsation of the life insurance policies is the combined effect of both the external and internal factors with some element of interaction between the two. The committee identified the following factors:

External Factors

1. Economic decision making of the policy.
2. Economic Social Background.
3. Availability of alternative investment option.
4. Client specific features like
 - Wealth and Savings,
 - Education,
 - Age,
 - Gender,
 - Location : Rural/ Urban,
 - Financial difficulties,
 - Resource Availability.
5. Macro economic factors like
 - Disposable income,
 - Inflation,
 - Government policies with regard to taxation,
 - Fiscal incentives,
 - Development of industrialized areas.

All the above factors are beyond the control of an Insurance Company.

The internal factors contributing to the lapsation of life insurance policies are :

1. Product design and choices
 - Types of plans,
 - Mode of Premium payments,
 - Policy Term.

2. Marketing and Personal strategies

- Planning of business activities (budgets, time frames)
- Sales personnel agents development officers, branch marketing supervisors,
- Customer education,
- Market research,
- HRD linked to marketing (recruitment training appraisal, incentives and discounts),
- Policy mismatch (lack of need based selling),
- Absence of insurance awareness/consciousness.
- Domination of Tax concern rather than risk management concern
- Lack of agency professionalism while selling insurance policies',
- Remuneration/commission structure for the field force (High commission for the first year premiums and low commission for renewal premiums),
- Knowledge gap among the field personnel and no quality consciousness in training programs for the field force Business target Structure(focuses mostly in the month of March)
- High agent turnover/poaching/churning the policies due to increased competition in the market,
- Lack of after sales service.

Question 5

Give a brief note on each of the following :

- Doctrines of contra proferentum*
- Doctrines of good faith and fair dealing*
- Reasonable expressions doctrine*
- Presumption of death and disappearance*
- Insurer's liability for delay, improper rejection or failure to act* (5 marks)

Answer 5

- Doctrines of Contra Proferentum* also known as "interpretation against the draftsman", is a doctrine of contractual interpretation providing that, where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interests of the party who provided the wording. The doctrine is not, however, directly applicable to situations where the language at issue is mandated by law. The reasoning behind this rule is to encourage the drafter of a contract to be as clear and explicit as possible and to take into account as many foreseeable situations as it can.

Example : In insurance contracts, an individual usually has to accept all terms and conditions of insurance policy document framed by the Insurer Company with no liberty on part of the individual to negotiate or alter the conditions of the contract.

- (b) *Doctrine of good faith and fair dealing* : Each party to the contract is to avoid impairing the rights of the other. The duty requires insurers to make prompt and full settlement with insured and beneficiaries and to consider the insured's interest in settling claims.

The implied-in-law duty of good faith and fair dealing imposes upon a disability insurer a duty not to threaten to withhold or actually withhold payments, maliciously and without probable cause, for the purpose of injuring its insured. The violation of that duty sounds in tort notwithstanding that it also constitutes a breach of contract.

- (c) *Reasonable expectations doctrine* : "Marketing patterns and general practices "of an Insurer will be honoured.

"A contract of insurance should be strictly construed against the insurer and read in favor of coverage in accordance with the reasonable expectations of the insured." Insurance policies are contracts of adhesion, drawn by insurers, and should be construed as reasonably understood by an insured. The test is not what the insurer intended its words to mean, but rather what a reasonable person in the insured's position would understand them to mean. "The policy should be read as a layman would read it and not as it might be analyzed by an insurance expert or an attorney."

Example : *Richards v. Hanover Ins. Co.* :The Supreme Court of Georgia, in *Richards v. Hanover Ins. Co.*, expressly approved application of the reasonable expectations rule and explained its function in conjunction with other rules of policy construction.

- (d) *Presumption of death and disappearance*: When a person leaves his usual place of residence and is neither heard or nor known to be living for a term of seven years, the person is presumed to be dead. Therefore if (1) an insured disappears for a period of seven years and (2) the absence is unexplained, the insurance company may be required to pay the policy death proceeds. The issue usually revolves around the second of the two conditions.
- (e) *Insurer's liability for delay, improper rejection or failure to act* : Many courts have held that when an insurer retains an applicant's premium but has not issued the insurance policy, elementary justice dictates that a contract of insurance is in existence else the company is liable for damages caused because of delay or failure to insure.

Question 6

Explain to what extent a valued policy modifies the principle of indemnity. (5 marks)

Answer 6

Under a valued policy, in the event of a total loss, the insurers must pay the agreed

value regardless of the actual value at the time of the loss, even if they can prove beyond doubt that the value of the property has declined since the insurance was opened.

The insured may, therefore receive more than a full indemnity. They may also receive less than indemnity if the actual value has increased.

If the initial valuation is grossly excessive, the policy might be voidable for fraud or misrepresentation or even void as a gaming policy under the Gaming Act 1845. The insured will normally be required to substantiate the value for which they seek to insure by providing an expert valuation at inception and so problems rarely arise in practice.

Valued policies are those policies where the value of the property is agreed before hand and which is made the sum insured under the policy. The condition of such a policy is that if there is a total loss than the full sum insured is to be paid even though the actual value is less than the sum insured. Here, the insured makes a gain. If the actual value is more than the sum insured then the insured sustain losses.

The following points should be noted in this regard –

- Only in case of a total loss there is the possibility of making either over-payment or under-payment. From experience it can be said that the possibility of total loss is very rare as mostly we experience partial losses.
- In case of partial loss, which is more common, the loss is treated under normal indemnity basis.
- Undervalued policies, the value that is agreed upon at inception is not just an arbitrary value but a value having a very realistic bearing on the actual market value.
- Valued policies are not usually given to those persons whose bona-fides are not in the knowledge of insurers. In other words, issuance of valued policies are very restricted.
- Valued policies are usually issued on articles of fairly stable value.
- It may be said that under valued policy the measure of indemnity is decided at the inception as opposed to ordinary policies where the measure of indemnity is decided at the time of claim.

Valued policies actually considered as contracts of indemnity in law and considering the above points it can very well be said that valued policies are in fact modifications of the principle of indemnity and certainly not departures from the principle of indemnity.

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

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

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

A question for adjudication, whether section 107A of the Patents Act, 1970 permits export from India of a patented invention, even if solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product, came up before the High Court of Delhi.

The petitioner, Bayer Corporation (Bayer) filed a writ petition in the High Court of Delhi contending that Natco was granted a Compulsory Licence by the Controller of Patents for the drug 'Sorafenib Tosylate' under section 84 of the Patents Act, subject to certain terms and conditions contained therein, that one of the said terms was that the Compulsory Licence was solely for the purposes of making, using, offering to sell and selling the drug covered by the patent for the purpose of treating HCC and RCC in humans within the territory of India, that Natco was however manufacturing the product covered by the Compulsory Licence for export outside India and that the export by Natco was contrary to the terms of Compulsory Licence and amounted to infringement of the patent within the meaning of Section 48 of the Patents Act.

Natco filed a counter affidavit in the writ petition inter alia pleading (a) that Natco had not exported any product (subject matter of Compulsory Licence); (b) that under the scheme of the Drugs and Cosmetics Act, 1940 (Drugs Act) permission was routinely granted for export to various countries upon compliance of certain conditions and that there were similar provisions in the western countries including Europe; (c) that the Patents Act also provided that export of a patented product for generation or submission of regulatory permission was not an act of infringement; (d) that the export by Natco was also for regulatory purposes (e) that such export was not at all barred by the Compulsory Licence; (f) that the activity of conducting studies for regulatory approval was squarely covered under Section 107A of the Patents Act, and (g) that Natco had never exported the finished product to any party outside India for commercial purpose.

Bayer, in its rejoinder to the counter affidavit aforesaid pleaded (i) that Section 107A of the Patents Act had no application as the acts contemplated thereunder, of making, constructing, using, selling or importing a patented invention, were to be performed within the territory of India and that the information from such activity could be submitted with the regulatory authorities either in India or with the countries other than India; (ii) that Section 107A of the Act did not contemplate export of product per

se but was limited to information generated within the territory of India; and (iii) that export of a product covered by Compulsory Licence under the garb of Section 107A of the Act was abuse of the process of law.

It was the contention of the senior counsel for Bayer (a) that the rights, if any of Natco, under Section 107A of the Act stood surrendered on Natco obtaining the Compulsory Licence and thereafter Natco was governed only by the terms of the Compulsory Licence ; (b) that such giving up of statutory rights under Section 107A of the Act flowed from Section 84(4) of the Patents Act, (c) that the word 'selling' in Section 107A of the patents Act meant selling in India only and did not include export; (d) that Section 107A of the Act, owing to its history called the 'Bolar Provision' was only to enable the activities mentioned in Section 107A of the Act within India and not for exports; (e) that Section 107A of the Act was not enacted for seeking approval to manufacture a new drug in other countries; (f) that to read the word 'export' in Section 107A would amount to making laws for other countries, and (g) that Section 107A of the Act used the word 'import' and from absence of the word 'export' therein, the only logical conclusion was that exports of patented invention were outside the ambit of Section 107A of the Act (reproduced below).

Section 107A of the Patents :

"For the purposes of this Act (a) any act of making, constructing, using, selling or importing a patented invention solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product (b) importation of patented products by any person from a person who is duly authorised under the law to produce and sell or distribute the product, shall not be considered as a infringement of patents rights."

It will be in order to reproduce Section 48 of the Copyright Act to provide the context. Section 48 : "Rights of Patentees—Subject to the other provisions contained in this Act and the conditions specified in Section 47, a patent granted under this act shall confer upon the patentee—(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India; (b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India."

The said Section 48 prescribes the rights of a patentee on conferment of patent. Those rights vest exclusively in the patentee. Axiomatically, exercise of any of those rights by a non-patentee would be infringement of patent. Counsel for Bayer contended that, the acts of a non-patentee (Natco) of making, using offering for sale, selling patented products would be infringement of patent and that the patentee was entitled to approach the Courts to prevent the non-patentee from doing the said acts.

The senior counsel for Natco argued (i) that the exports intended by Natco were only for research and development purposes and for obtaining the drugs regulatory approvals in the countries to which exports were intended (ii) that Natco was not

intending export of the product covered by the Compulsory Licence for commercial purposes (iii) that before a new drug was granted marketing approval, the drug regulatory authorities had to test its safety, efficacy and therapeutic value by requiring clinical trials to be undertaken; (iv) that Indian pharmaceutical industry was the largest exporter of generic drugs; and the biggest supplier of medicines to the developing world; (v) that research and development activity with respect even to patented drugs, for submission of data to the Drug Regulatory Authority, was not infringement; (vi) that Section 48 of the Patents Act was subject to other provisions of the Act, (vii) that the rights of Natco under Section 107A were independent of the Compulsory Licence; and (viii) that grant of compulsory Licence could not be in negation of the rights under Section 107A.

Further argued Natco that it was the purpose which distinguished, whether the impugned acts constituted infringement of patent or not. If the said purpose was within the confines of Section 107A, the acts so done would not constitute infringement and the patentee would not have the right to prevent a non-patentee from doing them. However, if the purpose of doing the acts of making, using, selling or importing a patented invention was not solely for the purposes prescribed in Section 107A, the said acts would constitute infringement of patent and the patentee would have the right to prevent a non-patentee from doing them. Hence the need for the word 'selling' in Section 107A.

Thus, sale by a non-patentee of a pharmaceutical product solely for the purposes prescribed in Section 107A would also not be infringement and cannot be prevented. Bayer could not controvert that such selling of patented invention, even if for profit, as long as solely for the purposes prescribed in Section 107A, is not infringement and cannot be prevented.

The point of difference between Bayer and Natco is qua selling outside India. While Bayer contended that the word 'selling' in Section 107A was confined to within the territory of India and that selling of patented invention outside India even if for purposes specified in Section 107A would constitute infringement which could be prevented by patentee, the contention of the senior counsels for Natco was that use of the word 'selling' under Section 107A was without any such restriction of being within India only and would include selling outside India also, so long as solely for the purposes proscribed in Section 107A.

An issue that was raised during the proceedings in the Court related to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). India as a party to the TRIPS agreement has agreed to give effect to the provisions thereof without being obliged to implement in its law more extensive protection than is required by it, provided that such protection does not contravene the provisions of the TRIPS Agreement. Else, India is free to determine the appropriate method of implementing the provisions of the TRIPS Agreement within its own legal system and practice. The objective of the TRIPS Agreement, as per Article 7 thereof, is protection and enforcement of intellectual property rights, to 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. Per Clause 1 of Article 8 the TRIPS Agreement,

member countries, in formulating and amending their laws and regulations, have discretion to adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of the TRIPS Agreement. Article 30 of the TRIPS Agreement entitles the member countries to provide limited exceptions to the exclusive rights conferred by a patent provided that such exceptions do not unreasonably conflict with the normal exploitation of the patent and so not unreasonably prejudice the legitimate interest of the patent owner, taking into account the legitimate interest of third parties.

Article 31 of the TRIPS Agreement, while providing that the laws of member countries may allow use of patented product/process for certain purpose, vide Clause (f) provides that such use should be predominantly for the supply of the domestic market of the member country authorizing such use. It is the contention of counsels for Bayer, that the use permitted by Section 107A thus has to be for selling to the domestic market only and not for selling by way of export.

The submissions of both the parties traverse the contours of the Patents Act and TRIPS Agreement. Having regard to the submissions, answer the following questions.

Questions :

- (a) What is the spirit/basis for Section 107A of Patents Act ? (15 marks)*
- (b) Would the word 'selling' in Section 107A of the Patents Act include export ? (15 marks)*
- (c) Are the provisions Section 107A and Section 48 independent of each other ? (10 marks)*
- (d) Discuss the relevance of Art. 31 (f) of the TRIPS Agreement in the instant case. (10 marks)*

Answer 1(a)

Section 107A was incorporated/inserted into the Patents Act, 1970 *vide* the Amendment Act of 2002 (Act 38 of 2002) and the same came into effect from 20th May 2003. The broad purpose and spirit behind bringing in such a provision on the statute book was to lay down certain acts which shall not be considered as amounting to an *'infringement of a patent'*. This was done in pursuance of the larger public interest.

The importance of section 107A is to be understood in light of the provisions of section 48 of the Act wherein the rights of the patentee (patent holder) have been laid down. A Patentee is conferred with certain exclusive rights as regards the invention (product or process) which is the subject matter of his patent. Normally, the acts of a non-patentee, of making, using, offering for sale, selling patented products would be an infringement of the patent and the patentee is entitled to approach the Courts to prevent such non-patentee from doing such acts.

However, by virtue of section 107A, the acts of a non-patentee of making, using, selling a patented product for the purposes prescribed therein have been made as not amounting to infringement of the patent. In all such cases, the patentee cannot prevent the non-patentee from doing them. But for section 107A, the acts of making, constructing, using, selling or importing of a patented invention, even if for the purposes prescribed in

section 107A would have constituted an infringement of the patent. It is thus the purpose for which the said acts are done' which distinguishes, whether the acts constitute infringement of a patent or not. If the said purpose is within the confines of Section 107A, the acts so done would not constitute infringement and the patentee cannot prevent a non-patentee from doing them. However, if the purpose of doing the acts of making, using, selling or importing a patented invention is not solely for the purposes prescribed in Section 107A, the said acts would constitute infringement of patent and patentee can prevent non-patentee from doing them.

Therefore, the consideration and the object behind inclusion of such a provision was to allow the acts of making, using, selling a patented invention, even during the life of the patent but solely for uses reasonably related to the development and submission of information required under the law for obtaining approval.

Answer 1(b)

Section 107A lays down that any act of making, constructing, using, selling or importing a patented invention solely for uses reasonably related to development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product shall not be considered as an infringement of the patent right of somebody else. The pertinent question that arises in the present set of facts however is, *'whether a non-patentee thereunder can export a patented invention for such purposes'*. The answer to this question has to be sought from the language of section 107A itself.

In the recent case, this question was answered by the Hon'ble High Court of Delhi wherein it has held that a *'Sale by a non-patentee of a pharmaceutical product solely for the purposes prescribed in Section 107A would also not be infringement and cannot be prevented.'* However, the further question to be answered is whether the word 'selling' in Section 107A is confined to within the territory of India and thus selling of patented invention outside India, even if for purposes specified in Section 107A, would constitute an infringement which can be prevented by patentee.

To answer the question and to interpret the word 'selling', the Court proceeded to dissect the language of section 107A and came to a finding that the meaning and ambit of the term 'selling' cannot be confined to 'selling within India only'. It further held that the *'presence of the word import' and absence of the word export' in Section 107A does not lead to any inference of the word 'selling' therein being exclusive of in the course of export. While the need for exporting was not felt due to presence of the word 'selling', the need for the word 'importing' in Section 48 was necessary to preserve exclusive right of patentee and in Section 107A to allow import for purposes prescribed therein'*.

Answer 1(c)

Section 48 of the Patents Act, 1970 which is titled as *'Rights of Patentee'* starts with the wording *'Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee.....'* Therefore, it is sufficiently clear while conferring certain rights on the Patentee to prevent others from making use of the Product or Process (as the case may be) which is the subject matter of his patent, it admits of certain exceptions carved out by section 107A. Section 107A provides that the acts of a non-patentee of making, using, selling a patented

product for the purposes prescribed therein shall not be considered as infringement. Therefore, the patentee cannot prevent non-patentee from doing them.

In the present set of facts, the exports intended by Natco are only for research and development purposes and for obtaining the drug regulatory approvals in the countries to which exports are intended. Natco did not intend to export the product covered by the Compulsory Licence for commercial purposes.

Therefore, as mentioned above, section 48 of the Patents Act is subject to other provisions of the Act and the rights of Natco under Section 107A are independent of the Compulsory Licence and grant of Compulsory Licence will not be in negation of the rights under section 107A.

It follows that grant of patent under the Act does not confer on the patentee right to prevent others from making and selling patented product if solely for purposes prescribed in Section 107A. These are two independent provisions, admitting of no overlap or need to read one as a proviso (and consequently narrowly) to another. The rights conferred on non-patentees under Section 107A are to be interpreted following the same rules as the rights of a patentee and are not to be read narrowly or strictly so as to reduce the ambit of Section 107A, as is the rule of interpretation of statutes in relation to provisos or exceptions. Section 107A is not carving out an exception to the exclusive right conferred by grant of a patent.

Answer 1(d)

Section 107A of the Patents Act, 1970 is not an exception that is carved out to the exclusive rights conferred by the grant of a patent. The exclusive right conferred by the grant of patent with respect to selling, offering for sale and thereby profiteering and earning from the patent is confined only during the term of the patent. Section 107A, permits sale of a patented product during the term of the patent but only for the purpose of obtaining regulatory approvals for manufacturing and marketing the patented product after the expiry of the term of the patent.

The purchaser/s of a patented product for such a purpose would be few and negligible in comparison to the consumers of the patented product. There is nothing in the provisions of the TRIPS Agreement to suggest that reading the word 'selling' in Section 107A as including 'by way of export', would be in violation of the TRIPS Agreement. TRIPS Agreement specifically vests discretion in the member countries to adopt measures in their laws which are necessary to promote public interest in sectors of vital importance to their socio-economic development. Even if it were to be considered that clause (f) of Article 31 thereof allows domestic operation only of Bolar provision, the Indian Parliament while enacting the Patents Act, 1970 was entitled to, having regard to the extent of the Indian Generic Industry, permit export for purposes of Section 107A.

Patents Act is concerned with the protection of the rights of the patentees in India only and not outside India. Neither the legislature nor the Courts in India can impose any conditions on the use of the goods exported once they reach the destination country or ensure that such goods continue to comply with the laws in India. The use of the goods in a foreign country would be subject to the laws of that country and cannot be regulated by laws of India or orders of the Courts in India. Even if it were to be believed that the patented invention once exported from India for the purposes prescribed in Section

107A may be used for other purposes, it is for the patentee to enforce its rights if any in that country. The laws of India are only concerned with the sale by way of export from this country being for the purposes prescribed. As long as the sale by way of export is declared to be for purposes of Section 107A and there is nothing to suggest that it is otherwise, no fetters can be imposed.

Question 2

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

The plaintiff, Super Cassettes Industries, contended before the High Court that the defendant, SCN Sujla Channel, a cable operator in Rajasthan was heavily using songs and film extracts to enhance its viewership. According to the plaintiff, in June 2015, when its executive captured on CD and DVD, the content being broadcast by the defendant, it realized that a major chunk of the content was copyrighted by the plaintiff and was broadcast without its consent.

Prominent examples of such content included such famous songs as Tere Mast Mast do Nain (Dabangg) Dhinkaq Chika (Ready), and Sadi Gali (Tanu Weds Manu).

The plaintiff contended that it apprised the defendant of its public performance licensing scheme under which it could legally broadcast the infringing content and also sent it a cease and desist notice in August 2015 by which the defendant was requested to seek the requisite license and pay damages worth Rs. 25 lakhs for the infringement of the plaintiff's copyright. Since the defendant did not respond to the notice, the plaintiff contended that the defendant's conduct fell within the four squares of Section 51 of the Copyright Act and that the plaintiff was entitled to the grant of damages. Since the licensing fee charged by the plaintiff was Rs. 18 per month per household, and the defendant had thousands of connections, the plaintiff argued that it was entitled to damages worth Rs. 1 crore in addition to rendition of accounts of profit and delivery of the infringing tapes.

The Delhi High Court noted that the plaintiff had been able to successfully establish that, since it was the owner of copyright in the concerned content, its rights had been violated by the defendant within the meaning of Section 51 of the Copyright Act. Further, since the defendant did not indicate the names of the author or owner of copyright in the films and sound recordings broadcast by it, the Court held that it had failed to comply with the statutory command engrafted in Section 52A of the Act.

In the light of the fact that the defendant had infringed the plaintiff's rights in a deliberate and calculated fashion and did not even bother to contest the proceedings instituted by the plaintiff, the Court held that the grant of damages was warranted.

Thereafter, the Court articulated the proposition that the aim of such damages would not only be to penalize the wrongdoer but also to recompense the plaintiff for the loss suffered by it.

While the Court acknowledged the fact that the plaintiff's prayer for the grant of damages has gone un rebutted, it noted that it had not put forth any material that could assist the Court in ascertaining what illegal revenue was earned by the defendant by virtue of the infringing content.

Holding that the plaintiff's rate card which indicated the licence fee that it charged cable operators for the broadcast of its content was an indicator of the profits that it could have earned, the Court held that the same could not take the plaintiff's case very far in light of the fact that its estimate of Rs. 1 crore was founded only upon its bald assertion that the defendant had thousands of customers.

Therefore, the Court asked the plaintiff to put forth cogent and reliable evidence to indicate the amount of compensatory damages that it was entitled to owing to the defendant's conduct and asked the defendant to share with the plaintiff its accounts of profits on the basis of which the plaintiff could compute the same. Finally, it granted punitive damages worth Rs. 5 lakhs in the interim.

Questions :

- (a) *Does the Copyright Act envisage the grant of punitive damages ? Does the High Court have a legal basis for granting punitive damages ? (5+5 marks)*
- (b) *Having asked the plaintiff to put forth cogent and reliable evidence to indicate the amount of compensatory damages that it was entitled to, was the Court correct in awarding interim damage of Rs. 5 lakhs ? (10 marks)*
- (c) *Cite three case laws on grant of damages in IP infringements cases (no need to describe them). What provisions of Copyright Act apply in the instant case of Super Cassettes ? (7+3 marks)*

Answer 2(a)

The Copyright Act does not envisage the grant of punitive damages by way of remedies. There is no specific provision in the Act to award the same. But the Act provides for certain remedies like, grant of injunction, damages and accounts in case there is an infringement of a right. The Court's award in this case lacks the legal basis and is based on the string of precedents in which the Courts have created for themselves this power. The Courts would do well to acknowledge the absence of the jurisprudential basis for the grant of punitive damages, but yet in the interests of the owners of copyright, the courts may be inclined to tread the path of awarding compensatory damages. At the same time, it is desirable that the Courts should insist on the plaintiff to provide a strong evidentiary basis before granting punitive damages.

The question of whether punitive damages should be awarded requires the consideration of whether the defendant's misconduct '*shocks the conscience*', and has an element of '*wilful and wanton disregard*', as punitive damages are known to be awarded only in extremely rare cases. In the case of Time Incorporated vs. Lokesh Srivastava , it was stated by the Honorable court that, "the time has come when the Courts dealing actions for infringement of trade marks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them".

Recently in the judgment of the Delhi High Court, the Court has fined one firm for software piracy. The suit was filed by Microsoft and Adobe. The firm was found guilty of

using pirated software for commercial purposes without adequate licenses. Court has awarded the compensatory and punitive damages of Rs. 10 lakh on the firm. This is the first ever judgment by any Indian court where punitive damages are also awarded. It is desirable that the Courts should insist on the plaintiff to provide a strong evidentiary basis before granting punitive damages.

Answer 2(b)

In the case at hand, the High Court of Delhi has noted that the plaintiff has been able to successfully establish that, since it is the owner of copyright in the concerned content, its rights have been violated by the defendant within the meaning of Section 51 of the Copyright Act. Further, since the defendant did not indicate the names of the author or owner of copyright in the films and sound recordings broadcast by it, the court has held that it had failed to comply with the statutory command engrafted in Section 52A of the Act.

Upon observing that the defendant has indeed infringed the plaintiff's rights in a deliberate and calculated fashion and did not even bother to contest the proceedings instituted by the plaintiff, the court held that the grant of damages was warranted. Thereafter, the court articulated the proposition that the aim of such damages would not only be to penalize the wrongdoer but also to recompense the plaintiff for the loss suffered by it. There are many valid reasons for the same and is also supported by the case-law.

While the Court acknowledged the fact that the plaintiff's prayer for the grant of damages has gone unrebutted, it noted that it has not put forth any material that can assist the court in ascertaining what illegal revenue was earned by the defendant by virtue of the infringing content. Holding that the plaintiff's rate card which indicates the license fee that it charges cable operators for the broadcast of its content is an indicator of the profits that it could have earned, the court held that the same could not take the plaintiff's case very far founded only upon its bald assertion that the defendant has thousands of customers.

Therefore, the court asked the plaintiff to put forth cogent and reliable evidence to indicate the amount of compensatory damages that it is entitled to owing to the defendant's conduct and asked the defendant to share with the plaintiff its accounts of profits on the basis of which the plaintiff can compute the same. Finally, it granted punitive damages worth Rs. 5 lakh in the interim in favor of the plaintiff.

But, it is difficult to fathom how the Court could have awarded punitive damages while acknowledging the proposition that the plaintiff had failed to establish the amount of compensatory damages that it was entitled to. Only after the Court ascertained the actual quantum of the losses suffered by the plaintiff on account of the defendants' conduct could it use that figure to arrive at the amount of punitive damages.

Answer 2(c)

Case-Law germane to award of damages in IP Infringement cases are:

1. *Times Inc. v. Lokesh Srivastava*, 116 (2005) DLT 599 : [2006] 131 CompCas 198 (Delhi). Decided by High Court of Delhi on 3rd January 2005.

2. *Microsoft v. Kiran and another*, 2007 (35) PTC 748 (Del) : ILR (2007) Supp. (5) Delhi 200. Decided by High Court of Delhi on 7th September 2007.
3. *GlaxoSmithkline Pharmaceuticals v. Sarath Kumar Reddy G.*, 234 (2016) DLT 459 : MANU/DE/2939/2016 Decided by High Court of Delhi on 2nd November 2016.

The Delhi High Court's verdict in *GlaxoSmithkline Pharmaceuticals v. Sarath Kumar Reddy G* can serve as a loadstar for the courts faced with a prayer for the grant of damages in IP infringement cases. In that verdict, the Court effectively safeguarded plaintiff's interest by scrutinizing the prayer for the grant of damages by applying the same evidentiary standards that it applied for the grant of other reliefs.

The provisions of Copyright Act applicable in the *Super Cassettes* case are Sections 51 and 52A thereof.

Question 3

Only a registered trade mark owner can give notice of opposition. Discuss.

(5 marks)

Answer 3

As per provisions of section 21 of the Trade Marks Act, 1999 this statement is not correct. Section 21(1) provides that "any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed by the Registrar, of opposition to the registration". Therefore, there is no requirement of the person submitting his opposition to the registration of a trademark to be the registered owner of such trademark. Having commercial or personal interest is also not necessary. Moreover, his bonafides are also immaterial for the purposes of submitting opposition to the grant of a trademark.

The opponent does not necessarily have to be a registered proprietor of a trademark. He can be a purchaser, customer or a member of the public likely to use the goods. The rationale behind this is that the opponent is not only representing himself but the public at large because having two similar marks in the market can only result in confusion amongst the public at large.

Every opposition shall be filed in compliance with the provisions of section 21 in relevant format and form, along with prescribed fees.

Question 4

What is 'Artistic Work' ? Can artistic work be registered as design under Designs Act, 2000 ?

(3+2 marks)

Answer 4

An 'artistic work' is defined in Section 2(c) of the Copyright Act, 1957 as follows:

'Artistic work' means:

- (i) A painting, a sculpture, a drawing (including a diagram, map, chart or plan), an

engraving or a photograph, whether or not any such work possesses artistic quality;

- (ii) A work of architecture; and
- (iii) Any other work of artistic craftsmanship.

It includes a graphic work, photograph, sculpture or collage, with "graphic work" further defined to include paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, woodcuts or similar. The definition of a "photograph" excludes stills from a film but includes slides, negatives and microfilm. Architectural works (including buildings of any kind), and works of artistic craftsmanship, such as jewellery or pottery, are also included. Copyright subsists in all of the above, regardless of artistic quality or craftsmanship. Courts in India have time and again recognized that creations of nature can be protected as copyrighted artistic works. For instance, the famous Panda logo of the World Wildlife Federation and the Crocodile logo of the famous French clothing brand, Lacoste, have been recognized as protected artistic works by the Delhi High Court.

The requirement of originality, therefore, would not bar a copyright in an artistic work such as a painting or a drawing embodying a creation of nature, such as an animal or a bird, because the originality of the work would be judged on the basis of the manner in which such a creation of nature is depicted and not the idea of the creation of nature itself.

'Artistic Work' cannot be registered under the Design Act. Such work is registerable under Copyright Act in India. Design includes features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article in two or three-dimensional form, or both, by any industrial process or means – whether manual, mechanical or chemical, separate or combined – which in the finished article appeal to and are judged solely by the eye. This definition excludes any mode of construction, or anything which in its substance is a mere mechanical device. It also excludes any trademark or property mark as well as any artistic work as protected under the Copyright Act. The Delhi high court observed in the case of Microfibres Inc. v. Girdhar and Co. that artistic work can be divided into original artistic work and commercial/industrial manifestation of such artistic work such as design derived from and founded upon the original artistic work. In the latter case, the work should be registered as a design under the Design Act. Whereas the original artistic work can acquire protection under the Copyright Act as an artistic work or else the protection under the Design Act qua the product created from the artistic work when industrially applied.

'Artistic Work' cannot be registered under the Designs Act, 2000. Such work is registerable under Copyright Act only.

Question 5

What is the relationship between the TRIPS Agreement and the Pre-existing International Conventions covered under it ? (5 marks)

Answer 5

The TRIPS Agreement says WTO member countries must comply with the

substantive obligations of the main conventions of WIPO, the Paris Conventions on Industrial Property and the Berne Convention on Copyright (in their most recent versions).

With the exception of the provisions of the Berne Convention on moral rights, all the substantive provisions of these conventions are incorporated by reference. They, therefore, become obligations for WTO member countries under the TRIPS Agreement – they have to apply these main provisions, and apply them to the individuals and companies of all other WTO members.

The TRIPS Agreement also introduces additional obligations in areas which were not addressed in these conventions or were thought not to be sufficiently addressed in them.

The TRIPS Agreement is therefore sometimes described as a Berne and ‘Paris-Plus’ Agreement.

The TRIPS Agreement contains references to the provisions of certain pre-existing intellectual property conventions. According to Article 2.1 of the Agreement, the WTO Members shall, in respect of Parts II, III and IV of the Agreement, comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967) (the Stockholm Act of 14 July 1967 of the Paris Convention for the Protection of Industrial Property). Article 9.1 of the Agreement requires Members to comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto (the Paris Act of 24 July 1971 of the Berne Convention for the Protection of Literary and Artistic Works). However, Members do not have rights or obligations under the TRIPS Agreement in respect of the rights conferred under Article 6b of that Convention, i.e. the moral rights, or of the rights derived therefrom. As regards protection of the layout-designs of integrated circuits, Article 35 of the Agreement requires Members to comply with Articles 2 through 7 (other than Article 6.3), Article 12 and Article 16.3 of the Treaty on Intellectual Property in respect of Integrated Circuits, adopted at Washington on 26 May 1989.

The Agreement contains some references to certain provision of the Rome Convention (the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961). However, there is no general obligation to comply with the substantive provisions of that Convention.

The TRIPS Agreement provisions on copyright and related rights clarify or add obligations on a number of points:

- The TRIPS Agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases must be protected under copyright;
- It also expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners’ potential earnings from their films; and
- It says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

The test of the TRIPS agreement also makes use of the provisions of some other international agreements on intellectual property rights:

- WTO members are required to protect “Integrated Circuit Layout Designs” in accordance with the provisions of the *Treaty on Intellectual Property In Respect of Integrated Circuits* (IPIC Treaty) together with certain additional obligations.
- The TRIPS Agreement refers to a number of provisions of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (Rome Convention) without entailing a general requirement to comply with the substantive provisions of that Convention.

Article 2 of the TRIPS Agreement specifies that nothing in Paris I to IV of the agreement shall derogate from existing obligations that members may have to comply with each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in respect of Integrated circuits.

Question 6

*What is the difference between Intellectual Property Law and Technology Transfer ?
Please analyze. (5 marks)*

Answer 6

Intellectual Property (IP) refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce. Intellectual property is divided into two categories : Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

The TRIPS Agreement encompasses, in principle, all forms of intellectual property and aims at harmonizing and strengthening standards of protection and providing for effective enforcement at both national and international levels.

Technology Transfer: As per Oxford Dictionary, ‘Technology Transfer’ is the transfer of new technology from the Originator to a Secondary User, especially from developed to developing countries in an attempt to boost their economies.

As per Business Dictionary, Technology Transfer refers to (1) Assignment of technological intellectual property, developed and generated in one place, to another through legal means, such as, technology licensing or franchising. Or (2) Process of converting scientific and technological advances into marketable goods or services.

In general, it denotes the sum knowledge, experience and skills necessary for manufacturing a product or products and for establishing an enterprise for this purpose.

Transfer of Technology is a complex phenomenon necessarily involving rights, obligations, privileges and commitments of the parties to the transactions. The basic legal document is the license agreement for transfer of technology.

If technology is transferred through licensing, stronger IPR protection results in greater innovation, and increased licensing. Licensing has the advantage to firms of higher profits due to lower production costs, but involves other costs in terms of contract negotiations, transferring the necessary technology and in the rents that the innovator must give to the licensee to discourage imitation. By reducing the risk of imitation, stronger IPR protection also reduces the costs of licensing, thus encouraging licensing and freeing up resources in innovation.

Transfer of technology takes place through formal and informal channels. Some of the formal channels include trade, licensing, joint ventures, franchising, foreign patenting, and Foreign Direct Investment (FDI) while the informal channels include imitation and technology spill over. The technology transfer relates to voluntary or non-market transactions by which a firm gains access to technology developed in another country. Therefore, policies made to develop a strong IPR regime can help developing countries gain access to foreign technology.

The impact of stronger IPR protection on technology diffusion is ambiguous in theory and depends on a country's circumstances. On the one hand, stronger IPR protection could restrict the diffusion of technology, with patents preventing others from using proprietary knowledge and the increased market power of IPR holders potentially reducing the dissemination of knowledge due to lower output and higher prices. On the other hand, IPRs could play a positive role in knowledge diffusion, since the information available in patent claims is available to other potential inventors. Moreover, strong IPR protection may encourage technology transfer through increased trade in goods and services, FDI, technology licensing and joint ventures. Despite this theoretical ambiguity, the diffusion of technology from countries at the technological frontier to other countries is considered the main potential benefit of the TRIPS Agreement, particularly for developing countries that tend not to innovate significantly.

The other commonly used models of technology transfer are technical assistance agreement, patent and patent agreement, know-how agreement, engineering service agreement, the trademark agreement and other franchisee agreement.

This all requires a huge involvement of IP rights for the best implementation of technology transfer.

INTERNATIONAL BUSINESS LAWS AND PRACTICES (Elective Paper 9.5)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Case study :

Merger and Acquisition in Changing Global Business Scenario :

On 3rd September 2013, Microsoft Corporation and Nokia Corporation entered into a joint venture (JV), whereby Microsoft Corporation (Microsoft) acquired all of the Device and Service business of Nokia Corporation (Nokia) through an all-cash deal. The Microsoft-Nokia JV was the 2nd largest merger in the history of Microsoft after the acquisition of Skype Technologies, the VOIP innovators, for \$9.2 billion. The terms of agreement stated that Microsoft agreed to pay Nokia \$4.99 billion for the Device and Service business and \$2.17 billion for the patents, license and mapping service. Under the Device section, models such as Lumia, Asha and X series come under Microsoft's umbrella. Nokia device designs, accessories, supply chain employees, developer, supply relations and most of Nokia's manufacturing plants and testing facilities were now owned by Microsoft along with services like Mix Radio, Store and more. Nokia's Mapping segment was considered as a separate business and was excluded from the deal but Microsoft agreed to a 10-year licensing agreement. Microsoft had control over IP agreements and any third-party contracts related to Nokia's devices including Symbian along with Nokia's partnerships with Qualcomm and other silicon companies.

Microsoft acquisition of Nokia's Device and Service unit was a decisive strategy to develop a differentiated sustainable mobile force and overthrow the market dominance of Apple and Google in emerging smartphone handsets and device software industry. After the JV, Microsoft could work both on the firmware and software thus optimizing the process of design, manufacture and distribution of smartphones through Nokia's innovation technological expertise, consumer demographic data, collaborate marketing and branding skills. For Nokia, the deal was a strategy to safeguard its declining position in the rapidly growing smartphone market, strengthen its financial position and maximize the wealth of its stakeholders. Additionally, the divestiture of the handset would enable Nokia to concentrate on the non-phone business, including its HERE Mapping division, Nokia solutions, Nokia telecoms group and nascent innovative technologies such as self-driven cars.

In 2015, a year after the acquisition, Satya Nadella, CEO Microsoft announced the writing down the entire value of Nokia handset acquisition alongside sweeping job cuts. Microsoft's aim to challenge the market dominance. Apple and Google thought Nokia's acquisition culminated into a failure. The gross profit of Microsoft declined from 75% in 2013 to 69% in 2014 to 65% in 2015. The ROE (after Tax) declined from

28% in 2013 to 25% in 2014 to 15% in 2015. Profit margin of Microsoft reduced to 25% in 2014 to further 13% in 2015. The ROA changed from 15.35% in 2013 to 12.81% in 2014 and further dipped to 6.92% in 2015.

An Overview of Nokia

The Finnish company "Nokia" began its operation in 1865 as a single paper mill at Tammerkoski Rapids in south-western Finland. Over the years, Nokia has nurtured success in several sectors including paper products, rubber boots and tires, cable, mobile devices and telecommunications infrastructure equipment. Nokia entered the Device and Telecommunication industry with the motto of "connecting people" through its cutting edge technology. As early as 1980, Nokia became a household name around the world with the launch of Nordic Mobile Telephone (NMT), world's first international cellular network with international roaming supported. The Nokia brand emerged as an undisputed leader in the mobile phone industry due the reliability, easy usage, higher resale value and durability of the devices. Nokia emerged as a multinational communication company engaged in the production of technologically efficient mobile products through innovation and convergence in the evolving ICT industry. The market capitalization of Nokia as of March 2nd 2016 is \$22.61 billion. As of December 2014, Nokia has a employee base of 61,656 with the operating profit of \$170 billion.

Nokia operated in major business segments namely-Smart Devices and Service, HERE (formely NAVTEQ) and Nokia Siemens Network. The Smart Devices targeted the smartphone segment while the Mobile Phone but worked relentlessly for providing reasonable mobile experience to the customers. The Device and Service segment controls the portfolio of product devices as well as internet services and applications. The HERE services had exclusive focus on location based services and products. It also developed content-based services for automobile/device manufacturers, location-based application service developers, internet service providers, traders and advertisers. Nokia Siemens has global expertise in telecommunication equipment and infrastructures, hardware, software and services.

An Overview of Microsoft

Microsoft is the world's leading producer of computer software and is considered to be one of the most valuable brands in the world by Forbes magazine. Microsoft was incorporated in 1981, but it came into existence in 1975 when founder Bill Gates and Paul Allen saw an opportunity in operating system after the launch of Altair 800 (microcomputer) by an American electronics company known as Micro Instrumentation Telemetry Systems (MITS). Microsoft's major breakthrough occurred in the year 1981 when they developed on OS for IBM's first-ever entry into the personal computer space. Microsoft marketed its own version as MS-DOS (Microsoft Disk Operating System). Microsoft became a dominant player in software market. In 1983, Microsoft introduced its first-ever OS with graphical user interface called Windows and since then it has been the most-used OS in the world.

Rationale of the deal

Microsoft acquisition of a part of Nokia's business was a strategic alliance where both the companies would work strategically to achieve common goals. Microsoft had nil to limited experience in manufacturing physical smartphone and needed strong technologically efficient manufacture to support its mobile software oriented

benefits by collaborating with Nokia and developing a sustainable Windows Phone application ecosystem for long-term benefits.

Strategic Expectations of Microsoft

- *Improving market share : Microsoft believed that the acquisition will help them accelerate its market share and profits in the phone market as millions of new users were waiting to buy a new smartphone. Before the acquisition, Nokia and Windows phone had more than 10% share in 9 markets and it was outselling Blackberry (then, a very popular company) in 34 different markets. Lumia phones had started gaining popularity and it believed that the imaging capabilities of Nokia could drive more success of them.*
- *Uniting hardware and software : Nokia had a very strong R & D division and had more than 30,000 utility patents and patents applications and around 8,500 design patents. Microsoft believed a synergy between a hardware giant and the software giant can bring revolution in the phone industry. The patents sector of Nokia was one of the most valuable in the tech sector.*
- *Benefitting from patents and royalties : Nokia had about 60 patent licences with many third-party OEMs which included wireless patents. Under this, Microsoft was also to benefit the attractive royalties.*
- *Strengthening its stance in tablet industry : Microsoft was already a leader in PC industry but was facing stiff competition in tablet industry. A smartphone success could have brought them success in the tablet business and that in turn could have helped their PC business and application environment.*

Financial Expectations of Microsoft

- *A much better profit per unit : Under the previous partnership, Microsoft was earning less than \$10 per unit and this earning had to support the entire marketing investment and platform payment support. But after the acquisition, a gross margin of more than \$40 was expected with a breakdown in 50 million smart devices.*
- *Impact on EPS : Microsoft predicted in its report that the transaction will be accretive by FY15 non-GAAP EPS and both GAAP and non-GAAP EPS in FY2016.25 Long-term value creation. According to a report, released by Microsoft, they expected a 15% market share in smartphone industry by 2018 with annual revenue of almost \$45 billion. Also, predicted a \$15 billion NPV with an assumed operating margin of 5% and a \$30 billion NPV with an assumed operating margin of 10%.*

Strategic Expectations of Nokia

Smartphone business reached a phase where the big players (Google and Apple) dominated the market with their strong ecosystem while the rest were either making losses or breaking even at best. At this juncture, Nokia had partnered with Microsoft. Leading business experts analyzed the rationale behind the deal from Nokia's perspective. They highlighted that Nokia aimed to regain its past glory of being a top player and hence was geared up to emerge as a leading player, through this deal, even in the smartphone business.

Risto Siilasmaa, Chairman of Nokia Device segment said, "What has now happened is actually the best solution of all the alternatives. I can't imagine any other realistic alternative where the company's future would look as bright as it does now."

North America was an emerging market for smartphone segment. Nokia wanted to establish its foothold in North America through its deal with Microsoft. Besides improved subscriber base, Nokia could use Microsoft's patents for its HERE services in return of making Microsoft the licensee of all its device and service related patents for a period of 10 years. Microsoft agreed to become 4 years paid licensee for the HERE platform resulting in the earnings of \$2.18 billion for Nokia. Nokia would overcome the technical limitations of Symbian by opting for Windows OS patented by Microsoft for its upcoming portfolio of smart devices. However, as a tradeoff, Nokia had to pay quarterly royalty to Microsoft based on number of Nokia phone devices sold, with a fixed minimum base fee.

After the acquisition, Nokia could focus on its business of making cellular networking equipment; its HERE location-based services, and other innovative technologies which accounted for 50% of its sales in 2012. Finland would get a boost to its economy through Microsoft exclusive data center in Finland to serve European customers along with the investment of quarter billion dollar under the intent of future expansion of Microsoft.

There are a shift in the organizational leadership under which Stephan Elop stepped aside as Nokia's CEO to become executive VP of devices and services in Microsoft Corporation, while Nokia's Chairman Risto Siilasmaa served as interim CEO.

Financial Expectations of Nokia

- The ultimate objective of Nokia was to increase the revenue generation from Nokia mobile devices segment besides an increased market share under the global smartphone market.
- When the speculation about acquisition was made official by Stephan Elop, the share market responded positively by a rise of 38% in the market share of Nokia. The shareholder would get a return of \$4.51 per share a per Euro-Dollar conversion rates in 2016. Nokia expected a sale of 53.7 million units in the quarter following the merger.
- "For Nokia, that is an important moment of reinvention, and from a position of financial strength, we can build or next chapter", said Siilasmaa, "After a thorough assessment of how to maximize shareholder value, including consideration of a variety of alternatives, we believe this transaction is the best path forward for Nokia and its shareholders."
- As a part of the deal, Nokia received a funding of 1.5 billion Euros from Microsoft in the form of convertible notes which Nokia could use at its convenience or pay back at the end of the deal.

Reflections of the Acquisition

Microsoft financials showed a steep decline after merger and acquisition. A write-off of \$7.5 billion of goodwill and asset impairment charges related to phone hardware and \$2.5 billion of integration and restructuring expenses, primarily cost associated with Microsoft's restructuring plans, which affected the overall business of Microsoft. The impact of the acquisition was so massive that even the gains in Microsoft's software business didn't compensate for the impairment cost of acquisition.

The objective of acquisition as stated by Steve Ballmer, CEO Microsoft, "We expect

this acquisition to be accretive to our adjusted earnings per share starting in FY15, and we see significant long term revenue and profit opportunities for our shareholders” failed to materialize even after two years of acquisition. The EPS reduced significantly from \$2.58 in 2013 to \$1.48 in 2015. The ROA of Microsoft reduced by almost 50% in the year 2015 as compared to 2013.

Acquisition of Nokia made Microsoft a true multinational brand as the clientele and manufacturing factories of Nokia expanded globally. The APAC region of India and China was manufacturing hub for Nokia but regulatory policies in China prevented Microsoft from controlling these manufacturing units. The India-based factory of Nokia was facing a tax dispute proceeding and hence remained as a part of Nokia after acquisition. The emerging markets were evolving technologically and moving towards 3G and 4G services for high speed data access on smartphones. The American markets were still recovering from the after-effects of the Lehman crisis and fluctuations in the exchange rate. Varying exchange rates made it difficult for Microsoft to arrive at a global pricing policy. The new markets lacked well-defined laws for the protection of intellectual property in terms of enforcement of copyright, trademark, trade secret, and other protections that apply to software and hardware products, services, business plans and branding.

Cultural integration of employees globally failed to turn out as expected by Microsoft thus posing a workforce threat. Microsoft laid-off 66% of the Finnish workforce from the Device and Service segment in 2014. The competitive landscape of smartphone OS comprised of Android, Apple iOS, Windows and others including Symbian (Nokia), Cyanogen (One+) etc. Open source OS (e.g., Android), having low cost of production focused on price sensitive populous economies like India and China while premium OS (e.g., iOS) focused no niche markets at premium pricing. Microsoft failed to position its product as compared to the competitors. The prime OS of Nokia “Symbian” was frugal in resource utilization and incompatible with object language C++ and Java. The technical limitation of Symbian and limited demand of Windows made Microsoft-Nokia based smartphones redimentary and obsolete in the competitive smart devices ecosystem. Microsoft owned or licensed limited patents of Nokia which excluded specific HERE-based patents and patents which were used for the clients of Nokia. The R&D expenses if Microsoft stood constantly at 13% of its revenue for the year 2014, 2013 and 2012.

The mergers of Sony-Ericson and Google-Motorola also exerted substantial amount of pressure on Microsoft to reinforce its strategies for the competitive smart device segment. However, all such mergers and acquisitions resulted in a dead fate.

The Way Forward

The recent 18,000 job cuts (12,500 from Nokia), restructuring charges of \$960 million and impairment charges of \$7.6 billion to Nokia Device segment by Microsoft gives a clear indication that the Microsoft acquisition of Nokia was a clear blunder. The prime reason behind such strategic collaboration is for the shared synergistic benefits derived by participating organizations. At the time of acquisition, Nokia was a downstream customer of Microsoft operating platforms (software) while Microsoft was the upstream supplier to Nokia’s product engineering and award-winning product design. There is an unwritten rule of thumb in M&A deals; Acquiring a profitable

upstream supplier or downstream customer will not necessarily increase the profit of the acquiring company. Without some kind of synergy that make the acquired assets more valuable to the acquiring company than they are to be acquired company, the acquisition will not be profitable. So a discussion is warranted to analyze whether the Microsoft acquisition of Nokia resulted in success for Microsoft.

The prime intent for Microsoft behind acquisition was to push the usage of its signature OS "Windows" in the smartphone industry which is yet to materialize. Microsoft currently holds the market share of 3%-5% globally as compared to Android which stands at 80%. The MVA (Market Value Added) reveals whether Microsoft has succeeded/failed to maximize the wealth of its shareholder. At the end of Q4 of 2014, Microsoft's MVA stood at a little above \$4 trillion. As per Q4 of 2015 released by the company, its MVA stood \$3.6 trillion. This shows a reduction in the value of the company by \$4 billion. The BEP (Basic Earning Power) ratio which stood at 16% at the end of Q4 of 2014 stands at 10% as on August, 2015 reflecting the fact that Microsoft is experiencing lower turnover ratios and lower profit margin in sales.

Referring to the above case, answer the following questions :

- (a) *State the theme of the case.* (10 marks)
- (b) *Discuss the concept of Mergers and Acquisitions as a strategy for both the corporations.* (10 marks)
- (c) *Comment on the various implications relating to political, economic, social, technological, environmental and legal factors.* (10 marks)
- (d) *Identify the internal and external factors that are favourable and unfavourable to achieve the objectives of merger and acquisition of both the units.* (10 marks)
- (e) *Evaluate the outcome of acquisition for Microsoft Corporation.* (10 marks)

Answer 1(a)

Microsoft Corporation and Nokia Corporation entered into a joint venture (JV), whereby Microsoft Corporation (Microsoft) acquired all of the Device and Service business of Nokia Corporation (Nokia) through an all-cash deal. The Microsoft-Nokia JV was the 2nd largest merger in the history of Microsoft after the acquisition of Skype Technologies, the VOIP innovators, for \$9.2 billion. The terms of agreement stated that Microsoft agreed to pay Nokia \$4.99 billion for the Device and Service business and \$2.17 billion for the patents, license and mapping service. Under the Device section, models such as Lumia, Asha and X series come under Microsoft's umbrella. Nokia device designs, accessories, supply chain, employees, developer, supply relations and most of Nokia's manufacturing plants and testing facilities were now owned by Microsoft along with services like Mix Radio, Store and more. Nokia's mapping segment was considered as a separate business and was excluded from the deal, but Microsoft agreed to a 10-year licensing agreement. Microsoft had control over IP agreements and any third-party contracts related to Nokia's devices including Symbian along with Nokia's partnerships with Qualcomm and other silicon companies. The theme of the case is Microsoft continuously and decisive strategy to expand and diversify business through mergers and acquisitions in newer, differentiated and sustainable market segments so as to overthrow the increasing market dominance of competitors such as Apple and Google.

Answer1 (b)

Mergers and acquisitions have become a popular business strategy for companies looking to expand and diversify into new markets or territories, gain a competitive edge, explore and tap newer and sustainable market segments, acquire newer technologies and skill sets. Successful management of any business unit makes it imperative to understand the strategic and financial implications and technicalities of merger and acquisition, an alliance, a licensing contract, a divestment or internal development. Globally, companies adopt merger and acquisition as a growth strategy mainly for the following reasons:

1. New product development

Companies opt for merger, acquisition or alliance for new product development when they have a good customer base and the market for their current products or services has reached saturation. Under such competitive intensive markets, market penetration fails to take off. Fearing extinction or decline, companies therefore try to innovate, through new product development strategy. E.g. Pizza Hut's Alliance with Kurkure; Maruti-Suzuki.

2. Market Development

Companies choose to expand globally through mergers and acquisitions when they have established themselves as a brand and aspire to expand to the untapped markets. E.g. Airtel acquisition of Zain; Zomato merger with Menu Mania in New Zealand.

3. Symbiotic Advantages

The companies adopt the symbiotic rationale to merger and acquisitions where the participating complement each other's strengths and weaknesses in order to overthrow the existing market leader by acquiring greater market share or to explore alternate sources of revenue by merging together as one large giant. E.g. Nokia -Microsoft Merger; Sony - Ericson Merger.

Answer 1(c)

Acquisition of Nokia by Microsoft Corporation might have attracted the following political, economic, social, technological, environmental and legal implications:

Political Implications:

- The currency and taxation policy could significantly affect the cost of operating business globally.
- Microsoft aimed to expand globally through Nokia especially in the emerging markets such as India and China. However, the spectrum auction in these countries for 3G/4G would significantly affect the market demand for smartphone devices.
- Weak intellectual right policy in emerging market resulting in loss of revenues.
- The regulatory framework in different countries affected the overall sales of smartphone devices.

Economic Implications

- US market was still recovering from the after-effects of the Global Economic Turmoil of 2008 which affected customer demand.
- Fluctuation in exchange rates made formation of global pricing policy difficult.

Social Implications

- Increased popularity and acceptance of open source technologies and business practices affected the brand image of Microsoft.
- Constant comparison with dominant players - Google (Android) and Apple created a perception of Microsoft as an outdated and less innovative smartphone brand.
- Improper marketing strategies resulted in loss of clientele. The non-product based marketing resulted in customer disappointment.
- Insufficient utilization of employees after the cultural integration.

Technological Implications

- As compared to Apple and Google, the Microsoft-Nokia based smartphones appeared to be outdated with bare minimum innovations. Technology was moving at fast pace towards clouds and mobility when Microsoft-Nokia still struggled with the basics of smartphone functionality for customer engagement.
- Due to the OS limitation and limited popularity, there were few apps available for installation on Windows-based phones for user entertainment.
- Technology was not as user-friendly as their competitors. Customers are not convinced of the value for money they could get from Windows phone.
- Ineffective negotiation and utilization of patents.

Environment Implications

- Higher power consumption for increased manufacturing capabilities as well as new data centers for global content delivery.
- Environmental concerns on the disposal of product materials. Absence of clarity on the acquisition of Morph device concepts developed by Nokia raised concerns on environmental damage.

Legal Implications

- Privacy concerns on application and cloud-based services.
- Disputes related to patent and royalty infringements.
- Monopoly of dominant players and the competitive pricing policies of new entrants and variants of established players such as HTC, Samsung, Xiaomi, One plus, etc.

Answer 1(d)

The SWOT analysis in this case may be presented as follows:

Strengths

- Microsoft's dominance in desktop operating system
- High brand awareness of both Microsoft and Nokia

- Strong R&D team of both Microsoft & Nokia
- Strategic Alliance to create synergies between both companies
- High brand loyalty of customers
- Nokia's high reputation of industrial hardware design, build quality and voice quality
- Established extensive regional sales and marketing networks around the globe.

Weaknesses

- Windows mobiles were no longer competitive
- While majority of the new software solutions relied on client-side software installations, Microsoft had a weak cloud-based and service-based solutions
- Longer time-to-market, lower reputation on software quality of initial launch, usability, software openness and business ethics of Microsoft
- Longer product development cycles and longer time-to market of Nokia products
- Symbian unable to fulfil customer needs, but Nokia was still heavily relying on it
- Nokia failed to commercialize R&D outcome.

Opportunities

- Revolutionizing the mobile user experience could retain high-loyalty customers
- Building a new or joining in an existing mobile ecosystem could bring in significant revenue to the company
- Disruptive smartphone features, such as the superb camera and imaging technologies, could be Nokia's key competitive advantage
- Bring Nokia products to markets where iPhone and Android do not have dominant market share yet. Leveraging traditional strengths on office productivity solutions on mobile (Microsoft)
- Cloud-based solutions (Microsoft)
- Service-based business model instead of license based model (Microsoft).

Threats

- Microsoft facing fierce competition in all software segments
- Loss of opportunities to re-enter the mobile operating system market (Microsoft)
- Nokia was facing fierce competition from Apple, Google and other smartphone manufacturers
- Customers had high expectations from Nokia due to competitors' market disruptive offerings and more developed application ecosystems

- Rapid decline in the demand of entry-level feature phones in favor of smartphones, Which Nokia does better in the former
- Changes of customer behavior and market needs, e.g. cloud-based and service-based solutions
- Loss of competitiveness may result in loss of bargaining power or even customers' boycott.

Answer 1(e)

Pre-acquisition, Microsoft was in a very good financial situation. While Microsoft's Net Income, EPS ROE, ROI, ROA were higher; P/E ratio was lower. This elucidates that Microsoft was performing really well. But post-acquisition, things changed. Though the software business was doing well, Microsoft could not realize the expected outcome.

It can be clearly inferred from an impairment charge of \$ 7.6 billion that their predictions went wrong which resulted in a negative NPV. A write-off of \$ 2.5 billion of integration and restructuring expenses, primarily costs associated with Microsoft's restructuring plans also affected the overall business of Microsoft.

The objective of acquisition as stated by Steve Ballmer, CEO Microsoft, "We expect this acquisition to be accretive to our adjusted earnings per share starting in FY15, and we see significant long-term revenue and profit opportunities for our shareholders" itself failed to materialize even after two years of acquisition. The EPS reduced significantly from \$ 2.58 in 2013 to \$ 1.48 in 2015. The ROA for Microsoft reduced by almost 50% in the year 2015 as compared to 2013.

The Return on Invested Capital had also reduced more than 50%. All these indicate that Microsoft financials had to suffer in a big way because of one bad decision. All these figures clearly indicate that Nokia acquisition for Microsoft failed miserably. The impact of the acquisition was so massive that even the gains in Microsoft's software business didn't compensate for the impairment cost of acquisition.

Question 2

- (a) *XYZ Co. Ltd. has been engaged in retailing business in UK. The Management of the Company has decided to extend the business of the company internationally. Initially, the Company started survey for Indian Markets and presented a plan for the expansion of its business in India through its outlets as well as through e.marketing route. Keeping in view of the global economic scenario and the international business policy of the Government of India, you are required to suggest the company's management to adopt the proposal or not.* (5 marks)
- (b) *JBL Co. Ltd. is an Indian Company engaged in courier services. It has commanding business in domestic sector. Now the company desires to enter in the global market for which it requires strategic alliance with US based company. Suggest the company for finalizing the strategic alliance agreement and also point out the advantages and disadvantages for the company if enters upon this alliance.* (5 marks)

- (c) *A company desires to establish its unit in a Special Economic Zone (SEZ) set up by the Government of India. You as an expert, advice the company in this regard highlighting the facilities and privileges which the company would obtain in the special Economic Zone. (5 marks)*
- (d) *Hudson Insurance Company is a US company desires to expand its insurance business in India under Foreign Direct Investment policy of the Government of India. You are required to suggest the company about the current FDI policy of the Government of India and other laws and regulations relating to FDI in Insurance sector. (5 marks)*
- (e) *ABC Exports Ltd. is planning to export readymade garments to gulf and European Countries. The company is anxious to know the financial feasibility of the proposal and also interested to know the various sources of finance for foreign trade. You are required to assist the company for conducting market survey and also to give a profile of the sources of export finance. (5 marks)*
- (f) *A company is planning to establish a manufacturing unit in a foreign country. The company is considering two options (i) Equity Joint Venture and (ii) Wholly owned subsidiary Analyse these options and submit your report to CEO of the company. (5 marks)*

Answer 2(a)

Indian economy is one of the vibrant economies of the world. It has attracted a large number of companies of the world to expend their business operations/activities in India. Accordingly XYZ Co. Ltd is also considering the same. The company must consider the significant drivers of international trade such as higher rate of profit, expansion of production capacities, political stability, availability of technology and competent human resources, cost of transportation, raw materials availability, policies of the Government, growth in market share, etc. International marketing strategies adopted by the company would be beneficial due to policy framework of the Government of India.

The Indian retail industry has emerged as one of the most dynamic and fast-paced industries due to the entry of several new players. It accounts for over 10 per cent of the country's Gross Domestic Product (GDP) and around 8 per cent of the employment. India is the world's fifth-largest global destination in the retail space. Indian Retail Industry has immense potential as India has the second largest population with affluent middle class, rapid urbanisation and solid growth of internet. India's retail market is expected to grow at a Compound Annual Growth Rate (CAGR) of 10 per cent to US\$ 1.6 trillion by 2026 from US\$ 641 billion in 2016. While the overall retail market is expected to grow at 12 per cent per annum, modern trade would expand twice as fast at 20 per cent per annum and traditional trade at 10 per cent. India has replaced China as the most promising markets for retail expansion, supported by expanding economy, coupled with booming consumption rates, urbanizing population and growing middle class. India is expected to become the world's fastest growing e-commerce market, driven by robust investment in the sector and rapid increase in the number of internet users. Various agencies have high expectations about growth of Indian e-commerce markets. Indian e-commerce sales are expected to reach US\$ 120 billion by 2020 from US\$ 30 billion in FY2016. Further, India's e-commerce market is expected to reach US\$ 220 billion in terms of gross merchandise value (GMV) and 530 million shoppers by 2025, led by faster speeds on

reliable telecom networks, faster adoption of online services and better variety as well as convenience. Government of India has allowed 100 per cent Foreign Direct Investment (FDI) in online retail of goods and services through the automatic route, thereby providing clarity on the existing businesses of e-commerce companies operating in India. XYZ Ltd. can invest in e-marketing portal and start online retail business in India. For retail outlets, India has following Retail FDI policy:

- 51% FDI is allowed in Multi -Brand Retail and
- 100% FDI is allowed in Single Brand Retail.

Answer 2(b)

By properly utilizing a strategic alliance, companies can expand their product and service offerings substantially, without the usual corresponding investment in staff, equipment, and facilities. Strategic alliances are motivated by considerations such as cost reduction, technology sharing, product development, market access etc., Strategic alliances have objectives similar to those of conventional acquisitions but such alliances can prove to be less expensive than acquisition, if they are structured properly this is because if two or more companies pool their resources they can secure their joint objectives more easily and economically.

There are many specific advantages of a global strategic alliance:

- Instant market access, or entries into a new market at outstanding pace.
- Exploit new opportunities to strengthen position in a market where firm already has a foothold.
- Increase sales.
- Gain new skills and technology.
- Develop new products at a profit.
- Share fixed costs and resources.
- Enlarge distribution channels.
- Broadening of business and political base.
- Gain greater knowledge of international customs and culture.
- Enhance image in the world marketplace

Disadvantages of Strategic Alliances

There are also some inevitable disadvantages of strategic alliances which organisations must consider:

- Weaker management involvement or less equity stake.
- Fear of market loss due to local partner's presence.
- Less efficient communication.
- Poor resource allocation.

- Difficulties in attaining targets in time.
- Loss of control over important issues such as product quality, operating costs, employees, etc.

Answer 2(c)

The incentives and facilities offered to the units in SEZs for attracting investments into the SEZs, including foreign investment include:-

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units
- 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.
- Exemption from Minimum Alternate Tax under section 115JB of the Income Tax Act.
- External commercial borrowing by SEZ units upto US \$ 500 million in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax.
- Exemption from Goods and Service Tax.
- Single window clearance for Central and State level approvals.
- Exemption from State sales tax and other levies as extended by the respective State Governments.

Answer 2(d)

Foreign Direct Investment (FDI) is a category of cross border investment made by a resident in one economy (the direct investor) with the objective of establishing a 'lasting interest' in an enterprise (the direct investment enterprise) i.e. resident in an economy other than that of the direct investor.

Foreign Direct Investment (FDI) means investment, by a non-resident entity/person resident outside India in the capital of an Indian company, under Schedule 1 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations. It is governed by the provisions of the Foreign Exchange Management Act (FEMA), 1999.

Foreign Direct Investment (FDI) in India is undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India with the intent and objective of the Government of India to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth.

Government has put in place a liberal policy on FDI, under which FDI, up to 100%, is permitted, under the automatic route, in most sectors/activities. There is a small list of sectors, which are either prohibited for FDI, or are subject to restrictions in the nature of equity caps, entry route or conditionalities. Further, the FDI policy is reviewed on an

ongoing basis, with a view to making it more investor-friendly. Significant changes have been made in the FDI policy regime in recent times, to ensure that India remains an increasingly attractive investment destination.

The Foreign Direct Investment (FDI) Policy, at present, 49% FDI is allowed in (i) Insurance Company (ii) Insurance Brokers (iii) Third Party Administrators (iv) Surveyors and Loss Assessors (v) Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development authority Act, 1999 under Automatic route.

Answer 2(e)

Financing international trade is a complex process, involving many variables, ranging from corporate policy and marketing strategy to exchange risk and general borrowing conditions. The reason behind the complexity of financing international trade is that trade involves two countries with different currencies and jurisdictions. In addition, payments must be made at a distance and across time, so the exporter, the importer, or both need credit during part or all of the period from the initial manufacture of goods by the exporting firm to the time of the final sale and collection by the importer.

The main objective of a good corporate export financing policy should be financing the greatest possible amount of sales with the greatest possible management simplicity and with minimal risk.

Following are among the important considerations in the choice of a strategy for trade financing:

- Nature of goods: Capital goods usually require medium to long-term financing while consumer goods, perishable products, etc. require short term finance.
- The nature of the relationship between the exporter and the importer. For example, if both are members of the same corporate family (affiliated to the same MNC) or have had a long standing relation with each other, the exporter may agree to sell on open account credit while absence of confidence may require a letter of credit.
- The availability of various forms of financing, government regulations pertaining to the sale transaction, etc.

Companies often need financing to market, promote and manufacture their products and services. The financing needs of companies involved in international trade transactions are usually categorized as follows:

- (a) *Pre-shipment financing*: this is financing for the period prior to the shipment of goods, to support pre-export activities, such as wages and overhead costs. It is especially needed when inputs for production must be imported. It also provides additional working capital for the exporter. Pre-shipment financing is especially important to smaller enterprises because the international sales cycle is usually longer than the domestic sales cycle. Pre shipment financing instruments can take the form of short-term loans, overdrafts or cash credits;
- (b) *Post-shipment financing*: This is financing for the period following the shipment of goods. The competitiveness of exporters often depends on their ability to provide buyers with attractive credit terms. Post shipment financing

thus ensures adequate liquidity until the purchaser receives the products and the exporter receives payment. Post-shipment financing is usually short-term.

Answer 2(f)

A Comparative study of Equity Joint Venture and Wholly-Owned Subsidiary is given below. The CEO of the Company may take decision on the basis of merits of these joint ventures:-

<i>Basis of Points</i>	<i>Equity Joint Venture</i>	<i>Wholly-Owned Subsidiary</i>
Structure	Separate legal entity, jointly owned by foreign party and local party	Separate legal entity, 100% owned by foreign investor
Entry into Market	<ul style="list-style-type: none"> - Faster - Foreign party benefits from local party's customers, connections, knowledge of competitors, local laws and practices 	<ul style="list-style-type: none"> - Slower - Foreign investor has to grow business from scratch (e.g., hire employees, build demand, obtain sales)
Start-up costs	<ul style="list-style-type: none"> - Lower to moderate - Costs of establishing and maintaining joint venture vehicle can be shared 	<ul style="list-style-type: none"> - Higher - Costs of establishing and maintaining corporate entity borne solely by foreign investor
Resource Commitment	<ul style="list-style-type: none"> - Lower to moderate - Foreign party often contributes management expertise, intellectual property and know-how - Local party often contributes employees, customers, plant and facilities 	<ul style="list-style-type: none"> - Higher - Foreign investor must hire local employees and/or transfer expatriates, purchase raw goods, etc.
Intellectual Property Risk	<ul style="list-style-type: none"> - Higher - Potentially sharing or giving away IP to local party (i.e., a competitor) 	<ul style="list-style-type: none"> - Lower - IP less exposed to a competitor because subsidiary is wholly-owned
Return on Investment	<ul style="list-style-type: none"> - Moderate to higher - Equity generally yields higher returns than royalties, but returns are 	<ul style="list-style-type: none"> - Higher - Equity generally yields higher returns than royalties

<i>Basis of Points</i>	<i>Equity Joint Venture</i>	<i>Wholly-Owned Subsidiary</i>
	<p>shared with other joint venture party</p> <ul style="list-style-type: none"> - Foreign party may have licensed intellectual property to the joint venture vehicle in exchange for royalty payments 	
Market Presence	<ul style="list-style-type: none"> - Moderate to higher - Foreign party has direct access to local market through local party 	<ul style="list-style-type: none"> - Higher - Foreign investor has direct presence in local market
Political Risk	<ul style="list-style-type: none"> - Moderate - Foreign party bears partial risk of politically volatile market, government interference, nationalization 	<ul style="list-style-type: none"> - Higher - Foreign investor bears full risk of politically volatile market, government interference, nationalization.
Competition Law Risk	<ul style="list-style-type: none"> - Moderate to higher - Participation by competitors in joint venture vehicle may trigger competition law issues 	<ul style="list-style-type: none"> - Lower/none - No formal collaboration with a competitor, therefore generally no competition law concern
Control over Strategy	<ul style="list-style-type: none"> - Moderate - Certain degree of control over joint venture vehicle's global strategy - Dependent upon strategic objectives of local party and ability of both parties to adhere to agreed strategy for the duration of the joint venture 	<ul style="list-style-type: none"> - Higher - Complete control over wholly owned subsidiary's global strategy
Complexity of Corporate Governance corporate control	<ul style="list-style-type: none"> - Higher - Conflicting strategic visions, different management/ cultural styles, unequal capital investments, and other material differences often require complex corporate governance mechanisms 	<ul style="list-style-type: none"> - Lower - Foreign investor can exercise full control over wholly-owned subsidiary

<i>Basis of Points</i>	<i>Equity Joint Venture</i>	<i>Wholly-Owned Subsidiary</i>
Market Feedback	<ul style="list-style-type: none"> - Moderate to higher - Joint venture vehicle may provide a direct identity and presence in the market 	<ul style="list-style-type: none"> - Moderate to higher - Wholly-owned subsidiary provides direct identity and presence in the market
Formality	<ul style="list-style-type: none"> - Higher - Need a joint venture agreement and must form joint venture entity - Possible ancillary agreements (e.g., intellectual property license, management services, shareholder rights agreement) 	<ul style="list-style-type: none"> - Moderate - Need to establish wholly-owned subsidiary
Complexity of Documentation	<ul style="list-style-type: none"> - Higher - Negotiation of profit-sharing. 	<ul style="list-style-type: none"> - Lower - No counterparty or joint venture partner
Termination Risk	<ul style="list-style-type: none"> - Moderate to higher - May be difficult to obtain market intelligence and transfer jointly-developed products out of joint venture (i.e. cost and ownership issues) Potential for conflict over intellectual property developed during course of joint venture. - Buy-out or termination procedures can be expensive and time consuming 	<ul style="list-style-type: none"> - Lower - Foreign investor owns 100% of subsidiary and, therefore, all of its assets

Question 3

World Trade Organization (WTO) is constituted for facilitating the smooth conduct of International business. Several privileges are associated with its membership. Large number of countries of the world are the members of WTO. You are required to appraise the role of WTO in India's international business. (5 marks)

Answer 3

World Trade Organization (WTO) has a crucial role to play in the international trade, global economics, political and legal issues arising in the international business because of the globalization. WTO has emerged as a world's most powerful institution for reducing trade related barriers between the countries and opening new markets. World Trade Organization is the only International governing body that replaces General Agreement on Tariffs and Trade (GATT) which was created in the year 1948. The goal of WTO is to provide a fair platform for its member countries to help in services like exports, imports and conduct their business in a peaceful manner. The advantage to the countries being members in the WTO is that that they lower trade related barriers among themselves. Contrary to this the countries which are not part of WTO must negotiate trade related agreements independently with their trading partners. Almost all the industrial and agriculture sectors have been affected by trade barriers between the countries. USA considered being a free trade country because of less number of trade barriers for importing, but still it has got many.

Role of WTO in facilitating international business:

- WTO facilitates implementation, administration and smooth operations of trade agreements between the countries.
- It provides a forum for the trade negotiations between its member countries.
- Settlements of disputes between the member countries through the established rules and regulations.
- It cooperates with the IMF (International Monetary Fund) and World Bank in terms of cohesiveness in making global economic policies.

Overall WTO was set up to play a very important role in the world economics though settling trade related disputes through rules, regulations and consensus based agreement mechanisms that would prevent trade related wars between powerful countries. Through resolving trade related disputed WTO has got the potential to maintain world peace and bilateral relations between its member countries thorough following negotiations, consultations and mediations.

India is one of the prominent members of WTO and is largely seen as leader of developing and under developed world. At WTO, decisions are taken by consensus. So there is bleak possibility that anything severely unfavorable to India's interest can be unilaterally imposed. India stands to gain from different issues being negotiated in the forum provided it engages with different interest groups constructively, while safeguarding its developmental concerns. In absence of such a body we stand to lose a platform through which we can mobilize opinion of likeminded countries against selfish designs of west. Thanks to vast resources of developed countries they can easily win smaller countries to their side. WTO provides a forum for such developing countries to unite and pressurize developed countries to make trade sweeter for poor countries. Accordingly, India remains committed to various developmental issues such as Doha Development Agenda, Special Safeguard Mechanism, Permanent solution of issue of public stock holding etc. Apart from this, Dispute Resolution Mechanism of WTO is highly efficient. Countries drag their trading partner to this body when action of one country is perceived to be unfair and violative of any WTO agreement, by other country.

Cases of Complaints against India

1. India — Certain Measures Relating to Solar Cells and Solar Modules (Complainant: United States)
2. India —Anti-Dumping Duties on USB Flash Drives from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu(Complainant: Chinese Taipei)
3. India —Measures Concerning the Importation of Certain Agricultural Products(Complainant: United States)
4. India —Certain Taxes and Other Measures on Imported Wines and Spirits(Complainant: European Communities)

Cases of Complaints by India:

1. United States —Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (Complainant: India)
2. Turkey —Safeguard measures on imports of cotton yarn (other than sewing thread)(Complainant: India)
3. European Union and a Member State —Seizure of Generic Drugs in Transit(Complainant: India)

Hence, WTO is a body which provides opportunity to aggrieved country to bring unfair trade practices to notice of Dispute Settlement body and to bring an end to such unfair practice. This dimension of WTO makes it a desirable and neutral body as it seeks to create a just global trading system. India has to continue its effort to prevent issues of developmental importance to be sidelined. Until this is done WTO cannot impinge upon sovereignty of India. India has already marked red line in sectors such as agriculture by making it clear that there is no scope of compromise on its positions. West has relentlessly tried to project India as rigid and uncompromising negotiator. However, these attributes are better suited to U.S. and other developed countries. They have been backtracking on various commitments under Doha Development Round and desperately trying to bring in new issues including Singapore issues. These issues are prejudicial to interests of majority of countries and vast majority of population. Consequently, majority of countries stand with India after failure of every meet.

Question 4

A foreign food company is planning to make investment in Indian economy. As an international business consultant, advise the company to analyse the cultural environment of the country for the investment. (5 marks)

Answer 4

An international marketer, operating in international business environment, needs to understand the importance of society in which he lives in and operate business. The main factors of appraisal consist of the sum of a society's beliefs, customs, values, languages, rites and rituals, behaviour and business etiquettes & practices. National culture is described as the body of general beliefs and values that are shared by a nation. Beliefs and values are generally seen as formed by factors such as history,

language, religion, geographic location, government, and education; thus firms begin a cultural analysis by seeking to understand these factors. Firms want to understand what beliefs and values they may find in countries where they do business, and a number of models of cultural values have been proposed by scholars.

The most well-known is that developed by Hofstede in 1980. This model proposes four dimensions of cultural values including individualism, uncertainty avoidance, power distance and masculinity.

- Individualism is the degree to which a nation values and encourages individual action and decision making.
- Uncertainty avoidance is the degree to which a nation is willing to accept and deal with uncertainty.
- Power distance is the degree to which a national accepts and sanctions differences in power.
- Masculinity is the degree to which a nation accepts traditional male values or traditional female values.

While analyzing social and cultural factors, the organisation may consider the following aspects:

- Approaches of the society towards business in general and in specific areas;
- Influence of social, cultural and religious factors on acceptability of the product;
- Life style of people and the products useful for them;
- Level of acceptance of, or resistance to change;
- Values attached to a particular product i.e. possessive value or functional value in the product;
- Demand of specific products for specific occasions;
- Propensity to consume and to save.

Mistakes in cross cultural communication often go unnoticed by the communicators, but these mistakes have potential to cause damage to any company like this food company planning to invest in India. One cannot become expert on understanding entire world's cultures however it is possible to construct a cross-cultural framework involving important cultural variables which can help marketer understand the broad characteristics of a market. Foreign Food Company can never underestimate the importance of variables such as cultural life of people, rites, rituals, festivals, heritage invasion of alien culture and business culture of a market. 'Cultural Themes' are integral part of any culture and have a substantial impact on ways of doing business in a country, for example, Indian cultural themes are rooted in folk belief and core Hindu values which include practicing joint family system, thrift, mutual cohesiveness, endurance, and trustworthiness. These values are deeply engrained in the Indian consumer's psyche. Food Company should launch a product which should be in sync with these values and beliefs.

Question 5

Asian Development Bank (ADB) was established for poverty alleviation of Asia and Pacific. ADB has been driven by an inspiration and dedication for improving people's

lives in this area. It is committed to help the member countries for improving its status by upgrading the standard of living of the people of the member countries. The main devices for its assistance are loans, grants, policy dialogue, technical assistance and equity investments. As one of the significant member of the ADB, evaluate its role in India's economic development. (5 marks)

Answer 5

India has been a founding member of the Asian Development Bank (ADB) since its establishment in 1966. Since the beginning of its lending operations in the country in 1986, ADB has partnered with India in its endeavor to reduce poverty through infrastructure lead growth. Over the years, ADB has aligned its India program with the government's increasing focus on inclusive and sustainable growth. While continuing its support for infrastructure development in the energy, transport and urban sectors, ADB is engaged in improving water resources management, agribusiness infrastructure development, promoting financial inclusion, and skills development. In line with the government's Finance Plus approach, ADB has been infusing innovations and regional best practices into project design and implementation. ADB has focused on strengthening its partnership with multilateral and bilateral development partners in India. In 2012, consulting and programming related meetings were held with several key partners. Such consultations help ADB in being more responsive to development needs besides being useful in identifying strategies and approaches that add value to its overall program in India. ADB's partnerships with civil society organizations aim to strengthen the effectiveness, quality, and sustainability of development efforts. Civil society organizations partnering in ADB operations provide a grassroots perspective on the design and implementation of projects, assist in community mobilization and resettlement, provide technical training, and conduct independent monitoring and evaluation.

To supplement the government's efforts in reducing interstate disparities and promoting regionally balanced growth, ADB has expanded its operations in low income and special category states.

ADB will continue to support the strategic goals of the government—faster, more inclusive, and sustainable growth— as emphasized in the 12th Five-Year Plan and reflected in ADB's country partnership strategy (CPS), 2013–2017 for India.

India is ADB's fourth largest shareholder. Since launching its lending operations in India in 1986, ADB has approved 168 sovereign loans amounting to \$27.2 billion. As of 31 December 2012, the portfolio included 78 ongoing sovereign loans amounting to \$11.2 billion. ADB's sovereign lending assistance to India increased from an annual average of about \$1.16 billion in 2000–2006 to \$1.85 billion in 2007–2012. India has been ADB's largest borrower for the last 3 years (2010–2012).

This Country Partnership Strategy (CPS), 2018–2022 for India aims to support the government's goal of faster, inclusive, and sustainable growth accompanied by rapid economic transformation and job creation. Asian Development Bank (ADB) assistance is articulated through the three strategic pillars of the CPS: boosting economic competitiveness to create more and better jobs, providing inclusive access to infrastructure networks and services, and addressing climate change and increasing climate resilience.

Question 6

*“The scope of logistics Management is not only optimising transportation cost.”
Comment on this statement. Also state the role of logistic management in
international business. (5 marks)*

Answer 6

The scope of logistics management is wider than just optimizing transport costs. Decisions about Logistics have their impact on inventories, on packaging, on material handling and on purchasing and marketing decisions and vice versa. In short, logistics management aims to create time, place, form and price utilities for a product or service thus creating extended and improved value proposition to customers in today's competitive world where as optimizing transportation cost of goods or services is just one elements of logistics function. For instance there is no point in producing small but economic batch quantities when the distribution facility dictates that number of these batches should be accumulated before they can be shipped to the customers.

Instead of carrying inventory in the plant, one will carry it outside the warehouse. Logistics in a business aim to the following contributions:

- Achieve maximum customer service level
- Ensure high product quality
- Achieve minimum (possible) cost
- Be flexible in the constant market changes

Transportation provides the flow of materials, products and persons between production facilities, warehouses, distribution centres, terminals and customer locations. Transportation consumes a major proportion of the total logistics costs, so it is very important to plan and implement it intelligently. Transportation Planning generally targets to:

Customer Satisfaction (Quality of Service)	- On-time Delivery - Minimum Delays/Damages/Losses
Productivity Efficiency	- Transit Time Reduction - Lower Variability of Transit Times
Cost Minimization	- Vehicle Acquisition / Fuel consumption minimization - Minimization of Overtimes and excess personnel costs

The goal for any business owner is to minimize transportation costs while also meeting demand for products. Transportation costs generally depend upon the distance between the source and the destination, the means of transportation chosen, and the size and quantity of the product to be shipped. In many cases, there are several sources and many destinations for the same product, which adds a significant level of complexity

to the problem of minimizing transportation costs. Logistics management, on the other hand, can be prime source of gaining competitive advantages in global markets, any firm with global motivations, should plan, execute and implement the logistics system that is instantaneous, free, readily available with suitable capacity and frequency in order to achieve value and productivity advantages while satisfying the requirements of customers across the globe. The role of Logistics management in international business is ever-increasing as it helps any firm to offer right product, right price, right promotion, right place, right time, right condition and right quantity.
