

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

JUNE 2016

MODULE 3



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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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>Updation required in the answer</i>
All Previous Sessions	—	<p>The Income Tax, Service Tax, Sales Tax, Central Excise 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 December 2016 examination.</p> <ul style="list-style-type: none">(i) For Direct taxes, Finance Act, 2015 is applicable.(ii) Applicable Assessment year is 2016-17 (previous year 2015-16).(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, all changes made by the Finance Act, 2016 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 six 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>Updation required in the answer</i>
All Previous Sessions	—	Notified provisions of Companies Act, 2013 and the provisions of Companies Act, 1956 which is still in force.

(iii)

UPDATING SLIP

BANKING LAW AND PRACTICE

MODULE – 3 – ELECTIVE PAPER 9.1

<i>Examination Session</i>	<i>Question No.</i>	<i>Updation required in the answer</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>Updation required in the answer</i>
All Previous Sessions	—	<p>SEBI (ICDR) Regulations. All answers pertaining to Issue of securities to be updated according to amended Regulation.</p> <p>SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015. All answers pertaining to listing of securities and corporate governance to be updated accordingly. SEBI (Prohibition of Insider Trading) Regulations, 2015. All answers pertaining to price sensitive information, insider trading to be updated accordingly.</p> <p>Master Circulars issued by RBI from time to time.</p>

(v)

UPDATING SLIP

INSURANCE LAW AND PRACTICE

MODULE – 3 – ELECTIVE PAPER 9.3

<i>Examination Session</i>	<i>Question No.</i>	<i>Updation required in the answer</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>Updation required in the answer</i>
All Previous Sessions	—	In accordance with revised laws and rules under TRIPS and World Intellectual Property Organization (WIPO).

(vii)

UPDATING SLIP

International Business - Laws and Practices

MODULE – 3 – ELECTIVE PAPER 9.5

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

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 2016-17, unless stated otherwise.

PART A

Question 1

- (a) A company wants to raise capital of ₹40,00,000 for a project wherefrom earnings before tax would be 30% of the capital employed. The company can raise debt finance @ 12% p.a.

The following three alternatives for raising capital are available for the company:

- (i) ₹40,00,000 by equity capital
- (ii) ₹20,00,000 by equity capital and ₹20,00,000 by loans
- (iii) ₹8,00,000 by equity capital and ₹32,00,000 by loans.

Assume that the company would distribute the entire amount of profits as dividend. The tax rate is 30.9% and dividend distribution tax rate is 20.358%.

Work out which one of the above three alternatives should the company opt to minimise its tax liability ? (5 marks)

- (b) What is 'advance ruling' ? State the procedure to obtain advance ruling. (5 marks)

- (c) Comment with reasons on the taxability or otherwise of the following incomes for the year ended on 31st March, 2016 as per the Income-tax Act, 1961 :

- (i) Akhil, a not ordinarily resident, earned ₹65,000 from a business in Australia when he was in Australia. Later the profits were remitted to India.
- (ii) Birender, an ordinarily resident and a financial consultant, received a fee of ₹50,000 from an Indian company carrying on business in Canada for the services rendered there. The fee was directly deposited in a bank in Canada.
- (iii) Chandan, an ordinarily resident, earned agricultural income of ₹25,000 from land in England. He spent the entire income for his son's education in India.
- (iv) Dinesh, a citizen of India, got employment in Burma. He left India on 1st September, 2015 after earning ₹5,00,000 in India. He earned ₹7,00,000 in Burma during the previous year.
- (v) Girish, a resident, brought to India, his income earned in 2010-11 in Sri Lanka which was not taxed in Sri Lanka. (5 marks)

Answer 1(a)

Analysis of total tax liability of the Company under various financing options

<i>Particulars</i>	<i>Amount in Rs.</i>		
	<i>Option 1</i>	<i>Option 2</i>	<i>Option 3</i>
Share Capital	40,00,000	20,00,000	8,00,000
Debt @ 12%	-	20,00,000	32,00,000
Total Capital	40,00,000	40,00,000	40,00,000
PBIT (Expected Rate of Return @ 30% of total Capital Employed)	12,00,000	12,00,000	12,00,000
Less: Interest on loan @ 12%	-	(2,40,000)	(3,84,000)
Profit Before Tax	12,00,000	9,60,000	8,16,000
Less: Tax @ 30.9% on PBT (a)	(3,70,800)	(2,96,640)	(2,52,144)
Net Profit After Tax	8,29,200	6,63,360	5,63,856
Dividend Distribution Tax @ 20.358% (b)	1,68,808	1,35,047	1,14,790
Total Tax liability			
Income Tax (a)	3,70,800	2,96,640	2,52,144
Dividend Distribution Tax (b)	1,68,808	1,35,047	1,14,790
Total tax liability (a+b)	5,39,608	4,31,687	3,66,934

As the tax liability is minimum in option 3, therefore company should go for option 3

Answer 1(b)

The term "advance ruling" has been defined in section 245N(a) of the Income tax Act, 1961 to mean:

- (i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or
- (ii) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident; or
- (iii) a determination by the Authority in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant, and such determination shall include the determination of any question of law or of fact specified in the application; or
- (iv) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal. Further, advance ruling may be determined for both the question of law or fact; or

- (v) a determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.

An applicant desirous of obtaining an advance ruling should apply in the following manner:

1. The application should be made in the prescribed form stating the question on which the ruling is sought.
2. The application has to be made in quadruplicate in Form No. 34C/ 34D / 34E / 34EA as the case may be.
3. The application is to be accompanied by an account-payee demand draft for Rs. 10,000.
4. Application can be made personally or by registered post.
5. If application is made by Registered post then it will be deemed to have been made on the date such post is received by Authority.

Answer 1(c)(i)

Not Taxable in India: Since, Mr. Akhil is not ordinarily resident 'NOR' in India and the Income accrued and received outside India i.e. from business in Australia, would not be taxable in India. Further, the subsequent remittance of the fund to India would not be deemed to be received in India.

Answer 1(c)(ii)

Taxable in India : An individual, qualifying as resident and ordinarily resident in India would be liable to pay tax on his / her Global Income. Therefore, the fee of Rs. 50,000 received by Mr. Birender from an Indian company carrying on business in Canada for the services rendered there would be chargeable to tax in India.

Answer 1(c)(iii)

Taxable in India : An individual, qualifying as resident and ordinarily resident in India would be liable to pay tax on his / her Global Income. Therefore, the agriculture income of Rs. 25,000, from a land in England, would be taxable in India. Further Mr. Chandan may be eligible to claim deduction with respect to the expenditure incurred for his son's education in India subject to the provisions of section 80C of the Income tax Act, 1961.

Answer 1(c)(iv)

As Dinesh, citizen of India, has left India for the purpose of employment outside India, present in India for less than 182 days during the previous year and therefore qualifying as non-resident 'NR' in India. Accordingly, he would be liable to pay tax on source based income in India.

Therefore, Income of Rs. 5,00,000 earned in India would only be taxable in India. Income of Rs. 7,00,000 earned outside India i.e. in Burma would not be taxable in India.

Answer 1(c)(v)

Not Taxable in India : Since, the Income accrued and received during the year 2010-11 and not during the previous year i.e. 2015-16 and therefore not taxable in India during the previous year i.e. 2015-16. Further, the subsequent remittance of the fund to India would not be deemed to be received in India.

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

- (a) Discuss the meaning of 'associated enterprises' as defined under section 92A. (5 marks)
- (b) Mrs. Kareena, an individual resident and citizen of India, earned remuneration in foreign currency from an enterprise in foreign country during her stay in that country in the previous year 2015-16. There is no DTAA with that country. The remuneration was ₹8,00,000 and ₹1,60,000 was deducted at source by the enterprise. Income from other sources of Mrs. Kareena in India was ₹2,00,000. Compute the relief available to her under section 91 assuming that Mrs. Kareena brings ₹3,00,000 in India in convertible foreign exchange by 30th September, 2016. Also, compute the taxable income and tax liability of Mrs. Kareena for the assessment year 2016-17. (5 marks)
- (c) Give examples of five incomes in India which are exempt under section 10 in respect of non-residents. (5 marks)

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

- (i) What is advance pricing agreement ? State the validity period of the agreement. Also, specify the binding force of the agreement. (4 marks)
- (ii) From the following information, determine the tax payable under section 115-O by a domestic company on the dividend distributed by it where the rate of dividend distribution tax is 20.358% :
- It received dividend of ₹5,00,000 on 20th November, 2015 from its subsidiary company which paid dividend distribution tax under section 115-O.
 - It distributed dividend of ₹33,00,000 on 14th December, 2015 to its shareholders.
 - Out of ₹33,00,000, the company paid dividend of ₹3,00,000 to a person on behalf of the New Pension System Trust. (3 marks)
- (iii) What is an LLP ? How is it different from a partnership firm ? (3 marks)
- (iv) Distinguish between 'tax planning' and 'tax evasion'. (5 marks)

Answer 2(a)

Associated Enterprises 'AE' has been defined in Section 92A of the Act. It prescribes that "associated enterprise", in relation to another enterprise, means an enterprise—

- (a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

- (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

The basic criterion to determine an AE is the participation in management, control or capital (ownership) of one enterprise by another enterprise whereby the participation may be direct or indirect or through one or more intermediaries, control may be direct or indirect.

Answer 2(b)

Computation of Taxable Income & Tax Liability of Ms. Kareena in India (AY 2016-17)

<i>Computation of Taxable Income and Tax Liability</i>	<i>Amount (in Rs.)</i>	<i>Amount (in Rs.)</i>
Income earned in India	2,00,000	
Income earned outside India	8,00,000	
Gross Total Income	10,00,000	
Deduction under Chapter VI	NIL	
Total Income		10,00,000
Tax Liability		
On first Rs. 2,50,000 - NIL		
Rs. 2,50,001 - Rs. 5,00,000 - 10%		25,000
Rs. 5,00,000 – Rs. 10,00,000 – 20%		1,00,000
Total Tax (excluding EC & SHEC)		1,25,000
Education Cess & SHEC @ 3%		3,750
Total Tax		1,28,750
Average rate of Tax in India Rs. $(1,28,750/10,00,000 * 100)$ =12.875 %		
Average rate of tax in foreign country $(1,60,000/8,00,000*100) = 20%$		
Doubly Taxed Income	8,00,000	
Relief under section 91 (on Rs. 8,00,000 @ 12.875%) i.e. rate 20 % or 12.875 % whichever is lower		(1,03,000)
Tax payable in India		25,750

Note:

- Relief under section 91 would be calculated on doubly taxed income at average rate of tax in India or in foreign country whichever is lower.
- Since, the question is silent about the age of the assessee, it is assumed to be age of the assessee is under 60 year and therefore apply the normal tax slab rate applicable to an individual.

Answer 2(c)

The following are the income exempt from tax under section 10 of the Income tax Act, 1961 in the hands of non-residents:

1. *Interest on NRE A/c [Section 10(4)(ii)]*: In the case of an individual, any income by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the Foreign Exchange Management Act, 1999 ('FEMA') is exempt.
2. *Tax payable on Royalty or FTS on behalf of foreign company*: Tax payable, under the terms of the agreement, on Royalty or FTS on behalf of foreign company is exempt under section 10(6A).
3. *Tax payable on certain incomes on behalf of foreign company or Non-Resident 'NR'*: Tax payable on certain incomes (not being salary, royalty or FTS) on behalf of foreign company or a NR is exempt u/s 10(6B).
4. *Tax payable by Indian Company on behalf of foreign Government etc.:* Tax payable, on behalf of foreign Govt. or foreign enterprises by, Indian company engaged in business of operation of aircraft, on income from leasing of aircraft etc. u/s 10(6BB).
5. *Royalty or FTS received by a specified foreign company*: Royalty or FTS received by specified foreign company is exempt u/s 10(6C).
6. *Lease rent paid for leasing aircraft*: Leasing rent paid for leasing aircraft by an Indian company engaged in business of operation of aircraft as a consideration for acquiring an aircraft or an aircraft engine on lease from Govt. of a foreign State or a foreign enterprise under an agreement is exempt under section 10(15A) in the hands of non-resident or foreign company.

Answer 2A(i)

Advance Pricing Agreement (APA) is an agreement between a taxpayer and a taxing authority (Board) on an appropriate transfer pricing methodology for fixing the arm's length price for a set of transactions over a fixed period of time in future.

As per Section 92CC(1) of Income Tax Act, 1961, w.e.f. 1st July, 2012, the Central Board of Direct Taxes (Board), with the approval of the Central Government, may enter into an Advance Price Agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.

Validity of Advance Pricing Agreement

The advance pricing agreement shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement.

Bindingness of Advance Pricing Agreement

Advance Pricing Agreement shall be binding on:

- (a) the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and
- (b) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

However the advance pricing agreement shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

Answer 2A(ii) - Alternative 1**Computation of Dividend Distribution Tax payable**

<i>Particulars</i>	<i>Amount (in Rs.)</i>
A Dividend Distributed	33,00,000
Less : Dividend received from subsidiary company	(5,00,000)
Less : Dividend Paid on behalf of NPS	(3,00,000)
Net Dividend liable for dividend distribution tax	25,00,000
B Dividend Distribution tax payable (Rs. 25,00,000* 20.358%)	5,08,950

Note:

- It is assumed that the dividend distribution tax rate i.e. 20.358 % mentioned in the question is the gross-up rate.

Answer 2A (ii) - Alternative 2**Computation of Dividend Distribution Tax payable**

<i>Particulars</i>	<i>Amount (in Rs.)</i>
A Dividend Distributed	33,00,000
Less : Dividend received from subsidiary company	(5,00,000)
Less : Dividend Paid on behalf of NPS	(3,00,000)
Net Dividend liable for dividend distribution tax	25,00,000
B Computation of Increased gross-up dividend distribution (25,00,000* 17.304%) / (1- .17304)	5,23,121
C Total dividend distribution (Gross) (A+B)	30,23,121
D Dividend Distribution tax payable (30,23,121* 17.304%)	5,23,121

Note :

- The Finance Act, 2014 has inserted sub section (1B) in section 115O, as per which for the purpose of determining the tax on distributed profits payable, any amount of dividends referred to in sub-section (1) as reduced by the amount of dividend (if any) received by a domestic company from its subsidiary company or dividend paid on behalf of NPS shall be increased to such amounts as would, after reduction of tax on such increased amount (@15% + SC+ EC+SHEC) be equal to the net distributed profits.

Answer 2A(iii)

A limited liability partnership (LLP) is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008. It is a legally separated entity from that of its partner.

Difference between LLP & Partnership Firm

Under “traditional partnership firm”, every partner is liable, jointly with all the other partners and also severally for all acts of the firm done while he is a partner. However, under LLP structure, liability of the partner is limited to his agreed contribution. Further, no partner is liable on account of the independent or un-authorized acts of other partners, thus allowing individual partners to be shielded from joint liability created by another partner’s wrongful acts or misconduct.

Answer 2A(iv)

<i>Sr. No.</i>	<i>Tax Planning</i>	<i>Tax Evasion</i>
1.	Tax planning is an act within the four corner of the tax laws. It is a mean to avail the benefits legally permissible.	Tax evasion is an attempt to avoid tax by misrepresentation of facts and falsification of accounts
2.	Tax planning is a permissible legal right which enables the tax payer to maximize his return net of taxes.	Tax evasion is a legal offence which may lead to penalty and prosecution.
3.	Tax planning enables the assessee to have more cash flow in order to expand business.	Tax evasion distorts the economy and results in black money generation.
4.	Tax planning is a professional exercise.	Tax evasion encourages bribery and weakens the economic and political situation of the country.
5.	Tax planning has judicial approval.	Tax evasion is denounced by courts as anti social.

PART B

Question 3

- (a) *Madhur Ltd. is engaged in the manufacture of machines. It has supplied one machine to Zeal & Co. at a price of ₹8,50,000 (excluding taxes and duties) on*

which a cash discount @ 2% is allowed as per terms of contract, as Zeal & Co. made full payment in advance. Further, following additional expenses have been incurred :

Particulars	₹
Expenses pertaining to installation and erection of the machine at Zeal & Co.'s premises (machine was permanently affixed to earth)	30,000
Packing charges	12,500
Design and engineering charges	4,000
Cost of material supplied free of charge by Zeal & Co. (used in production of machine)	10,000
Pre-delivery inspection charges (charged by Madhur Ltd.)	1,000
Bought out accessories supplied with the machine	8,000

Determine the total amount of central excise duty payable thereon from the aforesaid information assuming the rate of excise duty to be 12.5%. (5 marks)

- (b) A material was imported by air at CIF price of US \$5,000. Freight paid was US \$1,500 and insurance cost was US \$500. The banker realised the payment from importer at the exchange rate of ₹65 per US dollar. Central Board of Excise and Customs notified the exchange rate at ₹63 per US \$. Find the value of material for the purpose of levying customs duty. (5 marks)
- (c) Raj Ltd. of Madhya Pradesh made a total purchase of input and capital goods of ₹55,00,000 during the month of January, 2016. The following further information is available :

- Goods worth ₹9,00,000 were purchased from West Bengal on which central sales tax @ 2% was paid.
- The purchases made in January, 2016 include goods purchased from unregistered dealers for ₹21,50,000.
- It purchased capital goods (not eligible for input credit) worth ₹9,50,000 and those eligible for input credit for ₹9,00,000.
- Sales made in Madhya Pradesh during the month of January, 2016 is ₹10,00,000 on which VAT @ 12.5% is payable.

Assuming that all purchases made are exclusive of tax and VAT @ 4% is paid on them, calculate —

- (i) The amount of input tax credit available for the month of January, 2016;
- (ii) VAT payable for the month of January, 2016; and
- (iii) Input tax credit carried forward.

Note : The input VAT credit on eligible capital goods can be availed in 36 equal monthly installments. (5 marks)

- (d) The residents welfare association (RWA) of Rising Sun Housing Society in Mumbai provides the following information with respect to the various amounts received by it in the month of September, 2015 :

<i>Particulars</i>	<i>₹</i>
<i>Monthly maintenance charges from member families (₹ 2,500 each from 200 families)</i>	<i>5,00,000</i>
<i>Electricity charges levied by State Electricity Board on the members of RWA (the same were collected from members and remitted to the Board on behalf of the members)</i>	<i>3,50,000</i>
<i>Electricity charges levied by State Electricity Board on RWA in respect of electricity consumed for common use of lifts and lights in the common area (bill was raised in the name of RWA which collected the said charges by apportioning them equally among the 200 families and then remitted the same to the Board)</i>	<i>4,00,000</i>
<i>Proceeds from sale of entry tickets to a cultural programme conducted by the RWA in the park of the society</i>	<i>40,000</i>
<i>Proceeds from sale of space for advertisements in members' directory (members ₹1,00,000 and non-members ₹2,00,000)</i>	<i>3,00,000</i>
<i>Fees received from two members who sold their flats in September, 2015</i>	<i>20,000</i>

Compute the value of taxable services and service tax liability of RWA of Rising Sun Housing Society for the month of September, 2015.

Note : (i) Wherever applicable service tax is included in the receipts of RWA; (ii) RWA of Rising Sun Housing Society is not eligible for small service providers' exemption under Notification No. 33/2012-ST dated 20th June, 2012; and (iii) Wherever applicable, the point of taxation falls in the month of September, 2015. (5 marks)

- (e) Manish provides you the following information :

<i>Particulars</i>	<i>₹</i>
<i>Royalty for providing technical know-how for manufacture of products</i>	<i>25,00,000</i>
<i>Royalty received for permanent transfer of trade mark</i>	<i>20,00,000</i>
<i>Annual royalty from authorship of books</i>	<i>18,00,000</i>
<i>Royalty received from temporary transfer of patent registered outside India</i>	<i>3,00,000</i>
<i>Royalty received from music company for allowing recording of song composed by Manish for further distribution</i>	<i>6,00,000</i>
<i>Research and development cess paid for import of technology</i>	<i>50,000</i>

Compute the value of taxable service and tax liability (ignore small service providers' exemption).

Note : All charges are exclusive of service tax @ 14%. (5 marks)

Answer 3(a)

Computation of Assessable Value and Excise Duty

<i>Particular</i>	<i>Amount (in Rs.)</i>
Price of Machine (excluding taxes and duties)	8,50,000
Installation and Erection Charges (Note 1)	-
Packing Charges (Note 2)	12,500
Design and engineering charges (Note 3)	4,000
Cost of Material (supplied free of charge by Zeal & Co.) used in production of machine (Note 4)	10,000
Pre-Delivery inspection charges (Note 5)	1,000
Total	8,77,500
Less: 2% cash discount on price of machinery (2% on Rs. 8,50,000)	(17,000)
Assessable Value	860,500
Excise Duty @ 12.5%	1,07,563

Notes:

- (1) Installation and erection charges would not be included as they are only in relation to sale, not in connection with sale.
- (2) Amount charged from buyer in relation to packaging (whether primary or secondary) will be included.
- (3) As per Rule 6 of Valuation Rules, 2000, design and engineering charges will be included in computation of assessable value.
- (4) Cost of material supplied free of charge by buyer will form a part of assessable value as it is additional consideration flowing from the buyer to seller.
- (5) Since, pre delivery inspection charges are charged by the manufacturer and therefore includible in the assessable value.
- (6) Bought out accessories, supplied along with the machinery, assumed to be non essential, and thus not been included.
- (7) Cash discount will be allowed as deduction if actually passed on to buyer and is the transaction is on principal to principal basis.

Answer 3(b)**Computation of Assessable value of Imported Goods**

<i>Sr. No.</i>	<i>Particular</i>	<i>Amount (US \$)</i>
A	CIF value of the material	5,000
	Less : Air Freight	(1,500)
	Less : Insurance	(5,00)
B	FOB value (CIF value - Air freight - Insurance)	3,000
	Add : Air Freight (20% of FOB value)	600
	Add : Insurance actual	500
C	CIF value as calculated (FOB + Air Freight + Insurance)	4,100
	Add : Landing Charges (1% on CIF value)	41
D	Assessable Value (CIF value + Landing Charges)	4,141
E	Assessable value in INR (4,141 x 63)	₹ 2,60,883

Notes:

- (1) If the goods are imported by air, the freight cannot exceed 20% of FOB price.
- (2) Landing charges would be 1% of CIF value.
- (3) Rate of exchange determined by CBEC would be considered as per clause (a) of the explanation to section 14 of the Customs Act, 1962.

Answer 3(c)**(i) Calculation of inputs tax credit available for January, 2016**

<i>Sr. No.</i>	<i>Particular</i>	<i>Amount (₹)</i>
A	Purchase made in January, 2016	55,00,000
	Less : Inter-state purchase (credit not available)	(9,00,000)
	Less : Purchase from un-registered dealer	(21,50,000)
	Less : Purchase of capital goods (not eligible for credit)	(9,50,000)
B	Total purchase eligible for tax credit	15,00,000
	Input tax credit available for January, 2016	
	i) Input tax credit on inputs (4% of Rs. 6,00,000)	24,000
	ii) Input tax credit on eligible capital goods (4% of 25,000)	1,000
C	Total Input tax credit available for Jan, 2016	25,000

Notes:

- (1) Input tax credit on inputs eligible for tax credit, other than capital goods
 = ₹ 15,00,000 – ₹ 9,00,000 = ₹ 6,00,000
- (2) Input tax credit on capital goods could be availed in 36 equal installments
 = ₹ 9,00,000 * 4 % * 1/36 = 1,000

(ii) Calculation of VAT Payable for January, 2016

<i>Sr. No.</i>	<i>Particular</i>	<i>Amount (In ₹)</i>
A	Sales made in Madhya Pradesh during January, 2016	10,00,000
B	VAT on Sales (12.5% of 10,00,000)	1,25,000
C	Less: Input tax credit (as calculated in part (i))	(25,000)
D	Net VAT liability for the month of Jan, 2016	1,00,000

(iii) Input tax credit carried forward

- (a) Input tax credit carried forward for capital goods = 35 installments of ₹ 1,000 each
- (b) Input tax credit carried forward for goods other than capital goods = nil

Answer 3(d) – Alternative 1

Computation of Value of taxable services and service tax liability of RWA of Rising Sun Housing Society for the month of September, 2015

<i>Sr. No.</i>	<i>Particular</i>	<i>Amount (in ₹)</i>
1.	Monthly maintenance charges from member families	-
2.	Amount collected towards electricity charges levied by State Electricity Board on the members of RWA	-
3.	Amount collected towards electricity charges levied by State Electricity Board on RWA in respect of common area	4,00,000
4.	Proceeds from sale of entry tickets to cultural programme held on the park of the society	40,000
5.	Proceeds from sale of space for advertisement in members directory	3,00,000
6.	Fees received from two members who sold their flats	20,000
7.	Total value of taxable services (inclusive of service tax)	7,60,000
8.	Value of taxable services (excluding service tax) (7,60,000 x 100/114)	666,667
9.	Service Tax Liability (Rs 666,667 x 14%)	93,333

Notes:

1. Exempt as contribution per member is below ₹ 5,000 as per mega exemption notification.
2. It is excludible as the RWA is acting only as a pure agent of the member for remitting the bill.
3. Amount collected for maintenance of common facilities, other than monthly maintenance is chargeable to service tax.
4. It is taxable with effect from 14th May, 2015, earlier it was covered in the negative list under clause (j) of section 66D of the Finance Act, 1994. Further, the bifurcation of ₹ 40,000 collected from each family is not available, therefore it is assumed the amount of Rs. 40,000 is the consolidated amount and above the limit prescribed i.e. ₹ 5,00 per person and therefore consider it chargeable to service tax.
5. Taxable as only selling of space for advertisement in print media is included in the negative list under clause (g) of section 66D of the Finance Act, 1994.
6. If per month per member contribution of any or some members of a RWA exceeds five thousand rupees, the entire contribution of such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification.

Answer 3(d) – Alternative 2

Computation of Value of taxable services and service tax liability of RWA of Rising Sun Housing Society for the month of September, 2015

<i>Sr. No.</i>	<i>Particular</i>	<i>Amount (in ₹)</i>
1.	Monthly maintenance charges from member families	-
2.	Amount collected towards electricity charges levied by State Electricity Board on the members of RWA	-
3.	Amount collected towards electricity charges levied by State Electricity Board on RWA in respect of common area	4,00,000
4.	Proceeds from sale of entry tickets to cultural programme held on the park of the society	-
5.	Proceeds from sale of space for advertisement in members directory	3,00,000
6.	Fees received from two members who sold their flats	20,000
7.	Total value of taxable services (inclusive of service tax)	7,20,000
8.	Value of taxable services (excluding service tax) (7,20,000 x 100/114)	6,31,579
9.	Service Tax Liability (Rs 6,31,579 x 14%)	88,421

Notes:

1. Exempt as contribution per member is below Rs. 5,000 as per mega exemption notification.
2. It is excludible as the RWA is acting only as a pure agent of the member for remitting the bill.
3. Amount collected for maintenance of common facilities, other than monthly maintenance is chargeable to service tax.
4. It is taxable with effect from 14th May, 2015, earlier it was covered in the negative list under clause (j) of section 66D of the Finance Act, 1994. Further, the bifurcation of ₹40,000 collected from each person is not available; therefore it is assumed the amount of ₹40,000 is within the limit prescribed i.e. ₹5,00 per person ($\text{₹}40,000 / 200 \text{ person} = \text{₹} 200 \text{ per person}$) and therefore exempt from service tax.
5. Taxable as only selling of space for advertisement in print media is included in the negative list under clause (g) of section 66D of the Finance Act, 1994.
6. If per month per member contribution of any or some members of a RWA exceeds five thousand rupees, the entire contribution of such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification.

Answer 3(e)**Computation of Value of taxable services and service tax liability**

Sr. No.	Particular	Amount (in ₹)
1.	Royalty for providing technical know-how for manufacture of products-taxable	25,00,000
2.	Royalty received for permanent transfer of trade mark (Not taxable as it amounts to sale of I.P.R.)	-
3.	Royalty from authorship of books (Copyright relating to original literary work is exempt from service tax – Mega Exemption Notification No. 25/2012-ST)	-
4.	Royalty received for temporary transfer of patent registered outside India – liable to Service tax	3,00,000
5.	Royalty received from music company for allowing recording of song composed for further distribution (Exempt - Mega Exemption Notification No. 25/2012-ST)	-
A	Total value of taxable services	28,00,000
B	Service Tax Liability (Rs. 28,00,000 x 14%)	3,92,000
C	Less : Research and Development Cess paid on import of technology (the amount of Research and development cess paid shall be allowed as a deduction from the service tax payable on the taxable service involving the import of technology)	(50,000)
D	Net Services Tax Liability	3,42,000

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

- (a) *Apple Ltd. cleared certain goods to Peaches Ltd. paying higher rate of excise duty in the month of March, although the rate of duty on the said goods had been reduced in the budget of the same financial year. Peaches Ltd. refused to pay the higher duty which Apple Ltd. had paid by mistake. Peaches Ltd. raised a debit note in the month of June of the same year and Apple Ltd. applied for refund of the excess duty paid in August. The Department rejected the claim on the ground that the incidence of duty has been passed by Apple Ltd. to Peaches Ltd.*

While claiming refund, Apple Ltd. relied on the debit note raised by Peaches Ltd. in the month of June to demonstrate that its customer Peaches Ltd. had not paid the excess duty to Apple Ltd. The Department contended that since the debit note was issued in the month of June and not in March, it could not be the basis for refund.

Examine with the help of decided case law, whether the contention of the Department is valid in law. (5 marks)

- (b) *Bleak Ltd. imported super kerosene oil (SKO) and stored it in a private warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent on the date of presentation of such bill of entry and the order for clearance for home consumption was passed. On account of highly combustible nature of SKO, the importer made an application to permit the storage of oil in the same warehouse until actual clearance for sale or use in terms of section 49 of the Customs Act, 1962. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse. The Department demanded the differential duty. The company challenged the demand.*

Whether the company will succeed ? Discuss briefly by referring to decided case law, if any. (5 marks)

- (c) *Indian Coffee Co-operative Society Ltd. entered into agreements with a thermal company for running and maintenance of a guest house and with Lemon Ltd., for running and maintenance of catering services for the township of the company. The society charged amounts in cash from individual customers for food, eatables and beverages supplied according to rates stipulated in the menu card. The society did not pay any service tax as it was of the view that it did not provide any service to the thermal company or Lemon Ltd., but only sold goods in their canteens to the individual customers and not to the company. The companies provided a place for running the canteen on rent and reimbursed certain expenses for maintenance and running. Thus, there should not be any service tax liability on this activity. However, the Department demanded service tax treating the activity of the society as outdoor catering services. Decide with the help of case law whether Department is justified in demanding service tax. (5 marks)*

OR (Alternate question to Q.No. 4)**Question 4A**

- (i) (a) Explain 'place of removal' under section 4(3)(c) of the Central Excise Act, 1944. (3 marks)
- (b) What legal action can be taken in case the retail price is not mentioned or is tampered after the removal of goods? (2 marks)
- (ii) Under reverse charge mechanism, which services have been notified where service tax is jointly payable by both the service provider and service receiver? (5 marks)
- (iii) Clean Power Co., a 100% export oriented undertaking (100% EOU) imported DG sets and furnace oil duty-free, for setting-up captive power plant for its power requirements for export production. They used the power so generated for export production but sold surplus power into domestic tariff area (DTA).

The Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area (DTA).

Discuss whether the demand of Customs Department is valid in law by referring to decided case law, if any. (5 marks)

Answer 4(a)

The facts of the case are similar to the case of *CCE vs. Techno Rubber Industries (P) Ltd.* 2011 (272) ELT 191 (KAR.) wherein, the High Court observed that when the customer has raised a debit note and refuses to pay excess duty claimed, the only inference to be drawn is that the assessee has not received the excess duty paid by him to the department. The High Court thus held that the department is bound to refund the excess amount of duty received by it to the person who has paid the excess duty.

In the given case, Peaches Ltd. (buyer) had refused to pay the higher duty and has raised a debit note on Apple Ltd. (Assessee). Thus, it can be inferred that Apple Ltd. has paid higher duty to the department and has not passed on the incidence to Peaches Ltd.

Thus, Apple Ltd. is entitled to the refund of such excess duty paid by them and the contention of the department is not valid in law.

Answer 4(b)

The facts of the given situation are similar to the case of *CC v. Biocco Lawrie Ltd.* 2008 (223) ELT 3 (SC) wherein the Supreme Court observed that where the imported goods are allowed to be warehoused under Section 68 of the Act after proper assessment and collection of duty and are subsequently cleared from the warehouse, the rate as applicable on the date of subsequent removal of goods from the warehouse is not applicable. Further, once the assessment is over and duty is collected, the issue is closed forever. Any subsequent change in the rate of duty will not affect the transaction.

The Court held that, not only the full duty stands paid by the Company, but also goods have been permitted to be cleared thus, the goods cannot be held to be the warehoused goods. The goods were allowed to be kept in the warehouse only on account

of an application made by the Company in terms of the provisions of Section 49 of the Act.

The Court also held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provision of section 68, the goods removed in smaller lots have to be treated as cleared for home consumption. The company is not required to pay any differential duty. The question of applicability of provisions of Section 15(1)(b) becomes irrelevant.

In the light of Supreme Court's decision, the Company is not liable to pay differential duty.

Answer 4(c)

The facts of the case are similar to that in the case of *Coffee Workers' Co-operative Society Ltd. v. CCE & ST, 2014 (34) STR 546*, wherein it was held that the taxable catering service could not be confused with who had actually consumed the food, edibles and beverages which were supplied by the assessee. Taxability or the charge of tax does not depend on whether and to what extent the person engaging the service consumes the edibles and beverages supplied wholly or in part. What is material is whether the service of an outdoor caterer is provided to another person or not. Once it is established that services of outdoor caterer is used, as in the present case, the chargeability of tax is attracted.

In the given case the Society is a caterer which supplies food, edibles and beverages to cater to persons who use the facility of a canteen which is provided by the thermal company or by Lemon Ltd., within their own establishments. The companies have engaged the services of the Society as a caterer at a place other than its own, as an outdoor caterer. Thus, the contention of the Revenue is correct.

Answer 4A(i)(a)

The place of removal has been defined under Section 4(3)(c) as,

1. a factory or any other place or premises of production or manufacture of the excisable goods;
2. a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
3. a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory from where such goods are removed.

Sales depot, place of consignment agent, branch office etc. are brought within the purview of the place of removal under the new definition but the sale from them is governed by Rule 7 of Valuation Rules.

Answer 4A(i)(b)

If the retail sale price is not mentioned on the excisable goods or is tampered after the removal then:

1. Such goods shall be liable to confiscation; and

2. The retail sale price of such goods shall be ascertained in the manner prescribed by the Central Government and such price shall be deemed to be the retail price. [Section 4A(4) of the Central Excise Act.]

Answer 4A(ii)

The Following services have been notified vide Notification No. 30/2012-ST dated 20.06.2012 (as amended from time to time) under reverse charge mechanism where service tax is jointly payable by both service provider as well as service receiver:

- (i) In respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on non abated value to a business entity which is not in the similar line of business.
- (ii) Services provided or agreed to be provided by way of works contract.

In above both the cases, the service provider, as per Rule 2(1) (d) of Service Tax Rules, 1994, must be an individual or sole proprietor or LLP/ Partnership firm or HUF or AOP and the recipient of service must be a body corporate.

Answer 4A(iii)

The facts of the given case are similar to the case of *Commissioner v. Hanil Era Textiles Ltd.* 2005 (180) ELT A44 (SC), wherein the Supreme Court observed that in the absence of a restrictive clause in the notification that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any conditions of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from Clean Power Company for selling surplus power in domestic tariff area for the following reasons:

- (a) They have used the Diesel Generator sets and furnace oil imported duty free for generation of power;
- (b) Such power generated has been used for manufacturing goods for export; and
- (c) Only the surplus power has been sold, as power cannot be stored.

Question 5

- (a) *Mention briefly the provisions relating to date for determination of rate of central excise duty. (3 marks)*
- (b) *What are the consequences in case the assessee fails to pay the central excise duty by the due date under Rule 8 of the Central Excise Rules, 2002 ? (3 marks)*
- (c) *Refund of import duty is available to an importer under section 26A of the Customs Act, 1962, if the goods are found to be defective and an application for refund of duty is made before the expiry of six months from the relevant date. What does the term 'relevant date' mean for the purposes of section 26A of the Customs Act, 1962 ? (3 marks)*

- (d) *Specify the penalty imposable for failure to pay service tax under section 76 of the Finance Act, 1994.* (3 marks)
- (e) *Specify the point of taxation in respect of payments pertaining to copyrights and trade marks.* (3 marks)

Answer 5(a)

As per Rule 5 of the Central Excise Rules, 2002 –

1. The rate of duty or tariff value applicable to any excisable goods, other than khandsari molasses, shall be the rate or value in force on the date when such goods are removed from a factory or a warehouse, as the case may be.
2. The rate of duty in the case of khandsari molasses, shall be the rate in force on the date of receipt of such molasses in the factory of the procurer of such molasses.
3. If any excisable goods are used within the factory, 'the date of removal of such goods' shall mean the date on which the goods are issued for such use.

Answer 5(b)

As per Rule 8(3) of Central Excise Rules, if the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification under section 11AA of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount. The applicable rate of interest as notified by the Government is 18% per annum.

If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues. [Rule 8(3A)]

Answer 5(c)

For the purpose of Section 26A of the Customs Act, "Relevant date" means,—

- (a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51.
- (b) in cases where the title to the goods is relinquished, the date of such relinquishment.
- (c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

Answer 5(d)

As per section 76 of the Finance Act, 1994 as amended vide section 113 of the Finance Act, 2015 where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of

fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax.

Provided that where service tax and interest is paid within a period of thirty days of—

- (a) the date of service of notice, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded.
- (b) the date of receipt of the order of the Central Excise Officer determining the amount of service tax, the penalty payable shall be 25% of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

Answer 5(e)

Rule 8 of the Point of Taxation Rules determines point of taxation in respect of payments pertaining to copyrights & trademarks. In these cases, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time.

- (i) when a payment in respect of such use or the benefit is received by the provider in respect thereof; or
- (ii) an invoice is issued by the provider, whichever is earlier.

Question 6

- (a) *What is the proposed GST regime ? Mention the State taxes and levies to be subsumed under GST.* (6 marks)
- (b) (i) *Briefly discuss the availability of input tax credit under VAT in respect of stock transfer.*
(ii) *Mention the methods which are generally used for computation of VAT.* (3 marks each)
- (c) *Mention, with reasons, whether the following are liable to service tax —*
 - (i) *A transaction in money*
 - (ii) *A provision of service by an employee to the employer in the course of his employment.*
 - (iii) *Fees paid to the Appellate Tribunal established under the Customs Act, 1962.* (1 mark each)

Answer 6(a)

The GST is a comprehensive destination based tax levy on manufacture, sale and consumption of goods and services at a national level which will subsume most of the

indirect taxes at State and Central level to provide comprehensive and continuous chain of set-off benefits throughout the value chain.

Following state taxes and levies are proposed to be subsumed under GST:

- (a) Octroi
- (b) VAT (except on liquor for consumption)
- (c) Entry tax
- (d) Stamp duty
- (e) Tax on consumption or sale of electricity
- (f) Entertainment tax (unless it is levied by the local bodies)
- (g) Luxury tax
- (h) Taxes on lottery, betting and gambling
- (i) State Cess and Surcharge in so far as they relate to supply of goods and services
- (j) Purchase Tax

Answer 6(b)(i)

Stock transfers to a branch or consignee are the norms of trade and it could be both inter-state and intra-state. Inter-state sales are covered by Central Sales Tax Act, 1956. However, in case of stock/branch transfer, goods move from one State to another, but there is no 'sale' thus stock transfer/branch transfer is not subject to tax since there is no 'sale'

Thus, the tax paid on inputs used in the manufacture of finished goods which are stock transferred or purchased goods which are stock transferred, is available as input tax credit after retention of 2% of such tax by the concerned state government. Accordingly, Input tax paid in excess of 2% on stock transfers to other states will be eligible for tax credit.

Further, intra-state sales / transfer of goods are covered by local VAT and where goods are transferred by a dealer to its own branch which is its additional place of business, there are no VAT implications.

Answer 6(b)(ii)

VAT can be computed by using any of the three methods detailed below:

1. *Subtraction method*: Under this method the tax rate is applied to the difference between the value of output and the cost of input.
2. *Addition method*: Under this method, value added is computed by adding all the payments that are payable to the factors of production and business expenses (viz., wages, salaries, interest payments, etc.).
3. *Input Tax Credit method*: Under this method, it entails set-off of the tax paid on inputs from tax collected on sales. Indian states opted for tax credit method, which is similar to Cenvat. (output tax- input tax)

Answer 6(c)(i)

As per the Clause (44) of Section 65B of the Finance Act, 1994, transactions only in money have been excluded from the definition of service and hence not liable to service tax. However transactions such as currency conversion charge, loans etc. are not transactions mere in money and thus liable to service tax.

Answer 6(c)(ii)

As per the Clause (44) of Section 65B of the Finance Act, 1994, no service tax is attracted if the services are provided by the employee to the employer in the course of employment.

Answer 6(c)(iii)

As per the Clause (44) of Section 65B of the Finance Act, fee taken in any Court or Tribunal has been excluded from the definition of service for the purpose of levy of service tax and hence shall not be liable to service tax.

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

Comment on the following:

- (a) *Conveyance is an act of transfer of any property*
- (b) *A contract of guarantee is a contract to perform the promise.*
- (c) *A mortgage is a transfer of interest in any property.*
- (d) *A lease of immovable property is a transfer of right.* (5 marks each)

Answer 1(a)

Mitra's legal and commercial dictionary defines "conveyance" as the action of conveyancing, a means or way of conveyancing, an instrument by which title to property is transferred, a means of transport, vehicle.

"Conveyance", as defined in clause 10 of Section 2 of the Indian Stamp Act, 1899, "includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided by Schedule I" of the Act."

Section 5 of transfer of property act defines "transfer of property" as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons; and "to transfer property" is to perform such act.

Thus Conveyance is an act of by which movable or immovable property is transferred by way of sale, lease, gift or exchange.

Answer 1(b)

A "Contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor"; and the person to whom the guarantee is given is called the "creditor". (section 126 of Indian Contract Act). There are therefore three parties to such a contract – the creditor, the principal debtor and the surety.

The guarantee contract is an undertaking to make good the creditors in case the principle debtor does not fulfil his promise. Hence the creditor is assured that the promise will be performed by the guarantor in case the principle debtor fails.

Answer 1(c)

Mortgage is transfer of interest in specific immovable property.

Mortgage is defined under section 58 of the Transfer of Property Act, 1882. A mortgage

is a transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of a loan, existing or future debt or performance of an acknowledgement, which may give rise to pecuniary liabilities. As such, it is a limited form of transfer of interest, unlike a sale of property.

Answer 1(d)

A lease of immovable property is a transfer of right

As per Section 105 of Transfer of Property Act, 1882, a lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, for consideration.

Thus a lease of immovable property is a transfer of right to enjoy the property for a certain time in consideration for a price paid or promised.

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

Question 2

Distinguish between the following:

- (a) "Endorsement" and "Engrossment"
- (b) 'Partner' and 'designated partner'
- (c) 'Bank guarantee' and 'hypothecation'
- (d) 'Surety' and 'security' (4 marks each)

OR (Alternate question to Q.No. 2)

Question 2A

Write notes on the following :

- (i) Assignment of copyright
- (ii) Goodwill as an intangible asset
- (iii) Provisions relating to appeal before the Competition Appellate Tribunal under the Competition Act, 2002
- (iv) Web wrap agreement. (4 marks each)

Answer 2(a)

<i>Endorsement</i>	<i>Engrossment</i>
Endorsement means to write on the back or on the face of a document. The term endorsement is used with reference to negotiable instruments like cheques, bill of exchange etc. For example on the back of the cheque to sign one's name as payee	The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the board for this purpose by passing requisite resolution approving and authorising of its execution.

to obtain cash is an endorsement on the cheque.

Endorsement is used to give significance to a particular document with reference to new facts to be added in it. Endorsement is also used to express definite approval to a particular document.

The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Stamp Act.

Answer 2(b)

Partner and Designated partner

As per section 2(q) of the Limited Liability Partnership (LLP) Act, 2008, partner means any person who becomes a partner in LLP in accordance with LLP agreement.

As per section 5 of LLP act, any individual or body corporate may be a partner in a LLP, except person of unsound mind, an undischarged insolvent or he has applied for insolvency.

Designated partners means any partner designated as such pursuant to section 7 of the Limited Liability Partnership Act, 2008. As per section 7 every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be resident in India.

Designated Partners have specific responsibilities. They shall be responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership (LLP) in respect of compliance of the provisions of the LLP Act including filing of any Document, Return, Statement and the like Report pursuant to the provisions of Limited Liability Partnership Act, 2008. The Designated Partners shall be responsible for the doing of all acts and deeds arising out of LLP Agreement.

Answer 2(c)

“Bank Guarantee” and “Hypothecation”

A “bank guarantee” is a guarantee given by a bank on behalf of its client or account-holder to another person with whom the client has entered into a contract to perform some job or to do and call upon the bank to pay the guaranteed amount in the event of the contingency, mentioned in the guarantee, happening or not happening, as the case may be.

As per section 2(n) of SERFAESI act, "Hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property.

Answer 2(d)

“Surety and Security”

A person who gives a guarantee is called as surety. Upon fulfilling his obligation, the surety takes over the position and rights of the creditor, under the doctrine of subrogation. Surety is most commonly found in a contract of guarantee.

The property charged and assured for re-payment of debt is referred as security. Security is usually tendered in case of hypothecation.

Answer 2A(i)

Section 18 of the Copyright Act, 1957 deals with the assignment of copyrights. The section lays down:-

The owner of the copyright in an existing work of the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to initiating and either for the whole term of the copyright or any part thereof.

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

Answer 2A(ii)

Goodwill is benefit of a good name, reputation and connections of a business, which is the one thing which distinguishes a well old-established business from a new business at its inception.

Goodwill arises mainly:

- By personal reputations of the owners
- By reputation of the goods dealt in
- By site monopoly or advantage
- By access to sources of supply for example large quotas
- For patent and trademark protection
- Effectiveness of publicity

Goodwill is therefore intangible but not fictitious. However it is very difficult to measure or value.

Answer 2A(iii)

Section 53 B of the Competition Act, 2002 deals with the provisions relating to appeal before COMPAT:-

As per Section 53B of the Act,–

- (1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of Section 53A may prefer an appeal to the Appellate Tribunal.
- (2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of

the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
- (4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
- (5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

Answer 2A(iv)

These are the agreements which we generally come across while surfing internet such as "I AGREE" to the terms or "I DISAGREE" to the above conditions. Such agreements are mostly found as part of the installation process of software packages. It is also called a "click through" agreement or click-wrap license. . These agreements are standard form agreements that do not involve any bargaining between the parties.

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

Question 3

In the light of judicial pronouncements, discuss the following:

- (a) *The family settlement must be a bona fide one*
- (b) *It is to ascertain the intentions of the testator who constructed a will.*
- (c) *Surrender of lease is not a transfer*
- (d) *An HUF is not a legal person* (4 marks each)

OR (Alternate question to Q.No. 2)

Question 3A

In the light of judicial pronouncements, discuss the following:

- (i) *A firm is not a legal person*
- (ii) *Revocation of gift*
- (iii) *Deficiency in pleading would not affect the plaintiff's case.*
- (iv) *In case of any conflict between the articles of associations and the shareholder's agreement, the former will always prevail.* (4 marks each)

Answer 3(a)

Family arrangements are governed by a special equity peculiar to themselves. In *Kale v. Dy. Director of Consolidation*, AIR 1976 SC 807 the Supreme Court has laid down the following essentials of a family settlement in a concretised form:

- (1) The family settlement must be a bona fide one so as to resolve family disputes

and rival claims by a fair and equitable division or allotment of properties between the various members of the family.

- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.
- (3) The family arrangement may be even oral in which case no registration is necessary.
- (4) The members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement.
- (5) Even in bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable, the family arrangement is final and binding on the parties to the settlement.

Answer 3(b)

Like any other document, a will is subject to interpretation. The Supreme Court in *Gnambal Ammal v. T. Raju Iyer* held that the cardinal maxim to be observed in construing a Will is to endeavour to ascertain the intentions of the testator. This intention has to be primarily gathered from the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done, if he had been better informed or better advised.

Answer 3(c)

Surrender of lease is not a transfer but mere yielding up by the lessee of his interest under the lease to the lessor by mutual agreement. It is in effect merger of the estate of the lessee into the reversion. It is not a transfer or an assignment of any right or estate within the meaning of Section 5 of the Transfer of Property Act (*Calcutta High Court in Makhanlal v. Nagendranath*)

A surrender must be made with clear intention to yield up as mere non-payment of rent for years together or abandonment of the site does not amount to surrender. Except in certain kinds of leases, there is no requirement that such surrender be made in writing.

Answer 3(d)

An HUF is not a legal person

A firm or a Hindu Undivided Family is not a legal person and cannot therefore enter into agreements or sue in its own name. This has repercussions as far as commercial arrangements are concerned. For example, an HUF cannot enter into partnership with any person. When the Karta of a HUF enters into a partnership with strangers the other members of the family do not ipso facto become partners (*Firm Bhagat Ram v. Comm. of Excess Profits Tax*, AIR 1956 SC 374).

Answer 3A(i)

A firm is not a legal person.

Supreme Court in Malabar Fisheries Co. v. CIT, [1979] 120 ITR 49 observed that-
 "...a partnership firm under the Indian Partnership Act, 1932, is not a distinct legal

entity apart from the partners constituting it and equally in law the firm as such has no separate rights of its own in the partnership assets and when one talks of the firm's property or firm's assets all that is meant is property or assets in which all partners have a joint or common interest...

The firm as such has no separate rights of its own in the partnership assets but it is the partners who own jointly or in common the assets of the partnership and, therefore, the consequence of the distribution, division or allotment of assets to the partners which flows upon dissolution after discharge of liabilities is nothing but a mutual adjustment of rights between the partners and there is no question of any extinguishment of the firm's rights in the partnership assets amounting to a transfer of assets within the meaning of section 2(47) of the Act....”

Answer 3A(ii)

Section 126 of Transfer of Property Act, 1882 prescribes the circumstances when a gift may be suspended or revoked. As per Section 126, the donor and donee may agree that on the happening of any specified events which does not depend on the will of the donor a gift shall be revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked.

Answer 3A(iii)

Parties are related to each other and know everything. No element of surprise has been caused to the other party. While it is usually a requirement that all material facts be presented in pleadings, an exception should be made in the broader interests of justice. Both parties understand the case and lead evidence accordingly. Deficiency in pleading would therefore not affect case of the plaintiff [*Kailash Chandra v. Vinod*, AIR 1994 NOC 267 (MP)].

Answer 3A(iv)

In India courts have either refused to recognize clauses in shareholders agreements or, even when consistent with company legislation, enforced such clauses only if they have been incorporated in the articles of association of the company. There is a series of rulings where the courts have upheld that in case of any conflict between the Articles and the Shareholders agreement, the former will always prevail.

Some of these are:

- *V.B. Rangaraj v. V.B. Gopalakrishnan* (AIR 1992 SC 453)
- *Shanti Prasad Jain v. Kalinga Tubes Ltd.*, (35 Com. Cas. 351 SC)
- *Mafatlal Industries Ltd. v. Gujarat Gas Co. Ltd.* (97 Comp Cas 301 Guj),
- *Pushpa Katoch v. Manu Maharani Hotels Limited* ([2006] 131 Comp Cas 42 (Delhi)]

Question 4

Vijay is holding 10,000 shares of Kamal Ltd., a listed company, in physical form. The price quoted for the share in stock exchange is ₹1,100. Due to change of house, Vijay could not locate the shares. He wrote to the Company Secretary of Kamal Ltd. for issue of duplicate share certificate. The company asked the following documents from Vijay to consider the request for issue of duplicate share certificate:

- (a) A copy of FIR;
- (b) An affidavit on a stamp paper of ₹10;
- (c) An indemnity bond on a stamp paper of ₹300 to be executed by the shareholder to the effect that in case the company suffers any loss due to issue of duplicate share certificate, the shareholder will indemnify the company to make the loss good; and
- (d) Since the value is large, a surety bond from a person other than the relative of the shareholder to make the loss good in case of any eventuality.

Draft (i) an FIR; (ii) an affidavit; (iii) an indemnity bond; and (iv) surety bond on the basis of facts given above. You may imagine the facts/data wherever necessary.
(4 marks each)

Answer 4(a)

To,

The Officer-in-charge
.....(name of police station)

Sir,

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

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

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

Yours Faithfully,

Vijay.....

Answer 4(b)**Affidavit**

(on stamp paper of Rs 10/-)

I Vijay....., S/o..... R/o.....am a shareholder of Kamal Ltd. and hold 10,000/- equity shares of the company as detailed below:-

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

I do solemnly and sincerely swear and state as under:-

- (1) That the said share certificate(s), covering the said shares have been lost and it is not in my possession.
- (2) That FIR has been registered in P.S vide no. dated.....
- (3) That I have not transferred the said shares or any of them in favour of any other person and I have not executed any instrument of transfer for the said share(s) in favour of any person.
- (4) That I have not created any charge or encumbrance on the said share in favour of any person.
- (5) That I have filed a request to the company viz. Kamal Ltd. to issue duplicate certificate(s) for the said shares.

Name of Shareholder

Signature of Shareholder

Answer 4(c)

Indemnity Bond for Duplicate Share Certificate

I am Shareholder of Kamal Ltd., having its Registered Office at and hold 10,000 equity shares of the face value Rs..... each, as per the details below:-

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

The share certificate in respect of the said shares had/have been lost. The said shares were not pledged nor I have assigned the interest in the same to anyone. I am the sole and absolute owner of the said shares.

I have therefore requested the company for issue of duplicate share certificates(s) in lieu of the original shares covered under Folio No. _____ and bearing Certificate No(s). _____ held by me.

In consideration of the company so doing, I do hereby agree to indemnify the Company against any claims, charges, costs, damages and losses which the said company, may sustain, incur or be liable in consequences or in relation to issuance of duplicate share certificate(s) at my request. I further undertake to surrender the said share certificate(s) to the company if and when the same are found at a later date.

In witness whereof I signed this day of June, 2016-06-11.

Name and address of the Shareholder(s)

Signature of the Shareholder(s)

Name and address of Witness

Signature of the Witness

Answer 4(d)

Surety Bond

This surety bond made this day of by Sri..... Son of..... resident of(hereinafter called the surety) on one part and Shri Vijay, Son of..... resident of(hereinafter called the principal).

Whereas the principal has lost the physical shares certificate of Kamal Ltd, representing 10,000 shares at his house. The same was lost due to change of house. The details are mentioned below:

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

The principle has therefore requested the company, Kamal Ltd. for issue of duplicate share certificate(s). The price quoted for the share in stock exchange is Rs 1100/-. Since the value is large, a surety bond was requested by the company.

Therefore in consideration of the company issuing duplicate shares, the surety hereby agree to Indemnify the Company against any claims, charges, costs, damages and loses which the said company, may sustain, incur or be liable in consequences or in relation to issuance of duplicate share certificate(s) at the request of principle.

IN WITNESS WHEREOF, the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and the year first above-written.

Signed, sealed and delivered in the presence of

- | | |
|----|-----------|
| 1. | Surety |
| 2. | Principal |

Question 5

- (a) *Under what circumstances, the Supreme Court of India can entertain appeals in cases where law does not provide right to appeal ?* (4 marks)
- (b) *Draft a legal notice under section 80 of The Code of Civil Procedure, 1908 to the State Government through district collector.* (4 marks)
- (c) *Business contracts these days specify the rights, liabilities and activities of the parties in detail. Still in the event of breach of the contractual obligations, irreparable intangible damages like loss of reputation and market do occur. Advise the remedies and redressal action, an aggrieved party to the contract can take under the civil law in such an event if the contract could still be saved. Cite legal provisions, if any.* (8 marks)

Answer 5(a)

Article 136 of The Constitution of India lays down the circumstances under which the Supreme Court can be approached for permission to file appeals in cases where law does not provide right to appeal. Such appeals are known as Special Leave Petition.

The article lays down that:

- (1) The Supreme Court may in its discretion grant special leave to appeal from any judgment decree determination sentence or order in any case or matter passed or made by any court or tribunal in territory of India.
- (2) Such appeal can also be preferred in cases where the High Court refuses to grant certificate of fitness to appeal to the Supreme Court.

- (3) This shall not apply to any judgment determination sentence or order passed or made by any court or tribunal constituted by or under any law relating to armed forces.

In suitable cases where some arguable questions mainly on legal points are involved the Constitution confers under Article 136 wide discretionary powers on the Supreme Court to entertain appeal even in cases where an appeal is not otherwise provided for. But so far as questions of fact, as distinct from questions of law is concerned it is only in rare or exceptional cases that the Supreme Court interferes and that too when finding of the High Court or the lower court is such that it shocks the conscience of the court.

Answer 5(b)

Notice under section 80 Civil Procedure Code

Registered with A/D

Dated.....

To,

The Collector of the District of.....
P.O.....
Dt.....

Sir,

Under instructions and on behalf of my client Sri..... son of by caste by occupation..... resident at..... P.O..... P.S.....Distt..... I hereby serve you this notice under S. 80 C.P.C and state that my aforesaid client intends to sue the Government ofon expiry of two months, after service of this notice, on the cause of action and for reliefs appearing herein below:

- (a) Cause of action (facts of the case)
- (b) Relief claimed

Please note that a true copy of the present notice is retained in my office for future use and reference.

Yours faithfully,

Advocate.

Answer 5(c)

The aggrieved party to the contract may seek the following remedies and redressal actions :-

- (a) Injunction
- (b) Suit for specific performance

Injunction

An injunction is a specific order of the Court forbidding the commission of a wrong threatened or the discontinuance of a wrongful course of action already begun.

Injunction may be either temporary or permanent.

Permanent injunction restrains a party for ever doing the specified act and the same can be granted only on merits of the case at the conclusion of the trial after hearing both parties to the suit. It is governed by Section 38 to 42 of Specific relief Act, 1963.

A temporary injunction restrains a party from doing the specified act and can be granted until the final disposal of the suit. It is regulated by the provisions of Order 39 of the Code of Civil Procedure and it may be granted at any stage of the suit.

The power to grant temporary injunction is at the discretion of the Court. This discretion however should be exercised reasonably, judiciously and on some legal principles.

Suit for Specific performance

Specific performance is an order of the court which requires a party to perform a specific act, usually what is stated in the contract. It is an equitable remedy commonly used in the form of injunctive relief concerning confidential information or real property.

Specific performance is granted when damages are not an adequate remedy and in some specific cases such as sale of land. Such orders are discretionary as with all equitable remedies, so the availability of this remedy will depend on whether it is appropriate in the circumstances of the case.

The Supreme Court in *Babulal vs. Hazari Lal and others* has held that no special form of decree on a suit for specific performance is supplied by CPC. Chapter 11 of Specific relief Act, 1963 deals with the various circumstances under which a contract may be enforced specifically and when it cannot be allowed. When a contract is to be specifically enforced, it means simply that when the parties do not agree to perform the contract mutually, the intervention of court is required.

Question 6

- (a) *"Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as estoppel." Write a detailed note on this statement with reference to the decisions of the courts. (8 marks)*
- (b) *'Outsourcing' is the contracting out of a company's non-core and non-revenue generating activities to specialists. Before signing an outsourcing agreement, what are the factors that must be addressed? (8 marks)*

Answer 6(a)

Recitals contain the brief history of the property up to its vesting into its transferors. Care should be taken that recitals are precise and intelligible.

Recitals precede the operative part and as a matter of fact contain the explanation to the operative part of the deed. Any inaccuracy in the recitals may act as estoppels under section 115 of the Evidence Act. Recital offers good evidence of facts recited therein. Recitals are not generally taken into evidence but are open for interpretation for the courts. If the operative part of the deed is ambiguous anything contained in the recital will help in its interpretation or meaning. In the same sense, it is necessary that where recitals contain chronological events that must be narrated in chronological order.

Supreme Court in *Provash Chandra Dalui v. Biswanath Banerjee* [1989 Supp (1) SCC 487] laid down the following proposition:-

"Ex praecedentibus et consequentibus optima fit interpretatio". The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties.

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

Answer 6(b)

A good outsourcing agreement provides a comprehensive road map of the duties and obligations of both the parties- outsourcer and service provider. It minimizes complications when a dispute arises. Before finalizing an outsourcing agreement, the terms should be thoroughly discussed and negotiated to avoid any misunderstanding at a later stage. Before signing an outsourcing agreement, the following factors must be properly addressed:

- Duties and obligations of Outsourcer
- Duties and obligations of service provider
- Security and confidentiality
- Legal compliance
- Fees and payment terms
- Proprietary rights; Auditing rights
- Applicable law
- Terms of the agreement
- Events of defaults and addressing
- Dispute resolution mechanism; Time limits
- Location or arbitration
- Number of arbitrators
- Time limits
- Interim measures/ Provisional remedies
- Privacy Agreement
- Confidentiality agreement
- Rules applicable
- Appeals and enforcement
- Survival terms after the termination of the outsourcing agreement.

BANKING LAW AND PRACTICE
(Elective Paper 9.1)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Grow More Ltd. is presently operating at 60% capacity level, producing 36,000 units of a product per annum. In view of favourable market conditions, it has been decided that from 1st January, 2016, the company would operate at 90% capacity.

Following information is available :

— Existing cost-price structure per unit is :

Raw material	:	₹4
Wages	:	₹2
Variable overheads	:	₹1
Fixed overheads	:	₹1
Profits	:	₹1

- *It is expected that the cost of raw material, wages, overheads and sales per unit will remain unchanged in the year 2016.*
- *Raw material remain in stores for 2 months before being issued to production. These units remain in production process for one month.*
- *Finished goods remain in godown for 2 months.*
- *Credit allowed to debtors is 2 months while credit allowed by creditors is 3 months.*
- *Lag in wages and overheads payments is 1 month; it may be assumed that wages and overheads accrue evenly throughout the production cycle.*

Assume that the opening balance of raw material, work-in-progress and finished goods have already been brought to desired level. Consequently, goods purchased during the period will only be for the production requirement and not for increasing the level of stock.

You are required to —

- (a) *Prepare a statement of profit and loss at 90% capacity level. (15 marks)*
- (b) *Calculate the working capital requirements on an estimated basis to sustain the increased production level. (15 marks)*
- (c) *Compute the permissible bank finance under the 1st and 2nd method of lending. (10 marks)*
- (d) *What is the direction to banks regarding determination of working capital credit? (5 marks)*

(e) What precautions should have been taken by the bank, if the bank has granted working capital finance to the company against inventory/goods ? (5 marks)

Answer 1(a)**Statement of Profitability at 90% capacity**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Sales Units at 90% capacity	54,000
Sales (A) (54,000 x 9)	4,86,000.00
Raw Material (54,000*4)	2,16,000.00
Wages (54,000*2)	1,08,000.00
Variable Overheads (54000*2)	54,000.00
Fixed Overheads (1*36000)	36,000.00
Total Cost (B)	4,14,000.00
Net Profit (A-B) (5,40,000-4,68,000)	72,000.00

Answer 1(b)**Statement showing working capital Requirement**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Current Assets	
Stock of Raw Materials (2 months*4500*4)	36,000.00
<i>Work in progress :</i>	
Raw Material (1 month*4500*4) = 18000.00	
Wages (1//2 month) = 4500.00	
Overheads (1/2 month) = 3,750	
(See working note)	26,250.00
Finished goods (2 months)	69,000.00
Debtors (2 months*414000/12)	69,000.00
Total Current Assets (A)	2,00,250.00
Current Liabilities	
Sundry Creditors (3 months)	54,000.00
Outstanding Wages (1 month)	9,000.00
Outstanding Overheads (1 month)	7,500.00
Total Current Liabilities (B)	70,500.00
Working Capital (A-B)	1,29,750.00

Working Note:

Overheads and Wages

The work in progress period is one month, so the wages and overheads included in work in progress are on an average, for half month or 1/24 of a year.

$$\text{Wages} = 1,08,000/24 = \text{Rs. } 4500.00$$

$$\text{Overheads} = (54,000 + 36,000)/24 = 90,000/24 = \text{Rs. } 3,750$$

Answer 1(c)

(i) *Permissible Bank Finance by First Method of Lending*

<i>Particulars</i>	<i>Amount (Rs.)</i>
Working Capital Requirement	1,29,750.00
Less : 25% margin of above	32,437.00
Bank Borrowings	97,313.00

(ii) *Permissible Bank Finance by Second Method of Lending*

<i>Particulars</i>	<i>Amount (Rs.)</i>
Working Capital Requirement	1,29,750.00
Less : 25% margin of Current Assets	50,062.00
Bank Borrowings	79,688.00

Answer 1(d)

Working Capital credit may be determined by banks according to their perception of the borrower and the credit needs. Accordingly, an appropriate system may be evolved by the Banks for assessing the working capital needs of the borrowers, within the prudential guidelines, and exposure norms, prescribed by the Reserve Bank of India.

Answer 1(e)

Precautions to be taken

- (i) Advances against goods should be restricted to genuine traders and not to speculators.
- (ii) Loans must be given for short periods, since the quality and the value of the security is likely to diminish.
- (iii) The Banker must have a working knowledge and gather information of the different types of goods regarding their character, price movements, storage value etc.
- (iv) The Banker should confirm the state of goods.
- (v) The goods should be insured against loss by theft or fire.
- (vi) The Banker should verify and confirm the title of the borrower to the goods by inspecting the invoice or cash memos.

- (vii) The Banker as a Pawnee is liable, if reasonable care is not taken of the goods pledged. He should therefore, take proper care for their storage and also take reasonable steps to protect them from damage and pilferage.
- (viii) The price of the goods must be accurately ascertained.
- (ix) Necessary margin should be kept.
- (x) The banker must obtain absolute or constructive possession of the goods.
- (xi) In the case of hypothecated goods, the Bank should obtain from the borrower a written undertaking that the goods are not charged to any bank or creditor and will not be so charged as long as the borrower regarding the quantity and valuation of the goods, which should be physically verified by the banker.

Question 2

- (a) Using the information on ratios and the format given below, compute and provide the value of balance sheet items for Wisdom Ltd. which has sales of `36 lakh for the year 2015-16 :

<i>Sales : Total assets</i>	<i>3</i>
<i>Sales : Fixed assets</i>	<i>5</i>
<i>Sales : Current assets</i>	<i>7.5</i>
<i>Sales : Inventories</i>	<i>20</i>
<i>Sales : Debtors</i>	<i>15</i>
<i>Current ratio</i>	<i>2</i>
<i>Total assets : Net worth</i>	<i>2.5</i>
<i>Debt : Equity</i>	<i>1</i>

Balance Sheet of Wisdom Ltd. as on

LIABILITIES	₹
<i>Net worth</i>
<i>Long-term debt</i>
<i>Current liabilities</i>
TOTAL	
ASSETS	
<i>Fixed assets</i>
<i>Inventories</i>
<i>Trade receivables</i>
<i>Liquid assets</i>
TOTAL	

(20 marks)

- (b) Explain briefly the significance of any four types of ratio that the management of every firm is interested in. (10 marks)

Answer 2(a)

Balance Sheet of Wisdom Ltd. As on 31.03.2016

Liabilities	Amount (Rs. in lacs)
Net Worth	4.80
Long Term Debts	4.80
Current Liabilities	2.40
Total	12.00

Assets	Amount (Rs. in lacs)
Fixed Assets	7.20
Inventories	1.80
Trade Receivables	2.40
Liquid Assets	0.60
Total	12.00

Working Note

The sales of Wisdom Ltd. is Rs. 36.00 lacs.

Particulars	Values	Calculations	Desired Value (Rs. in lacs)
Sales: Total Assets	3	Total Assets = $36/3$	12.00
Sales: Fixed Assets	5	Fixed Assets = $36/5$	7.20
Sales : Current Assets	7.5	Current Assets = $36/7.50$	4.80
Sales : Inventories	20	Inventories = $36/20$	1.80
Sales : Debtors	15	Debtors = $36/15$	2.40
Current Ratio	2	Current Liabilities = $4.8/2$	2.40
Total Assets : Net Worth	2.5	*Net Worth = $12/2.50$	4.80
Debt : Equity	1	Debt = $4.80*1$	4.80
Liquid Assets = Current Assets- Inventories- Debtors			
= $4.80-1.80 - 2.40 = 0.60$			

Answer 2(b)1. *Profitability Ratios*

Operating profit margin (OPM) and Net Profit Margin (NPM) are calculated by dividing the figures of operating profit (EBIT) which means earnings before interest and tax and net profit respectively by the net sales. OPM is an indicator of the operating efficiency of the enterprise while NPM is an indication of ability to withstand the adverse business conditions.

2. *Liquidity Ratios*

These are current Ratio (CR) and Quick Ratio or Acid Test Ratio. While the CR is a ratio of total current assets to total current liabilities, quick ratio is calculated by dividing current assets (excluding inventory) by total current liabilities. These ratios indicate the capacity of an enterprise to meet its short term obligations.

3. *Capital Structure Ratios*

Debt Equity Ratio (DER) is a ratio of total outside long term liability to the Net Worth of an enterprise. High debt equity ratio are an indication of high borrowings in relation to the owned funds. It also affects the viability of the operation of the enterprise, as higher borrowings means higher costs and lower operating margins. In case of those enterprises, which are not capital intensive (i.e. the requirement of fixed assets is low), which are not indicated by DER, may be disproportionate to the capital. To get a better result, OL/TNW ratio i.e. the ratio of total outside liabilities to tangible Net Worth can be used.

4. *Inventory Turnover Ratio*

This is one of the important ratios to measure the skills of the management of the firm. 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.

Question 3

Explain the relationship of a banker and customer in the following transactions :

- (i) *Loan from the bank*
- (ii) *Safe custody of articles*
- (iii) *Collection of cheques*
- (iv) *Standing instructions*
- (v) *Mortgage.*

(5 marks)

Answer 3

Banker-Customer relationship in the transactions is specified below:

<i>Item</i>	<i>Transaction</i>	<i>Banker</i>	<i>Customer</i>
(i)	Loan from the Bank	Creditor	Debtor
(ii)	Safe custody of articles	Bailee	Bailor

(iii)	Collection of cheques	Agent	Principal
(iv)	Standing instruction	Agent	Principal
(v)	Mortgage	Mortgagee	Mortgagor

Question 4

What is the period of limitation under the Limitation Act, 1963 in respect of following documents :

- (i) *Mortgage-foreclosure*
- (ii) *Guarantee*
- (iii) *Demand promissory note*
- (iv) *Mortgage-possession of immoveable property*
- (v) *Money payable for money lent.*

*(5 marks)***Answer 4**

<i>Documents</i>	<i>Period of Limitation</i>
(i) Mortgage - foreclosure	Twelve years from the money (secured by the mortgage) become due.
(ii) A Guarantee	Three years from the date of invocation of the guarantee
(iii) Demand Promissory Note	Three years from the date of DP note
(iv) A mortgage – possession of immovable property	Thirty years when the mortgagee becomes entitled to possession
(v) Money payable for money lent	Three years when the loan is made

Question 5

On what grounds, a customer can lodge a complaint with the Office of Banking Ombudsman for deficiency in service with respect to loans and advances ? What is the cost involved in filing complaint with Banking Ombudsman ? *(5 marks)*

Answer 5

A customer can also lodge a complaint on the following grounds of deficiency in the service with respect to loan and advances:

- non-observance of Reserve Bank Directives on interest rates;
- delays in sanction, disbursement or non-observance of prescribed time schedule for disposal of loan applications.
- non-acceptance of application for loans without furnishing valid reasons to the applicant;

- non-adherence to the provisions of the fair practices code for lenders as adopted by the bank or Code of Bank's Commitment to Customers, as the case may be;
- non-observance of any other direction or instruction of the Reserve Bank as may be specified by the Reserve Bank for this purpose from time to time;

There is no cost involved in filing complaints with Banking Ombudsman. The Banking Ombudsman does not charge any fee for filing and resolving customers' complaints.

Question 6

What is regulatory capital ? State the composition of regulatory capital for banks under Basel III norms. (5 marks)

Answer 6

Regulatory Capital : Regulatory capital is the amount of risk capital held by financial services company to enable them to survive any difficulties such as market or credit risks.

One of the key principles of supervisory review identified by the Basel Committee on Banking Supervision (BCBS) is that the Supervisors should ensure that the banks maintain and operate above the minimum regulatory capital ratios. Under the Basel II framework, the total regulatory capital comprises of Tier 1 (core capital) and Tier 2 capital (supplementary capital). In order to improve the quality and quantity of regulatory capital, capital will predominantly consist of common Equity under Basel III. Non equity Tier 1 and Tier 2 capital would continue to form part of regulatory capital subject to eligibility criteria as prescribed under Basel III capital regulations on an ongoing basis.

The total regulatory capital fund will consist of the sum of the following categories-

- (i) Tier 1 Capital (Going concern capital*) Comprises of :-
 - (a) Common Equity Tier 1 capital
 - (b) Additional Tier 1 capital
- (ii) Tier 2 Capital (Gone concern capital**)

(*from regulatory capital perspective, going –concern capital is the capital which can absorb losses without triggering bankruptcy of the bank.)

(** Gone concern capital is the capital which will absorb losses only in a situation of liquidation of the bank.)

CAPITAL, COMMODITY AND MONEY MARKET (Elective Paper 9.2)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Kavya & Co., an Indian resident, the television manufacturer, has related parties in India named Mullai & Co., Marutham & Co. and Neithal & Co., all related parties which make spare parts for the television manufacturer. Purchases and sales between related parties occur frequently. All of them know about arbitrage process. The means of attaining equilibrium at spot markets is called 'arbitrage'. Conversely saying, it is a profit earned in buying in one currency at lower rates and selling in another currency at higher rates. There are two types of arbitrage namely, geographical arbitrage and triangular arbitrage.

Kavya & Co. concentrates on geographical arbitrage, which consists of two currencies. Buying in one currency at lower rates and selling in another currency at higher rates. This arbitrage gain can be attained either through telephone or fax messages. Kavya & Co. has ₹10 crore for this purpose.

During that time rates of US \$1 were :

London : ₹47.5730 – ₹47.6100

Tokyo : ₹47.6350 – ₹47.6675

Mullai & Co. concentrates on triangular arbitrage, which consists of three currencies. One buying currency, one selling currency and another one is intermediary currency. Mullai & Co. wants to utilise US \$1 million for this purpose.

During that time rates were :

US \$1 : ₹48.3011 in Mumbai

£1 : ₹77.1125 in London

£1 : US \$1.6231 in New York

Marutham & Co. concentrates in forward market. Their borrowings are ₹1 crore.

Rates are as under :

Spot rate : ₹78.10/£

3-month forward rate : ₹8.60/£

3-months interest rates : Rupees: 5%; British £: 9%

Neithal & Co. concentrates in forex market. Data are as under :

1-month treasury bill (US) : 2.50% – 2.55% p.a.

1-month treasury bill (India) : 6.75% – 6.80 % p.a.

The dollar spot rate in India is ₹48.4050 / 48.4550 per US \$.

You are required to —

- (a) List out the benefits of investing in treasury bills. (5 marks)
- (b) Mention the conditions to be fulfilled for arbitrage. (5 marks)
- (c) Find the no arbitrage range of future prices for a 1-month dollar future for Neithal & Co. with the following possibility :
Borrow dollar, buy rupee. Invest in rupees and sell rupees in future. (10 marks)
- (d) Find out arbitrage gain of Kavya & Co. and Mullai & Co. separately. (15 marks)
- (e) Marutham & Co. concentrates on interest rate differentials of two currencies, as it is referred to cover interest arbitrage. Find out the arbitrage gain of Marutham & Co. (15 marks)

Answer 1(a)

Benefits of Investing in Treasury Bills

- No tax deducted at source
- Zero default risk being sovereign paper
- Highly liquid Money Market instrument
- Better returns especially in the short term
- Transparency
- Simplified settlement
- High degree of tradability and
- Active secondary market facilitates meeting unplanned fund requirements.

Answer 1(b)

Arbitrage is possible when one of the three conditions is met:

- The same asset must trade at the different prices on all markets.
- Two assets with identical cash flows must trade at different prices.
- An asset with a known price in the future, must trade today at a different price than its future price discounted at the risk-free interest rate.

Answer 1(c)

For Neithal & Co.

Borrow dollar, buy rupee. Invest in rupees and sell rupees in future.

Borrow Amount	Rs. 48.4050
Add : Interest $48.4050 \times 0.0675 \times 1$ month	0.2723
Total	<u>Rs. 48.6773</u>

$$\begin{aligned}
 \text{Sell in future market} &= \text{Rs. } 48.6773 / \text{Future} \\
 \text{Where Future} &= (1 + (0.0255 * 1/12)) \\
 \text{Future} &= 1 + 0.002125 \\
 &= 1.002125 \\
 \text{For No Arbitrage conditions of Neithal \& Co.} &= \text{Rs. } 48.6773 / 1.002125 \\
 &= \text{Rs. } 48.5741
 \end{aligned}$$

Answer 1(d)**Calculation of Arbitrage gain of Kavya & Co.**

$$\begin{aligned}
 \text{Buy US \$ from London Forex Market @ Rs. } 47.6100 \\
 &= \text{Rs. } 100 \text{ Million} / 47.61 \\
 &= \text{US \$ } 2,100,399.075 \\
 \text{Arbitrage} &= \text{Rs. } 100,052,509.90 - 100,000,000.00 \\
 &= \text{Rs. } 52,509.90
 \end{aligned}$$

Geographical arbitrage gain for Kavya & Co.

Calculation of Arbitrage gain of Mullai & Co.

$$\begin{aligned}
 \text{Buy Indian Rupees Rs. } 48.3011 * \$1,000,000 &= \text{Rs. } 48,301,100 \\
 \text{Convert the Indian rupees into British £} &= \text{Rs. } 48,301,100 / \text{Rs. } 1,000,000 \\
 &= \text{£ } 626,371.8592 \\
 \text{Convert £ into at New York Market \$} &= 626,371.8592 * \$1.6231 \\
 &= \text{US \$ } 1,016,664.164 \\
 \text{Triangular arbitrage gain for Mullai \& Co.} &= 1,016,664.164 - 1,000,000 \\
 &= 16,664.164
 \end{aligned}$$

Answer 1(e)**Calculation of Arbitrage gain of Marutham & Co.**

$$\begin{aligned}
 \text{Interest rate differentials} &= 9\% - 5\% = 4\% \\
 \text{Convert Rs. } 10 \text{ Million into British £ at spot rate} &= \text{Rs. } 10,000,000 / 78.10 \\
 &= \text{£ } 128,040.9731 \\
 \text{Interest} &= \text{£ } 128,040.9731 * (3/12) * 0.09 = \text{£ } 2,880.9219 \\
 \text{Amount available for arbitrage} &= \text{£ } 128,040.9731 + \text{£ } 2,880.9219 \\
 &= \text{£ } 130,921.8950 \\
 \text{Sell at the end of 3 month} &= \text{£ } 130,921.8950 * \text{Rs. } 78.60 \\
 &= 10,290,460.94
 \end{aligned}$$

Amount borrowed with interest without arbitrage

Actual Borrow	=	Rs. 10,000,000
Interest Rs.10, 000,000*(3/12)*0.05	=	125000
Total amount without arbitrage	=	Rs. 10,125,000
Net arbitrage gain for Marutham & Co.	=	Rs. 10,290,460.94 – 10,125,000.00
	=	Rs.165, 460.94

Question 2

- (a) *Amar & Co., a credit rating agency, intends to instil high standards of integrity and fairness in all its dealings with its clients. Advise the company about the code of conduct it should adopt, keeping in view the SEBI Regulations.*
(10 marks)
- (b) *You are the Company Secretary of Popular Ltd. The Board has entrusted you with the task of suggesting a comprehensive investor protection mechanism. Prepare a note for the Board highlighting salient points in the light of Justice Dhanuka Committee recommendations.*
(10 marks)
- (c) *An investor expects the stock market to decline, but instead of selling the equity short, he decided to sell the stock index futures contract based on the XYZ stock exchange composite index. The index is currently 138 and the contract has a value that is 500 times the amount of the index. The margin requirement is ₹3,500 and the maintenance margin requirement is ₹1,000.*

Based on the above, answer the following —

- (i) *When the investor sells the contract, how much must he put-up ?*
- (ii) *What is the value of contract based on the index ?*
- (iii) *If after one week of trading, the index stands at 140, what would happen to investor's position ? How much has he lost or gained ?*
- (iv) *If the index declined to 136.6 (approximately 1% from the starting value), what will be investor's percentage of profit or loss on his position ?*
- (v) *If the investor had purchased the contract instead of selling it, how much would he have invested ?*
(2 marks each)

Answer 2(a)

As per SEBI (Credit Rating Agencies) Regulations, 1999 every credit rating agency is required to abide by the Code of Conduct as per SEBI Regulations:

- A credit rating agency in the conduct of its business should observe high standards of integrity, dignity and fairness in all its dealings with its clients.
- A credit rating agency should fulfil its obligations in an ethical manner.
- A credit rating agency should render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional

judgement. It shall wherever necessary, disclose to the clients, possible sources of conflict of duties and interests, while providing unbiased services.

- The credit rating agency should avoid any conflict of interest of any member of its rating committee participating in the rating analysis. Any potential conflict of interest shall be disclosed to the client.
- A credit rating agency should not indulge in unfair competition nor do they wear away client of any other rating agency on assurance of higher rating.
- A credit rating agency should not make any exaggerated statement, whether oral or written, to the client either about its qualification or its capability to render certain services or its achievements in regard to services rendered to other clients.
- A credit rating agency should always endeavour to ensure that all professional dealings are effected in a prompt and efficient manner.
- A credit rating agency should not divulge to other clients, press or any other party any confidential information about its client, which has come to its knowledge, without making disclosure to the concerned person of the rated company/client.
- A credit rating agency should not make untrue statement or suppress any material fact in any documents, reports, papers or information furnished to SEBI or to public or to stock exchange.
- A credit rating agency is required to abide by the provisions of the Act, regulations and circulars which may be applicable and relevant to the activities carried on by the credit rating agency.

Answer 2(b)

To,
The Board of Directors
Popular Ltd.

The Justice Dhanuka Committee made a few suggestions / recommendations indicating the nature of powers, duties and obligations to be conferred on the regulatory body for giving better protection to investors whose interests are in stake.

A list of such provisions is particularly indicated hereinafter.

- Power of making enquiry and investigation. Thus, the power to issue summons and record statements of individuals, suspected of fraud and malpractices - power to search the premises, to seize the records - power to appoint a Chartered Accountant or any other officer to take inspection of the records of the company concerned.
- Power to take-over the management of the entity concerned for a limited duration.
- Power to appoint Chairman or additional directors as Government nominees or as SEBI nominees with special obligations to protect the interest of the investors and make report to the authorities including authority to perform Bank Accounts.

- Power to make inventory inspection of the assets of the company. Appointment of receiver or freeze assets of the company including Bank Accounts where the regulatory authority has reason that the company is indulging in activities prejudicial in the interest of the investors or is dealing with the assets in a manner prejudicial or manipulating in activities in accordance with law.
- Power to prosecute the manipulators and persons who are *prima - facie* suspected fraud after investigation.
- Power to issue directions including directives in respect of freezing the assets of the company and such other directions as are deemed necessary in the interest of the investors.
- In case the company or the unit is found insolvent or the interests of the investors are in jeopardy or it is *prima facie* deemed just and equitable to seek winding up of such companies to make necessary applications for winding up of the company.

Sd/-
Ms. A
Company Secretary

Answer 2(c)

- (i) Since the Margin requirement is Rs. 3500, he needs to put up Rs. 3,500/-.
In futures trading, the entire value of a contract need not be paid, rather a margin that is typically between 2 per cent and 10 per cent of the total value of the contract need to be paid while entering into the contract. It is part of the risk management system.
- (ii) The Value of the contract would be Rs. 69000 calculated as (500×138) .
Here, 500 is the size of the contract and 138 is the spot price.
Value of a contract = Size of the contract x price per unit represented by spot price.
- (iii) If after one week of trading the index stands at 140, the investor would have lost Rs. 1000 calculated as $(69000 - 70000)$
 $69,000 = (500 \times 138)$; $70,000 = (500 \times 140)$
- (iv) 20 % profit calculated as $\{(138 - 136.6) \times 500\} / 3500$
Here, 138 and 13.6 are the spot price on two different time points,
500 is the size of the contract,
And, 3500 is the margin money.
- (v) Rs. 3500; the margin money will be invested.

Question 3

Amaze Ltd., a listed company, is running its business with strong fundamentals, but does not foresee any option to bring fresh capital from its existing shareholders. Raising capital from the public is also out of reach due to sluggish capital market

sentiments. The financial position of Amaze Ltd. as on 31st March, 2015 is as follows :

<i>Amaze Ltd.</i>		<i>₹ (in lakh)</i>
<i>Liabilities</i>		
<i>Authorised capital</i>		<i>20.00</i>
<i>Paid-up share capital :</i>		
<i>1,00,000 shares @ ₹10 each</i>		<i>10.00</i>
<i>Securities premium account</i>		<i>15.00</i>
<i>General reserve</i>		<i>5.00</i>
<i>Surplus</i>		<i>10.00</i>
<i>Goodwill</i>		<i>3.00</i>
<i>TOTAL</i>		<i>43.00</i>
<i>₹ (in lakh)</i>		
<i>Assets</i>		
<i>Net fixed assets</i>	<i>20.00</i>	
<i>Current assets</i>	<i>20.00</i>	
<i>Cash at bank</i>	<i>6.00</i>	<i>46.00</i>
<i>Less: Provision for dividend</i>		<i>(3.00)</i>
<i>TOTAL</i>		<i>43.00</i>

The company is contemplating to make its follow-on public offer (FPO) after 2 years. Now the company wants to restructure its capital base and is willing to show good prospects. What is the best option available for its capital restructuring, so that at the time of FPO, it will increase investors' confidence. State the immediate formalities required for FPO. (5 marks)

Answer 3

As the company is not able to make a right offer and FPO for sluggish capital market, the bonus issue is the best option by capitalising Rs. 10 lakh. The authorised capital is Rs. 20 lakh. There will be residual reserve of Rs. 5 lakh.

It is suggested to plan a board resolution or member resolution (based on the authority conferred under the Articles of Association of the Company) and inform to the stock exchange before the meeting called and after decision, fix a record date. The notice of decision will be dispatched to the shareholders and publish the record date in the newspaper. Dispatch the bonus shares / credit the bonus shares in the Demat account of the shareholders. Further, obtain the listing approval, from stock exchanges, for commencement of the trading in the bonus shares.

Question 4

A trade bill is drawn by a supplier of goods as follows :

Value of goods sold : ₹10,00,000

Number of days of the bill (take 365 days per year) : 60 days

Rate of discount (to be charged by banker) : 12.50 % p.a.

You are required to calculate —

(a) Discount on the bill; and (3 marks)

(b) Amount to be paid by the bank on the date of presentment of the bill at the bank for discounting. (2 marks)

Answer 4

(a) Discount on bill = (face value of the bill*time in years*rate of interest)/10

$$= \frac{10,00,000 * 60 * 12.50}{365 * 100} = \text{Rs. } 20,547.94$$

Discount on the bill can be stated as the Simple Interest on the face value of the bill for unexpired time.

(b) Amount to be paid by the bank = Face value of the bill – Discount on the Bill

$$= \text{Rs. } 9,79,452.06$$

(i.e. Rs. 10,00,000 – Rs. 20,547.94).

Question 5

You are the Company Secretary of Shine Ltd. As a Compliance Officer of the company, what are the safeguards you will implement so that the price sensitive information is properly protected ? (5 marks)

Answer 5

As per SEBI (Prohibition of Insider Trading) Regulations, 2015, compliance officer means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

The following shall be implemented by the compliance officer to properly protect the price sensitive information:

- Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
- Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available
- Uniform and universal dissemination of unpublished price sensitive unpublished price sensitive information to avoid selective disclosure.

- Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.
- Price-Sensitive Information is to be handled on a “need to know” basis, i.e. Price Sensitive Information should be disclosed only to those within the Company who need the information to discharge their duty.
- Gist of any proceedings of meetings with analysts and other investor relations conferences may be made available on the company’s website.
- Any sharing of information with analysts and research personnel shall be done only with the prior approval of the Compliance officer to ensure that no unpublished price sensitive information may be disclosed.
- The disclosure of unpublished price sensitive information shall be on a continuous, immediate, uniform basis and will be universally disseminated. The company may consider others ways of supplementing information released to stock exchanges by improving Investor access to their public announcements.

Question 6

"Money market mutual funds are the lowest-risk variety of mutual funds, but they are not risk-free." Discuss. (5 marks)

Answer 6

Money market mutual fund (MMMMF) is a scheme of a mutual fund set up with the objective of investing exclusively in money market instruments. Money market funds are regarded as high liquidity oriented as investor attaches more value for safety and liquidity. MMMFs are exclusively governed by SEBI (Mutual Funds) Regulations, 1996 w.e.f March 07, 2000. MMMFs are the lowest-risk variety of mutual funds, but they aren't risk-free.

The risks associated with MMMFs are as under:

1. MMMFs are subject to market risks and do not have any risk cover like “Deposit Insurance and Credit Guarantee Corporation” for upto Rs. 1,00,000 (Rupees one lakhs only) against defaults by banks in India.
2. Negative returns : Over a period, Money Market Mutual Funds can result in negative yield to the investors in real value if inflation rate is higher than the risk free rate of return.
3. While Money Market Mutual Funds generally invest in government securities and other vehicles that are considered comparatively safe, they may also take some risks in order to obtain higher yields for their investors. So, in order to try to capture another tenth of a percentage point of return, it may invest in bonds or commercial paper that carry additional risk.
4. Expenses charged by Money Market Mutual Funds can result in fall in returns to the investors: Being relatively safe investments, the returns on Money Market Mutual Funds are lowest and even a small annual fee can substantially reduce the profits on such funds. This may make it even more difficult for money market investors to keep pace with inflation.

INSURANCE LAW AND PRACTICE
(Elective Paper 9.3)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Ashwini, aged 30 years, was employed as a supervisor in a bank. On 4th June, 2012, he took two life endowment insurance policies on his life for ₹50,000 each from Prudent Life Insurance Co. Ltd. Each policy had a different maturity term and period. Both the policies had accident claim benefit of an equivalent amount, viz. in the case of death of the insured due to an accident, the amount payable by the insurer would be twice the amount of the sum assured. Ashwini made his wife Smt. Asha as his nominee under the policies and also the legal assignee, since the couple had no issues then.

On 31st May, 2014, Ashwini while going to his office on his two-wheeler was involved in a head-on collision with a motor car coming from the opposite direction and was severely injured. He was admitted to a hospital, but succumbed to the injuries and died in the hospital on the morning of 2nd June, 2014.

Smt. Asha filed a claim under the policies with the insurer for payment of the sum assured together with the accident benefits. The company, after processing the claim, informed her on 15th July, 2014 that they were rejecting the claim on the ground that Ashwini, while taking the policies, had suppressed material facts.

The insurer indicated that Ashwini did not mention in the proposal form, the fact of an earlier ailment of having suffered from para-typhoid in June – July, 2010 and having been away from his employer on medical leave between 6th June, 2010 and 5th July, 2010.

The nominee filed a complaint on 18th August, 2014 with the District Consumer Forum stating that the repudiation of the claim was not justified. The insurer reiterated its argument that the non-mention of the previous ailment to it was a suppression of material facts and affected the fundamental nature of the contract. The District Consumer Forum on consideration of the arguments before it held in favour of the insurer agreeing with it that the deceased had suppressed material facts at the time of the proposal.

Smt. Asha, not accepting the decision of the District Consumer Forum, filed an appeal with the State Forum. Her counsel contended before the Forum that even if the deceased had suffered from para-typhoid less than two years prior to obtaining the policies and did not give the necessary information in the proposal form, it did not amount to a material suppression of facts. His main argument was that the cause of death was the accident with the motor vehicle and the cause had no nexus whatsoever with the alleged ailment. Thus, there was no suppression of facts.

The State Forum after hearing the arguments of both the parties, allowed Smt.

Asha's appeal and held that the cause of death was accident and not illness. The non-mention of the fact of illness and hospitalisation did not amount to any non-disclosure of material facts. The Forum granted the relief asked for and directed the insurance company to pay Smt. Asha ₹2,00,000 under the policies. The decision taken on 6th January, 2015 also entitled the nominee with interest at 9% per annum from the date of filing the claim, viz. 18th August, 2014.

From the information given above, answer the following questions —

- (a) *Was the State Forum justified in its conclusion in terms of the conditions of life policies issued by Indian insurance companies ? Give reasons for your answer. Cite relevant case law, if any. (15 marks)*
- (b) *If Ashwini had died on account of an illness, and not in an accident, will the decision of the State Forum be different ? Give reasons. (10 marks)*
- (c) *What are the provisions of the Insurance Act, 1938 regarding the time-limit beyond which the terms of a life insurance policy cannot be questioned ? (5 marks)*
- (d) *What do you mean by 'guaranteed surrender value' in a life policy ? (5 marks)*
- (e) *Can a discontinued life insurance policy be revived by the insured and if so under what circumstances and on what terms ? (5 marks)*
- (f) *Can a disputed claim under a small value life policy (e.g. ₹2,000) be settled in a quick manner ? (5 marks)*
- (g) *If death of the insured under a life policy takes place within two years of its commencement, by way of suicide, will the beneficiary get a claim ? (5 marks)*

Answer 1(a)

The decision of the State Forum is justified on the following grounds:-

- (i) That the Death of Late Shri Ashwini Kumar was as a result of an accident and not any illness.
- (ii) That Section 45 of the Insurance Act, 1938 provides that a policy of life insurance cannot be called in question by an insurer after the expiry of two years from the date on which it was effected on the ground that a statement made in the proposal for insurance or any other document leading to the issue of the policy was inaccurate or false.
- (iii) That the Death of Shri Ashwini Kumar was within two years of taking a life Insurance Policy from "Prudent Life Insurance Company". The policy was taken on the 4th of June 2012 and the death of the assured occurred on 2nd of June 2014.
- (iv) That the accident of Motor Cycle with car resulting in death of the assured had nothing to do with any illness and hence cannot come under the purview of section 45 of the Insurance Act.

In the light of the foregoing, the decision taken by the state forum was correct and in

Relevant Case : *Life Insurance Corporation of India v. Shakuntala Bai* on 17 July, 1973 (AIR 1975 AP 68)

Answer 1(b)

Had the Death of Late Shri Ashwini Kumar occurred on account of illness and not accident on 2nd of June 2014, the same would have come under the purview of section 45 of Insurance Act, 1938 of two years limitation and hence the illness of the deceased on account of Para-Typhoid would have been a material fact and its non-disclosure in the proposal form would have prejudiced admission of liability under the claim.

The Decision of the District Forum in repudiating the claim would than have been justified.

Answer 1(c)

The Section 45 of the Insurance Law (Amendment) Act, 2015 clearly stipulates that no policy of life insurance shall be called in question on any ground whatsoever (other than fraud) after the expiry of three years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.

Answer 1(d)

The Guaranteed Surrender Value is the amount guaranteed to the policy holder in case of voluntary termination of a policy before maturity. The minimum surrender value allowed is equivalent to an assured percentage of the total amount of premium paid by the policy holder.

Surrender value is the amount that a policy holder receives from the insurer in case he plans to terminate the policy before its maturity. If a policyholder decides to end the policy before it matures, he is liable to receive a certain sum that has accrued as his saving. From this amount the insurer deducts the surrender charge and the remaining is transferred to the policyholder. A regular premium policy acquires guaranteed surrender value after the policyholder has paid the premiums continuously for three years if the premium paying term is 10 yrs or more. For policies where premium paying term is less than 10 yrs, policy acquires guaranteed surrender value after 2 years premiums have been paid. When an individual decides to terminate his policy, all the benefits attached with it cease to exist, including the life cover. Therefore, the policy holder should only terminate the policy if he feels that it no longer fulfils the requirement or if he realizes that the policy was sold with false promises.

Answer 1(e)

Yes, a discontinued life insurance policy can be revived by the insured. If the life policy has lapsed, it may be revived during the lifetime of the assured, but within a period of 3 years from the date of first unpaid premium and before the date on which the Annuity Vests, on payment of arrears of premium together with interest as may be decided by the insurer. Revival is a fresh contract wherein the insurer can impose fresh terms and conditions. It varies from policy to policy, insurer to insurer; Generally, a declaration of the insured state of health at the time of reinstatement is taken by the insured.

Answer 1(f)

Yes, in the event of any dispute relating to the settlement of a claim on a policy of life insurance assuring a sum not exceeding two thousand rupees (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of insurance business transacted in India, arising between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Authority (i.e. IRDA) for decision and the Authority may, after giving an opportunity to the parties to be heard and after making such further inquiries as he may think fit, decide the matter.

The decision of the Authority under above clause shall be final and shall not be called in question in any Court, and may be executed by the Court which would have been competent to decide the dispute if it had not been referred to the Authority as if it were a decree passed by that Court.

Answer 1(g)

If death occurs within certain period of time as mentioned in the policy document (generally 2 years) of taking a Life Insurance Policy, the beneficiary /nominee would receive the premium back but not the death benefit.

Question 2

- (a) *Hari took a fire insurance cover on his stock of oil-seeds, oil-cakes, etc., while stored in a godown of Class-I construction, for a sum assured of ₹1,50,000 with Zenith General Insurance Co. Ltd. The risk was inspected by the insurer's representative. After the inspection, he collected the premium due and issued a cover note. The official receipt for the premium was received after three days by Hari. The cover note issued by the insurer's representative indicated that "the stock of oil-seeds and oil-cakes, etc. are covered for a period of 12 months effective from 26th February, 2015, subject to terms, conditions, exceptions, etc. of the insurer's printed policy against the risk of fire whilst stored in a godown of Class-I construction."*

Despite several written requests and reminders by Hari, the policy document was not issued till the end of May, 2015. In the meantime, on 10th May, 2015, a major fire broke out in the godown damaging a large part of the insured's stock.

The insurer appointed a licensed surveyor who assessed the loss of oil-seeds and oil-cakes to the tune of ₹1,15,000. He also held that the fire was on account of 'spontaneous combustion'.

In the course, Hari filed a claim for loss with the insurer. Zenith Insurance Co. Ltd. informed him that the fire having occurred due to an excluded peril, viz., spontaneous combustion, no claim would be payable.

How will you advise Hari to proceed to support his claim ? Discuss in your answer, the sanctity of a cover note issued by an insurance company or its representative. (15 marks)

- (b) *Inder had purchased a bus by taking a hire-purchase loan from Swami Financiers. The bus was used as a private service vehicle and not as a public transport. It*

was insured under a comprehensive motor policy issued by Sun India Insurance Co. Ltd. The bus met with an accident and an insurance claim was lodged. The insurer appointed a licensed surveyor who assessed the loss at ₹1,26,500. Out of this, the company deducted ₹33,125 on the ground that the driver of the bus did not have an endorsement on his driving licence to drive a transport vehicle. The balance of the amount was paid by the insurer to Swami Financiers. Aggrieved by this, Inder filed a complaint before the Consumer Forum.

You are required to answer the following —

- (i) Can an insurance claim be paid to the financier and not to the insured ?*
- (ii) What are the exclusions under a comprehensive motor insurance policy ?*
- (iii) What are the common reasons for the repudiation of claims under motor insurance policies ?* *(5 marks each)*

Answer 2(a)

Since the claim lodged by Mr. Hari has been turned down by Zenith General Insurance Company on the ground that "Spontaneous Combustion" is not covered under a standard fire policy, he can take up the matter with insurance ombudsman of his state and file a complaint with that office. The ombudsman is an internal redressal machinery of insurer created by the industry with the backing of the central government. The decision of the ombudsman is binding on the Insurance Company but not the claimant. The ombudsman would look into the entire matter of issuance of cover note by the insurer without any stipulation and give the benefit to the claimant.

The very fact that there was no warranty stipulated in the cover note strengthens the case of the claimant, and benefit of doubt must go in his favour.

If Mr. Hari still does not get justice, than he can approach the District Forum and State Forum for redressal of his grievance.

A Cover Note is a temporary risk document issued by the insurer till it is replaced by a stamped policy document. Insurers all over the world honour this document. The cover note describes the risk proposed for insurance and also stipulates conditions which are relevant and necessary.

In the present case, since no warranty pertaining to "Spontaneous Combustion" being an excluded Peril was incorporated in the Cover note issued by the insurer, he cannot disown his liability under the claim at this stage. The claim will have to be honoured by the insurer.

Answer 2(b)(i)

No, the action taken by the Company is not justified for the following reasons:

- Firstly, if a person has a licence to drive a heavy goods carriage vehicle, it also means that he/she was entitled to drive a transport vehicle, including a public service vehicle, hence repudiation of the claim on this ground or reason is not teneable.
- Secondly, the company is also not right in making a part payment of the amount

of loss. The Commission should direct the insurance company to pay the balance amount and the Consumer Forum may decide such interest & costs.

- Thirdly, the practice adopted by insurance companies of directly paying to the financier, without informing the insured or without his consent, cannot be justified. If the insurance Policy is taken in the name of the vehicle purchaser, there is no question of paying the amount straightaway to the financier.

Answer 2(b)(ii)

The Common exclusions or limitations in a motor insurance policy are as follows:

- Consequential loss depreciation, wear and tear, mechanical and electrical breakdown, failures or breakages.
- Damage to tyres and tubes (5 % in case of mishap).
- Accidental loss or damage under the influence of intoxicating liquor or drugs.
- Method of Valuation-claim amount is to also limited by the valuation method, for example at retail value (the price a dealer pays on purchase of car), or market value (generally the mid-point between trade and retail). These values affect the premiums and what the insurer will pay out when on claim.
- “No water damage” exclusion damage to an engine.
- Excesses or sometimes multiple excesses exclusion. Sometimes, in addition to standard excess, extra excesses may be imposed like others may apply. For example, young or new drivers who haven't had a license for a certain number of years, can be liable for an additional excess.
- If the policyholder has had an accident within six months of obtaining cover, or between midnight and 6 am-the most dangerous time on the road-an excess may apply.
- And some insurers levy an additional excess on drivers older than of a certain age.

Answer 2(b) (iii)

Some of the Common reasons for the repudiation of motor accident claims include the following:-

- When losses or claims are caused by unlicensed driver.
- When the vehicle is unroadworthy vehicle-e.g. wipers not working, smooth tyres.
- Reckless or negligent driving-e.g. “Failure to take care” clause which refers to recklessness, which is not to be confused with negligence, and “Breach of road traffic regulations” clause, exceeding the speed limit at the time of an accident.
- Drunk driving by the drivers.
- Driver not the “regular driver”- some policies cover the regular driver only, or a named driver or any licenses driver.

- Total-loss policy-which applies only when the insurer deems the vehicle to be a total write-off.
- Tracker device not fitted, if it is mandatory.
- Vehicle inspection not carried out, as per the rules, is insurers insist on inspecting the vehicle at inception of the policy. This is so that there can be no disputes about pre-existing damage to the vehicle. If the policyholder neglects to comply, there will be breach of contract and the claim may be rejected.
- Material non-disclosure at underwriting stage, with regards to claims record, a break in insurance cover, prior applications for cover being rejected, and judgments on credit record are all material to the assessment of risk, and it is imperative that the policyholders should disclose such information. For example, people with a bad credit record have a higher propensity to file fraudulent claims than people with a clean credit record.
- Vehicle used for business, should be disclosed to the insurer.
- Vehicle not parked securely at night-if the policyholder claims that car is parked securely-in a garage or off the street-at night, and, in the event of theft, it is found it was regularly in the street, claim could be rejected.
- Security device not fitted, if that is mandatory that a vehicle should be fitted with an alarm or a gear lock and if it is not complied the claim can be rejected.

Question 3

What are the conditions precedent to and subsequent to a fire insurance contract ? Discuss. (5 marks)

Answer 3

Conditions are terms which prescribe the limitations under which an insurance policy is granted and which specify the duties of the assured. They can be either conditions precedent or subsequent. Conditions precedent are those, which are essential for the creation of a valid contract, the non- satisfaction of which makes the contract *void ab initio*. The Conditions precedents to a Fire Insurance Contract are:-

- (i) Offer
- (ii) Acceptance
- (iii) Lawful Consideration
- (iv) Consensus ad idem - (Mutual Consent)
- (v) Competency to Contract
- (vi) Lawful object
- (vii) Agreement

Conditions subsequent relate to the continuance of a valid contract, the non-fulfilment of which leads to the avoidance of the contract from the date of the breach. They can be further classified into express conditions and implied conditions. Express conditions which are expressly provided in the contract. Implied conditions are those, which are

implied by law to apply to every contract of insurance irrespective of any specific inclusion or reference to them such as insurable interest, good faith etc. A condition, which seeks to reduce or curtail the period of limitation and prescribes a shorter period than that prescribed by law is void. However, the insured is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach. An insurer cannot take recourse to a condition, which has not been mentioned in the policy to reduce his liability. However, an insurance policy may not curtail the right but may merely provide for forfeiture. The Conditions subsequent to the Contract in Fire Insurance Would be:-

- (a) Utmost good Faith
- (b) Insurable Interest
- (c) Strict indemnity
- (d) Subrogation
- (e) Contribution
- (f) Proximate Cause

Question 4

What is a unit-linked insurance plan (ULIP) ? What is the difference between a protection-cum-savings plan and ULIP ? (5 marks)

Answer 4

A Unit Linked Insurance Plan (ULIP) is a product offered by insurance companies that, unlike a pure insurance policy, gives investors both insurance and investment under a single integrated plan.

A Unit Link Insurance Plan is basically a combination of insurance as well as investment. A part of the premium paid is utilized to provide insurance cover to the policy holder while the remaining portion is invested in various equity and debt schemes. The money collected by the insurance provider is utilized to form a pool of fund that is used to invest in various markets instruments (debt and equity) in varying proportions just the way it is done for mutual funds. Policy holders have the option of selecting the type of funds (debt or equity) or a mix of both based on their investment need and appetite. Just the way it is for mutual funds, ULIP policy holders are also allotted units and each unit has a net asset value (NAV) that is declared on a daily basis. The NAV is the value based on which the net rate of returns on ULIPs are determined. The NAV varies from one ULIP to another based on market conditions and the fund's performance.

The significant difference between a protection cum savings plan and a ULIP :

<i>Comparison</i>	<i>ULIP</i>	<i>Protection Cum Saving Plan</i>
Description	ULIPs are instruments which provide both protection against death of insurer and savings along with investment options	Protection cum Saving Plan are instruments which provide both protection against the life style after retirement, child education, Child future and savings

<i>Comparison</i>	<i>ULIP</i>	<i>Protection Cum Saving Plan</i>
Lock in period	5 years	15 years
Transparency	Most of the ULIPs allow you to track your portfolio. Individuals will get intimation on the fund on regular basis	In this plan investment premium is common with the fund. Hence you cannot track individual portfolio.
Maturity	One can redeem units at the prevailing unit prices.	Policyholder will get the sum assured plus bonuses, as per the plan.

Question 5

Outline the Insurance Regulator's guidelines with respect to financial inclusion.
(5 marks)

Answer 5

Insurance Regulatory & Development Authority (IRDA) has been making immense efforts to educate and empower the common citizens about insurance industry in India and their rights & responsibilities. IRDA has been at the forefront of insurance sector deepening, protecting the rights of policyholders, regulating insurance companies & advisors and bringing about insurance inclusion in India for all segments esp. the poor. Some of the steps taken by IRDA for financial inclusion include the following:

National Strategy for Financial Education - The National Strategy recognises that financial literacy and financial education play a vital role in financial inclusion and inclusive growth and envisages ways towards creating awareness and educating consumers on access to financial services, availability of various types of products and their features; changing attitudes to translate knowledge into responsible financial behaviour; and making consumers of financial services understand their rights and obligations

Website on Insurance Education - In an attempt to increase insurance awareness levels across the country, the authority has taken a number of consumer education initiatives and has recently launched an exclusive insurance education website www.policyholder.gov.in this website has self-explanatory menus and gives information in simple language.

Grant of Corporate Agency license to Department of Postal - To promote financial inclusion, insurance regulator Insurance Regulatory and Development Authority (IRDA) has granted corporate agency license to the Department of Post for distributing insurance products.

Emphasis on educating insurance agents to weed out mis-selling - IRDA has been emphasizing specialized training to the country's 2.5 million insurance agents after they clear the basic examination to qualify as a licensed agent to sell insurance products. The training, aimed at instilling seriousness among insurance agents about sales as a career and stop unfairly selling insurance schemes just to earn commissions.

Question 6

Explain the maxim caveat emptor. Does this apply to insurance contracts ?

Answer 6

Insurance contract is one which requires utmost good faith. The rule of caveat emptor (let the buyer beware) does not generally apply. This doctrine is supported by Representation through an application of Concealment and Warranty.

An application for life and health insurance is the applicant's proposal to the insurer for protection and is the beginning of the policy contract. The proposed 'insured' is required to give accurate answers to questions in the application relating to his personal and family history, habits, employment, insurance already in force, and other applications for insurance that either pending or have been postponed or refused etc. A failure to do so leads the insurer being estopped [i.e., prevented] from denying the correctness or truth of information in the application. Insurers place great reliance on this information to issue the requested policy.

This principle of insurance stems from the doctrine of "Uberrimae Fides" which is essential for a valid insurance contract. It implies that in a contract of insurance, the concerned contracting parties must rely on each other's honesty. Insurance contracts are different from other contracts. Normally the doctrine of "Caveat Emptor" governs the formation of commercial contracts which means 'let the buyer beware'. The buyer is responsible for examining the good or services and its features and functions. It is not binding upon the parties to disclose the information, which is not asked for.

However in case of insurance, the products sold are intangible. Here the required facts relate to the proposer, those that are very personal and known only to him. The law imposes a greater duty on the parties to an insurance contract than those involved in commercial contracts. They need to have utmost good faith in each other, which implies full and correct disclosure of all material facts by both parties to the contract of insurance. The term "material fact" refers to every fact or information, which has a bearing on the decisions with respect to the determination of the severity of risk involved and the amount of premium. The disclosure of material facts determines the terms of coverage of the policy. Any concealment of material facts may lead to negative repercussions on the functioning of the insurance company's normal business. Thus, the caveat emptor maxim is not applicable to contracts which are based on trust and faith and where the foundation of the contract is based on the parties trust and faith on each other.

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 on patent law and answer the questions that follow :

On 7th July, 2005, Viraj Ltd. (Viraj) was granted a patent under the Indian Patent No. 195904, with a priority date of 16th July, 2002. The title of the patent application was "an improved internal combustion engine working on four stroke principle." The invention was called DTS-i Technology and it related to the use of twin spark plugs located diametrically opposite to each other in a small displacement engine with the cylinder bore diameter ranging between 45 mm to 70 mm. According to Viraj, this placement of the spark plugs enabled a better control over the ignition timing and lesser time was taken for the flame to travel during the process of combustion. The novelty also lay in the use of a sleeve to protect the spark plug which prevented exposure of the plug to the lubricating oil.

In 2003, Viraj launched 'Inventa', a motorcycle which employed the DTS-i Technology in respect of which the patent was then pending. In the first eight months of that financial year itself, Viraj manufactured and marketed 8,14,393 two wheelers with the DTS-i Technology out of a total of 15,01,241 two wheelers which were sold by it amounting to 54.25% of its total sales.

In 2007, CVS Ltd. (CVS) announced the launch of a 125-cc motorcycle under the trademark 'Sport' which was to be powered by lean burn internal combustion engine of bore size 54.5 mm with a twin spark plug configuration just like that of Viraj. CVS also stated that on 1st and 3rd of September, 2007, Viraj had issued certain groundless threats to dissuade CVS from launching 'Sport'.

Hence, in October, 2007, CVS filed a suit under sections 105 and 106 of the Patents Act, 1970 in the High Court, alleging that the statements made by Viraj on 1st and 3rd of September, 2007 constituted groundless threats, and sought the intervention of the Court to restrain Viraj from interfering with the launch of 'Sport'. Further, CVS also filed an application for the revocation of Viraj's patent before the Indian Patents Appellate Board under section 64 of the Patents Act, 1970.

Upon the announcement by CVS, Viraj filed a suit for permanent injunction under section 108 of the Patents Act, 1970 in the High Court to restrain CVS from using the internal combustion technology patented by Viraj and from employing the same in marketing 2-3 wheelers, including CVS's proposed 125-cc 'Sport' motorcycle.

Vide its order dated 16th February, 2008, the Single Judge of the High Court restrained CVS from launching the proposed 125-cc 'Sport' motorcycle with the twin spark plug engine technology, as Viraj prima facie enjoyed the right of exclusive usage of the

patent, granted to it by the Patent Office. The High Court held that Viraj had succeeded in establishing a prima facie case for the grant of an injunction, and while granting the injunction was pleased to observe :

"... Suffice it to say now at this stage, prima facie there is novelty which means an invention and the same has been registered under the Patents Act... novelty has been on the face of it proved by the applicant by marketing the product to such a large extent and also without objection fairly for long"

Aggrieved by the order of the Single Judge, CVS preferred an appeal before the Division Bench of the High Court. The Appellate Bench of the High Court held that Viraj had not succeeded in establishing a 'prima facie' case of infringement in respect of its patented twin spark technology.

The Division Bench observed that having regard to the nature of operation of the DTS-i Technology engine by virtue of twin spark plugs and that of CVS by virtue of receipt of air fuel mixture through two different intake valves, their points of emphasis differed considerably, notwithstanding the use of twin spark plug in both the technologies. The Division Bench further observed that the operation of the invention as claimed by Viraj appears to be plug centric and that of CVS was valve centric, and on scrutiny of the claim as set out in the final complete specification, it held that it found it difficult to countenance Viraj's claim that the CVS's product specification infringed Viraj's patented right. Accordingly, the Division Bench set aside the order of the Single Judge.

Aggrieved by the order of the Division Bench, Viraj preferred an appeal before the Supreme Court. The Supreme Court, while prima facie agreeing with the order of the Division Bench, ordered that although CVS shall be entitled to sell its motorcycle 'Sport', but it shall maintain an accurate record of its entire domestic and international sale and directed the High Court to appoint a receiver in this connection.

In its interim order, the Supreme Court reiterated that in matters relating to trade marks, copyright and patents, the provisions of the Code of Civil Procedure, 1908 which mandate that civil disputes should be heard on a day-to-day basis without any adjournments, except in circumstances beyond the control of the parties. It also directed that the final judgment should be given normally within four months from the date of the filing of the suit. The Supreme Court directed that the timeline stipulated above be adhered to 'punctually and faithfully' by all courts and tribunals in the country.

Questions —

- (a) What were the grounds under which the Division Bench of the High Court reversed the decision of the Single Judge of the High Court ? Cite relevant case law. (15 marks)
- (b) Elaborate the order and the directions passed by the Supreme Court and how it may impact the IPR pending litigation. (15 marks)
- (c) Explain the factors which constituted a prima facie case for the grant of an injunction. (10 marks)

- (d) Write a note on the significance of laboratory note books/log books/record books in patent litigation. (5 marks)
- (e) Discuss the typical parts of a patent application. (5 marks)

Answer 1(a)

The Division Bench of the High Court reversed the decision of the Single Judge of the High Court on following grounds:

1. After considering the functioning and performance of products manufactured by both the parties, the Division Bench found that both the products were of distinctive features and different operation.
2. As to the nature of the operation of the engine, it was observed that the DTS-i Technology engine is operated by virtue of spark plugs and the CVS engine is operated by virtue of receipt of air fuel mixture through two different intake valves.
3. Technology used by appellant was different from technology used by respondent.
4. The point of emphasis of both the engines is considerably different and does not bear identified resemblance even with the use of twin spark plug in both the technologies.
5. It is further observed that Viraj's engine is plug centric and CVS engine is valve centric.
6. On the scrutiny of final complete specification, it was found that it is difficult to allow Viraj's claim that CVS's product specification has infringed the Viraj's patented rights.
7. Along with this, distinction as between patented claim and infringed product is well protected under provisions of Patents Act, 1970. Hence, infringement of respondent's patent by appellant not proved.

Relevant Case Law is *M/s TVS Motor Company Limited v. M/s Bajaj Auto Limited* (MANU/TN/0976/2009, MANU/TN/0174/2008)

Answer 1(b)

Challenging the appeal allowed by the Division bench of the Madras High Court, Viraj appealed to the Supreme Court by special leave. The most salutary effect of this case has been the guidelines passed by the Supreme Court directing expeditious disposal of IPR cases by the trial court. In this case, the Court was of the opinion that the matters relating to trademarks, copyrights and patents should be decided expeditiously and finally by the Trial Court instead of merely granting or refusing to grant injunction. Experience shows that in the matters of trademarks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction which goes on for years and years and the result is that the suit is hardly decided finally. This is not proper.

The Court observed that once the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined,

unless the court finds that, for exceptional reasons to be recorded by it, an adjournment of the hearing beyond the following day is necessary. Only circumstances which are beyond the control of the parties would justify such an adjournment. It also opined that in suits relating to the matters of patents, trademarks and copyrights, final judgement should be given normally within four months from the date of filling of the suit. The direction of the Supreme Court seeks to enforce a provision under which, an adjournment on the ground that the pleader of a party is engaged in another court, shall not constitute a ground for an adjournment. This cause of adjournments is the biggest bane and obstacle in overcoming judicial delays, and if these guidelines are actually implemented by the Courts and Tribunal below, all IPR cases would be decided expeditiously. This augurs well for strengthening the rights of IPR holders in India.

Relevant Case Law is *M/s TVS Motor Company Limited v. M/s Bajaj Auto Limited (MANU/SC/1632/2009)*

Answer 1(c)

For an invention to be patentable, it must satisfy the triple tests of novelty, non-obviousness, and capability of industrial application and exploitation. While considering the facts of case, the Court found that the invention satisfied the triple tests and was patentable. The Single Judge order of the High Court emphasised that in cases of interlocutory injunction, including any patent action the plaintiff must prove or show as follows:

1. prima facie case that the patent is valid and infringed
2. the balance of convenience lies in favour of plaintiff and
3. irreparable loss would be caused to Plaintiff by not granting an order of injunction

The factors which constitute a prima facie case for grant of an injunction are as follows:

- (a) Firstly, whether the applicant holds a patent over the technology under consideration. The certificate for grant of patent by the appropriate authority in such cases is a prima facie proof of the grant of a patent.
- (b) Secondly, whether there is a commercial use of the aforementioned patented technology by the respondent/non-applicant.

In cases where there is a dispute between the parties as to whether the invention or technology claimed to be patented is patentable or not the tests applied by the courts are the test of novelty, non-obviousness, and capability of industrial application and exploitation of the technology.

In the relevant case-law cited i.e. *Bajaj Auto Limited v. TVS Motor Company Limited*, while considering the facts of case, the Court found that the invention satisfied the triple tests and was patentable.

The Court was of the view that, upon the amendment of the Act which came into force on 20th May 2003, when a patentee files a suit for infringement based on the patent granted to him, the patent should be *prima facie* presumed to be valid, until the same is revoked or set aside under any of the grounds set out in the Act or in any other

manner. The Court was of the view that prior to the amendment, the patentee was conferred an exclusive right to use himself, or through agents or licensees and also to exercise or sell or distribute the inventions in India. However, after the amendment, the patentee now enjoys an exclusive right to prevent third parties from using or selling, or offering for sale etc his invention.

On the question whether Bajaj's invention involved an inventive step, the Court was satisfied that the invention involved a technical advance as compared to the existing knowledge and that it had economic significance. The Court was prima facie satisfied that the invention had found a special place in the Indian market and had established a significant market share.

The court found that even though Bajaj's product 'Pulsar' had been introduced in the market in 2003, TVS had for the first time raised an objection only on August 24, 2007, by which time Bajaj's DTS-i technology based product had been sold in large numbers across the country. The Single judge of the Madras High Court found that the petition for revocation of the Patent granted to Bajaj had been filed a mere six days prior to the launch of Flame, and as such the conduct of TVS was not entirely bona fide. The Court was of the view that till such time, TVS succeeded in its petition for revocation, the patent granted to Bajaj could not be viewed with suspicion, considering that it had been in existence for more than five years and as such the patentee Bajaj must be treated as actual user and the presumption of the validity of its patent was thus established.

On the above basis, the Court recorded its satisfaction the Bajaj had succeeded in establishing a prima facie case for the grant of an injunction. The Court also recorded that having exploited the patent for five years, the patentee had a further period of fifteen years to exploit the patent, and hence the balance of convenience was also in its favor.

Accordingly, the Madras High Court granted an interlocutory injunction in favour of Bajaj.

Answer 1(d)

Laboratory Notebooks are the birthplace of inventions. Laboratory notebooks (also called a journal, inventor's notebook or log book) are used by inventors, scientists and engineers to record their invention process, experimental tests, ideas and results and observations. It is not a legal document but is valuable, if properly organized and maintained, since it can help establish dates of conception and reduction to practice. The purpose of the inventors logbook is simply to be an irrefutable diary of your progress, so that if it comes to a legal conflict, you can produce your logbook and some supporting evidence to substantiate your claim that you were the first to start working on your invention, and the first to "make a working model" of your invention. The information can improve the outcome of a patent or a patent contestation.

Typically, governments award patents on either a first to file or first to invent basis. Therefore, it is important to keep and maintain records that help to establish who is first to invent a particular invention.

Laboratory notebook is a systematic device for recording all information related to an invention in such a way that it can be used as a key component to develop a case during a patent contestation or patent-related lawsuit. When properly kept, the notebook is a valuable tool for the inventor since it provides a chronological record of an invention

and its reduction to practice. Each entry must be signed and dated by a witness. The witness should not be someone with a conflict of interest (such as a research partner). If an inventor ever has to go to court to prove that he or she was the first to invent, then the witness would be called to the stand to testify that it is their signature and they have signed that page on that date.

Answer 1(e)

A patent application is a request pending at a patent office for the grant of a patent for the invention described and claimed by that application. An application consists of a description of the invention (the patent specification), together with official forms and correspondence relating to the application. The term patent application is also used to refer to the process of applying for a patent, or to the patent specification itself

The typical parts of a patent application are generally:

- Claims
- Detailed description (or specification)
- Drawings
- Background
- Abstract
- Summary

The title should broadly describe the invention. However, titles are not generally examined. Occasionally a patent examiner decides that a title is not descriptive of the invention. It is best to avoid being overly narrow in the invention's title, although the title should sufficiently indicate the subject matter of the invention.

A patent application should also include the names of the inventors. The inventors should be named after the title, e.g. on the cover page. The patent application itself should also include all priority information, such as the identification of related applications.

It is desirable to remember who the audience will be for the patent application. The key audiences include judges and patent examiners. Of course, the patent agent's client and the inventor are also audiences; the patent agent must make sure the inventor understands his own patent application.

Other potential audiences include competitors, infringers and investors. Many investors will often scrutinize a technology company's patent portfolio carefully before making an investment.

Question 2

Kalyan is a non-profit statutory trust in Andhra Pradesh situated in salubrious surroundings in a rural area. Employing about 14,000 persons, Kalyan produces a special kind of puri using resources peculiar to the area and adopting cooking skills particular to the area. The cooks preparing the puri had developed culinary skills, whose descent could be traced to their ancestors over more than 500 years. Villagers and even outsiders visiting the area savour the special taste of the puri and even

get addicted to it. Kalyan is also under the obligation to administer and maintain the trust property and to cater to the needs of the cooks and workmen. Puri is offered at subsidised rates to the customers and has gained great reputation and distinctiveness over a long period.

Kalyan applied for the registration of geographical indication (GI) for its puri under the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the Act). After following the procedure laid down, the Registrar of Geographical Indications granted registration sought by Kalyan in its favour. In doing so, the procedural formalities contemplated under the said Act and Rules made thereunder were strictly adhered to and the genuineness of the product (puri) was verified by duly appointed experts. The product was classified as 'food stuff' under the Act. Kalyan, thus, became the registered proprietor.

At the time of grant of GI to puri, there were no objections from anyone when the matter was published in the GI Journal. Thus, there was no pre-grant opposition to the grant of GI to puri. But yet, after the grant of GI, one large foodstuff dealer filed a rectification application alleging that granting of GI tag for puri contravened section 11(1) of the Act and Rules made thereunder and that the said geographical indication was prohibited for registration under section 9(a) of the Act.

Further, the rectification applicant alleged that there was no industrial purpose served by the grant and that granting monopoly to a single producer would defeat the very purpose for which the Act was brought into force. Section 11 of the Act refers to 'any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of producers of the concerned goods' and therefore a single producer was not entitled to the grant of GI. Moreover, the applicant claimed that puri was like any other similar puri made throughout the country and hence the use (consumption) of puri by customers would likely deceive or cause confusion attracting section 9(a) of the Act. It was prayed by the applicant that the grant of GI to puri be removed from the Register of Geographical Indications.

Furthermore, the rectification applicant opposed the grant of GI to puri on the ground that it did not fall under the definition of goods in section 2(1)(f) of the Act.

Kalyan (respondent) objected to the locus standi of the applicant stating that the rectification applicant was in no way offended by the registration and that he never objected when the matter was published in the GI journal before the Registrar of GI granted the registration to puri.

Kalyan contended that the term 'producers' mentioned in section 11 of the Act represents both singular and plural. Interpretation to the term should be done in the light of section 13(2) of the General Clauses Act, 1897. Producers would include a single producer. Further, the respondent argued that it had the inherent statutory and equitable rights to fence its intellectual property. The geographical indication registration was acquired to make the public aware of the GI tag granted to puri produced by the trust (Kalyan) and to protect them from unauthorised sales. The product was rightly classified as foodstuff under section 2(1)(f) of the Act.

Kalyan further opposed the rectification application on the ground that section 9(a)

of the Act prohibited the registration of GI which would be likely to deceive or cause confusion and that in the case of puri, there was no such confusion and misleading the public. On the other hand, the rectification applicant failed to explain how the registered product would cause confusion. Kalyan argued that the essence of GI was not only to protect the interest of manufacturers but also that of consumers who were willing to pay more for a genuine product. The legislative intent was to protect the interest of the producers and general public from imitation and consequently with puri having a well known reputation, the producer (Kalyan) was having every right to fence the product by getting eligible intellectual property protection.

The Registry of Geographical Indications sent notice to both the parties. The rectification applicant led no evidence nor did he produce any document in his favour.

Based on the above, answer the following questions —

- (a) Whether the rectification applicant has the *locus standi* to institute the rectification proceedings against the registered geographical indication puri? Whether the rectification applicant is an aggrieved person? (10 marks)
- (b) Whether there was any violation of section 11 of the Act, in particular with reference to puri being produced by a single producer, Kalyan and whether puri falls under the definition of 'goods' as per section 2(1)(f) of the Act? (10 marks)
- (c) Whether the rectification applicant had established its case for rectification, particularly in the light of section 9(a) of the Act? (10 marks)

Answer 2(a)

The respondent/ registered proprietor (Kalyan) had raised its preliminary objections regarding the maintainability of the rectification application challenging the *locus standi* of the applicant. Under section 27(1) of the GI Act, 1999 read with Rule 65 of the Rules made there under, an aggrieved person alone has the right to file a rectification application with the Registrar or the Appellate Board, as the case may be. The section in particular authorises only 'an aggrieved person' to apply for cancelling or varying the registration of a geographical indication on the ground of any contravention or failure to observe the condition entered on the register in relation thereto by the holder of the GI. A person cannot file a rectification application challenging the registration of GI unless he can prove his grievances on account of the registration. In the present case the rectification applicant failed to establish as to how he was prejudiced by the registration of the GI. On the other hand, it is the duty of the rectification applicant to set out fully the nature of his interest in the registered product. The rectification applicant was unsuccessful in satisfying the tribunal on this issue of his interest towards the registered GI. From the averments made in the rectification application, it is apparent that the rectification applicant is a third party and not involved in the same trade or manufacturing a similar GI product. Therefore it can be safely concluded that the applicant "lacks standing" to bring an action of this nature and has also failed in proving his *locus standi* to seek a rectification in the registered GI. The issue is not in favour of the rectification applicant on the ground that he is not an aggrieved person and also not having any interest towards the registered GI.

Answer 2(b)

It has been alleged in the rectification application that sections 11(1) and 2(1)(f) of

the Act and Rules made there under were violated in the grant of GI to Kalyan, raising an issue that the respondent was the sole producer of the product and therefore it does not fall within the ambit of section 11(1). Under section 11(1) of the Act, any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the goods may make an application for GI registration. The respondent/registered proprietor is a statutory trust in the state of Andhra Pradesh and therefore falls within the scope of section 11(1) of the Act read with section 2(1)(k) thereof, as a 'person' and 'producer' and the said entity is entitled to make an application for GI registration for any product subject to proving that it represents the interest of producers of the particular product. The rectification applicant mentioned that granting of GI tag to Puri contravened the essential condition for grant of GI under section 11(1) of the GI Act. It further alleged that there was no industrial purpose served by the grant and that such grant shall result in monopoly to a single producer. According to the rectification applicant, Kalyan, being a single producer was not entitled to the grant of GI and that each and every person involved in the manufacturing of the product is deemed to be a producer of the product and that Puri is not manufactured by the efforts of a single person. It is a product emerging from the effort of employees of Kalyan and Kalyan represents the producers under section 11(1) of the Act.

The term 'producers' mentioned in Section 11(1) of the Act includes both its singular as well as plural form. The interpretation to the term should be done in the light of section 13(2) of The General Clauses Act, 1897 and thus read in that context Kalyan is eligible to apply for GI registration for its Puri under section 11(1) of the Act.

The rectification applicant has questioned the classification of Puri as goods under section 2(1)(f) of the Act. The said section defines 'Goods' as 'any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff. Thus in terms of the said definition, Puri falls within the definition of 'Goods' under section 2(1)(f) of the GI Act.

Answer 2(c)

Section 9(a) of the Act prohibits the registration of a GI which would be likely to deceive or cause confusion. In case of Puri there is no such confusion or deception of the public. The facts of the case also show that the rectification applicant failed to explain as to how the registered product will cause confusion in the mind of public. The essence of grant of right over GI is not only to protect the interest of manufacturers but also that of the consumers who are willing to pay more for a genuine product. The legislative intent is to protect the interests of the producer as well as the general public from any imitation of the product. Puri has a well known reputation and the producer has every right to fence the product by getting eligible Intellectual property protection.

Regarding the applicant's contention that production of Puri and grant of GI for Puri shall serve no industrial purpose for which the Act was brought into force, carries no force, as it is evident from the facts of the case that Puri was being manufactured by a large work force and was therefore serving an industrial purpose. As the skills involved were unique and particular to the place of origin (the area where the trust is located and the area where the culinary skills of the cooks exist having descended from their ancestors), grant of GI to Puri was done only after following the procedure established

by law and after the genuineness of the product was verified by duly appointed experts. GI is granted to an applicant only after he satisfies the requirements of section 11(1) of the Act. The Act does not prohibit the grant of monopoly in respect of a product; rather the intent is to grant the protection to a GI in order to protect the interest of manufacturer as also the customers against non-genuine products.

Therefore, it can be safely concluded that the rectification applicant has failed to establish his claim for rectification.

Question 3

List the kinds of restrictive practices used in the intellectual property licensing agreements. (5 marks)

Answer 3

Following are some of the restrictive practices mainly used in the intellectual property licensing agreements:

1. Restrictions after expiration of Industrial Property Rights or Loss of Secrecy of Technical know-how
2. Restrictions after Expiration of Arrangements
3. Restrictions on Research and Development
4. Non-Competition Clauses
5. Tie-in Arrangements
6. Export Restrictions
7. Price Fixing
8. Restrictions on Field of Use, Volume or Territory
9. Grant-back Provisions
10. Exclusive Sales and Representation Arrangements.

Question 4

"There is no legislation which explicitly refers to dispute resolution in connection with domain names. This, however, does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing-off." Discuss. (5 marks)

Answer 4

There is no legislation, which explicitly refers to dispute resolution in connection with domain names. Although the operation of the Trade Marks Act, 1999 itself is not extra territorial and may not allow for adequate protection of domain names, yet this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off. Passing off is a form of tortious action based on the object to protect the goodwill that a trader has in his name, unlike an action for infringement of a trademark where a trader's right based on property in the name as

such. The law of passing off applies whenever there is the prospect of confusion between marks or where there is the prospect of confusion of identity through the unauthorized use of similar marks.

The protection of domain names in India has been in some ways, a favourable one, because the Courts in India have been more patient towards the concept of providing legal protection to domain names as that to trademarks through the instrument of passing off. Domain names serve the same functions as a trademark, and are not mere addresses or like finding a number on the internet and therefore, it is entitled to equal protection as trademarks. Domain names are entitled to the protection as trademark and trade mark law applies to the activities on internet, and the mere fact that the petitioner has no registered domain name by itself may not stand in the way of passing off action.

Question 5

Copyright is a 'bundle of rights'. Elucidate.

(5 marks)

Answer 5

Copyright is not a single right, rather it consists of a bundle of different rights in the same work. It confers on its owners the rights to:

- (a) To reproduce the work
- (b) To issue copies of the work to the public
- (c) To perform the work in public
- (d) To communicate the work to public
- (e) To Make any translation of the work
- (f) To Make any adaptation of the work
- (g) To make any cinematograph film or sound recording in respect of the work
- (h) To prepare derivative works based upon the copyrighted work

In addition to the above rights which the holder of the Copyright enjoys in respect of his work, he is also entitled to protect any other person from any of the above mentioned rights without his assent. Further following moral rights are also enjoyed by the author or the copyright holder:

- a. The right of Publication
- b. The right of Paternity
- c. The right of Integrity

Question 6

"Laws relating to intellectual property and competition both are necessary for the efficient operation of the market place." In the light of this statement, explain the interface between intellectual property rights and competition. *(5 marks)*

Answer 6

It is generally believed that Intellectual Property protection and the Competition Law are odds with each other. This belief is based on the premise that while Intellectual Property law creates and protects monopoly power, the competition law seeks to exclude it. However, protection of IPR is not per se against the policy of sustaining competition at the market place. The objective of competition law is to prohibit anti-competitive practices and in that sense the objective of both the streams of law i.e. IPR and Competition law is to give a boost to the economy by maximising the wealth. While a sustained competition in the market place is necessary for the economy, the protection conferred by the IPR is necessary to foster innovation and choice of products in the market which infuses efficiency in the market and increases consumer welfare. In that sense both the regimes are necessary for the efficient operation of the marketplace. Intellectual property laws provide property rights comparable to those of other kinds of private property, thereby providing incentives for owners to invest in creating and developing intellectual property and encouraging the efficient use and dissemination of the property within the marketplace. Similarly, competition law is intended to enhance consumer welfare by promoting competitive markets and consumer choice.

Competition law and Intellectual Property law are closely linked, as intellectual property law rewards innovation by granting exclusive rights to its holder, the competition law ensures that there is an opportunity available to the new players to enter the market and render better products and services at a competitive price and thereby ensuring consumer welfare.

In most instances, competition and intellectual property laws can be seen as complementary, seeking to promote innovation to the benefit of consumers and the economy. However, in situations where intellectual property owners are in a position to exert substantial market power or to engage in anti-competitive conduct, the conflict between the two becomes apparent. In all such cases, the owners of intellectual property rights seek to extend the scope of their right beyond what is intended by the intellectual property Law. The key issue in all such cases therefore, is to find out an appropriate balance between the need to confer intellectual property rights and the need to promote competition in the market.

The major challenge for the authorities established under the competition law in such situations is how to minimize the anti-competitive effects of Intellectual Property Rights while respecting their existence and the societal goals they are meant to promote consumer welfare.

INTERNATIONAL BUSINESS LAWS AND PRACTICES (Elective Paper 9.5)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Capitalising on world trade

The twentieth century was full of economic, social and political revolutions. Never before had history witnessed such disparities in the economic development of nations. Within decades, the image of the world changed rapidly and radically in the early part of the twentieth century. The United States of America (USA) pushed Great Britain and France aside, emerging as the leading economic power. Later on, Germany came to dominate Europe and retained its position on and off until 1945. During the same period, mineral-rich USSR made serious efforts to become a strong economic power. Later in the 1950s and 1960s, the USA and USSR dominated the world. In 1960s and 1970s, Japan made its historic comeback, forcing the western powers to make way for her in the world's markets. In recent years, the two Asian giants – India and China are making their bid to become economic leaders in the twenty-first century.

Over the past three decades, China has emerged as an extreme example of the East Asian model of economic development. It emphasises upon a rapid rate of capital accumulation, drawing of under-utilised labour out of agriculture and the rapid upgrade of technologies to those available in more developed economies.

In the immediate aftermath of the global financial crisis, China was congratulated for the speed and magnitude of its economic stimulus, and many believed that it had emerged from the global downturn unscathed. China's accession of the WTO in 2001 has led to the introduction of more favourable FDI measures. With further liberalisation in the services sector, its investment environment was further enhanced.

On the other hand, the Indian economy had been suffering from low levels of investment, trade and growth. India's savings and investment rates were lower than those in the pre-crisis levels. India's manufacturing growth had been sluggish, affecting millions of young Indians entering the job market every year. Policy flip-flops and lack of reforms had also added to the unfavourable investment and business climate.

However, recently, Chinese economic growth has slowed and the continued weakness of the global economy has made it difficult to maintain the reliance on exports as a primary driver of growth. Further, the Chinese market ran up with unprecedented participation by the locals.

The China crisis has opened up new challenges for the Indian economy. The Indian economy requires FDI to fill the gap between domestic savings and investment and to boost productivity and investment-led growth. Although Indian FDI policy has

been progressive, inflows have been far lower than expected and lag behind those of competitors like China.

How should India react to this global shift in trade realities ? The good news is that India's economic growth at 7.2 per cent came in higher than China's in the April-June quarter of 2015. Index of Industrial Production (IIP) rose by 9.8 per cent in October, raising the average growth during April-October, 2015 to 5.8 per cent, compared to 2.2 per cent in 2014-15. Commercial vehicle sales, a leading economic indicator, have picked up since July, 2015 and passenger car sales have followed suit. Excise collections during April-October, 2015 have shot up by 34 per cent over last year and direct tax collections by 15 per cent, providing assurance on fiscal balance.

Inflationary pressures remain muted, with the WPI still in negative territory at – 3.2 per cent for April to November and CPI at 5.4 per cent in October and 4.7 per cent for past seven months, well within the RBI's target of 6 per cent by March, 2016. The report of the Boston Consulting Group (BCG) – Confederation of Indian Industry (CII) 14th Manufacturing Summit, ended on 21st September, 2015, shows that India's manufacturing growth outlook is strong due to the new government's 'Make in India' initiatives. The Indian economy under experts watch seems to be on the move, steadily but surely.

The Indian government has taken an excellent move immediately to grab the opportunity by calling an urgent meeting with industrialists, bankers and economists recently. The government has sent the right signal to the world that 'it means business'.

The world, particularly, the USA, has been the centre of attraction for both India and China since long. Its major strength is its unique combination of exceptional innovation capacity, larger control of world's resources and sophisticated businesses. Both countries want to grab the USA for each other's economic benefits. But the question is, how will India succeed ? To get the answer, economic ties between India, USA and China need to be highlighted here.

US – China trade relationship

US – China economic ties have expanded substantially over the past three decades. In 2014, total bilateral trade (exports plus imports) reached \$592 billion. China is currently the second-largest USA trading partner (after Canada), the third-largest US export market (after Canada and Mexico), and the largest source of US imports. According to the US – China Business Council, China was a \$350 billion market (2013) for US firms.

Despite growing commercial ties, bilateral economic relationship has become increasingly complex and often fraught with tension. Major areas of concern expressed by US policy-makers and stakeholders include China's relatively poor record of intellectual property rights (IPRs) enforcement and alleged widespread cyber economic espionage against US firms by Chinese government entities; mixed record on implementing its World Trade Organisation (WTO) obligations; extensive use of industrial policies (such as financial support of state-owned firms, trade and investment barriers, and on transfer of technology) in order to promote the development of industries favoured by the government and protect them from foreign competition. The recently signed Trans-Pacific Partnership (TPP), a mega regional trade agreement

hammered out by a group of 12 Pacific Rim nations led by the US, aims at side-stepping China.

China – India trade relationship

Trade and economic relationship has seen rapid progress in the last fifteen years where two countries have set a target of \$100 billion by 2015 for bilateral trade. China's projected exports to India have reached over \$55 billion.

However, despite the growth, the Sino-Indian relations will remain competitive. Both will attempt to acquire the power and status which will be suitable to their populations, geographical locations, their country's size, and so on. Furthermore, the emergence of both the States as great powers and economic giants in the twenty-first century is likely to result in significant new geo-political alignments. Both will try to enhance their presence in different parts of Asia and Africa. Moreover, the new economic prosperity and military strength of both the States will create new tensions as both will try to register their authority in different parts of the world, especially in South Asia, South-East Asia and Central Asia. At the strategic level, India will continue to expand the strength, scope and reach of its naval capabilities.

US – India trade relationship

US – India relationship is leaping forward. US investments in India have soared from a total of \$7.7 billion in 2004 to \$28 billion till the year 2014. Currently, the US is India's second-biggest trading partner, just a whisker behind the UAE. It accounts for 12 per cent of India's trade against the UAE's 12.1 per cent. On the other hand, Indian investment in the US has grown from over \$300 million to \$9 billion. Bilateral trade in goods and services has crossed the \$105 billion threshold, five times of what it was just a dozen years ago. At the 11th Indo-US Economic Summit, new initiatives were taken to reach the \$500 billion goal in the years to come.

There are some key factors that attract US to India. Firstly, India, the largest secular democracy in the world, is home to 1.21 billion people (i.e., about 17.4% of the world's population). Secondly, in terms of economics, India accounts for 2.5% of world GDP in US dollar terms and 5.5 per cent in purchasing power parity (PPP) terms. Thirdly, it has a middle class that is, by some counts, larger than the entire US population. It presents a huge market, an economy driven by internal consumption rather than exports. Fourthly, the projected economic growth is at 7 per cent plus. Fifthly, US is now the largest supplier of military hardware to India, replacing Russia. Lastly, labour force is cheaper in comparison to that in China.

What further puts off the US about India is its complex regulatory system and slow legal architecture. Further, India's new model bilateral investment promotion and protection agreement (BIPA), which is used as a reference for all treaty negotiations, states that international arbitration will follow only after all legal remedies have been exhausted in the domestic legal courts. It also makes it clear that international arbitration courts cannot re-examine any legal issue settled by the Indian courts. But, the US wants arbitration to be settled only in an international court as it considers the Indian legal system as time consuming, which fails to resolve differences.

The US has also objected to another clause in India's model BIPA, which states that any treaty shall not apply to 'government procurement, subsidies and grants'.

This has been done to prevent foreign companies from taking part in Indian government procurement meant for the small scale sector, as well as from gaining benefits of grants and subsidies meant specifically for certain categories of Indian firms.

India's move

Several initiatives have been taken by the Government of India recently to improve the country's business environment, unveiling several campaigns (such as Make in India to boost manufacturing; Skill India to equip Indians with vocational skills and Digital India). Few important initiatives are :

- 1. Infrastructure : Increased outlays, on both the roads and gross budgetary support to railways, by ₹10,031 crore and ₹10,050 crore respectively. The government intends to establish a National Investment and Infrastructure Fund (NIIFF) for infrastructure and Atal Innovation Mission (AIM) for innovation promotion platform.*
- 2. eBiz : This portal is a single-window system on the web for firms to navigate the documentation-related formalities of setting-up and managing a business in India. This will reduce the complexity and multiplicity of paperwork, as that is one of the major causes of 'red tape' in India.*
- 3. Labour laws : Few recent amendments to labour laws are expected to allow companies to hire more employees without having to fulfill weightily labour law requirements, as it is proposed that companies with 10-40 employees will now be exempt from provisions under labour laws.*
- 4. Taxation : A direct tax regime in the shape of GST has been proposed. Deferment of GAAR with its grand-fathering provisions, reduction of corporate tax from 30 per cent to 25 per cent over the next four years and proposals to rationalise tax structure send out a positive message that India is all for stable and predictable tax regime.*

What is reflecting ?

The good news is that FDI inflows have been continually increasing and also include big-ticket announcements. Experts who are closely watching the Indian economy since long are of the opinion on the indications of economic growth that 'India is shining in the world'. The year 2012 saw FDI inflows of ₹1.2 trillion, which went upto ₹1.3 trillion in 2013 and then to ₹1.75 trillion in 2014. During 2015, FDI is expected to be ₹2.4 trillion. The awfully delayed \$7.6 billion TAPI gas pipeline agreement was signed in December, 2015.

Based on the above, answer the following questions —

- (a) Explain various forms of FDI. Why are USA trade negotiators insisting India on 'free trade agreement' ? Does the bilateral investment promotion and protection agreement (BIPA) model of India act as a protectionist measure in international trade ? Justify your answer giving reasons. (10 marks)*
- (b) Discuss the direction of India-China trade. Do you think that the two giants of the developing world will move positively in the future ? Justify giving reasons. (10 marks)*

- (c) *"The Government of India has sent the right signal to the world that it means business." Critically evaluate the government initiatives in this regard.*
(10 marks)
- (d) *China's accession to WTO was the major event at the Doha Ministerial Conference at the turn of the century. Critically discuss the pros and cons of this accession for China.*
(10 marks)
- (e) *How can it be claimed that 'India is shining' in the global front ? Explain what attracts USA to India vis-a-vis China.*
(10 marks)

Answer 1(a)**Foreign Direct investments includes:**

- (a) Green Field Investments
- (b) Joint Ventures
- (c) Acquisitions

And Foreign Portfolio Investments which includes:

- (a) Global Depository Receipts & American Depository Receipts
- (b) Foreign Institutional Investors / Qualified FII
- (c) Foreign Currency Convertible Bonds

For a developing economy like India, Foreign Direct investment is more suitable as it helps generate additional economic activity and employment and recent policy initiatives are aimed at strengthening the investment regime in foreign direct investments through programs like Make in India / Sagarmala / Digital India/ Solar Initiatives/ Coastal Economic Zones and other infrastructure development initiatives.

US Policy makers feel that it is in their interest to seek Free Trade Agreement from India as :

- (a) India is rapidly growing and potential for US export expansion is very high.
- (b) US will gain more through FTA as they will have better access to Indian markets through significantly high import duty elimination in India.
- (c) India's import-GDP ratio is high. India have to imports capital intensive items to support its economic growth which includes atomic reactors/ plants and machinery/ engineering goods and defense equipments including ship equipments etc hence gains from FTA for US policy makers are higher than that for India.

India is interested in early conclusion of BIPA as enhanced investments will help India manage other two factor of production better which are 'labor' and 'land' and will result in improved economic activity and employment generation for India thus enabling it manufacture potential products for exports to US market.

Protectionism is any government action that distorts the global production and allocation of goods, services and capital to favor domestic producers, thereby reducing overall efficiency. The new model Bilateral Investment Protection Agreement (BIPA)

which is used as a reference for all treaty negotiations, states that international arbitration will follow only after all legal remedies have been exhausted in the domestic legal courts. It also makes it clear that international arbitration courts cannot re-examine any legal issue settled by Indian Courts. But the USA wants arbitration to be settled only in an international court as it considers the Indian legal system as time-consuming which fails to resolve differences. Another clause has been added to prevent foreign companies from taking part in Indian Government procurement meant for small scale sector as well as from gaining benefits of grants and subsidies meant specifically for certain categories of Indian firms.

Answer 1(b)

It is projected that the Sino-Indian bilateral trade would be the world's largest trading partnership by the year 2020.

It has been estimated that Sino-Indian bilateral trade would touch \$100 billion by 2015.

Relations between contemporary China and India have been characterized by border disputes, resulting in three military conflicts — the Sino-Indian War of 1962, the Cho La incident in 1967, and the 1987 Sino-Indian skirmish. However, since the late 1980s, both countries have successfully reignited diplomatic and economic ties. In 2008, China became India's largest trading partner and the two countries have also extended their strategic and military relations.

India faces trade imbalance heavily in favour of China. Both countries have steadily established military infrastructure along border areas. Additionally, India remains wary about China's strong strategic bilateral relations with Pakistan, while China has expressed concerns about Indian military and economic activities in the disputed South China Sea.

It can be asserted that despite improvement, the Sino-Indian relation will remain competitive. Both will attempt to acquire the power and status which will be suitable to their population, geographical location, their country's size, and so on. Furthermore, the emergence of both the states as great powers and economic giants in 21st century is likely to result in significance new geo-political alignments. Both will try to enhance their presence in different parts of Asia and Africa. Moreover, the new economic prosperity and military strength of both countries will create new tension as both will try to register their authority in different parts of the world, especially South Asia, South –East Asia and Central Asia. At the strategic level, India will continue to expand the strength, scope and reach of its naval capabilities. The growth of such capabilities will provide further reasons to China to be wary of Indian intentions. Further, so far as the Sino-Pak ties and its impact on Sino-Indian relations are concerned, it will also remain an important irritant in the Sino-Indian relations.

Answer 1(c)

The Indian Government has taken an excellent move immediately to grab the opportunities by calling an urgent meeting with industrialists, bankers and economists recently. With almost the full cabinet present, the Government has sent the right signal to the world that "it means BUSINESS".

Several initiatives have been taken by the Government recently to improve the

country's business environment, unveiling several campaigns (such as "Make in India"- to boost manufacturing; "Skill India" – to equip Indian with Vocational Skills, "Digital India", etc). Few important initiatives are:

- (i) *Infrastructure* : Increase outlays on Roads and the gross budgetary support to Railways by Rs. 10.031 Crores and Rs. 10.050 Crores respectively. The Government intends to establish a National Investment and Infrastructure Fund (NIIIF) for infrastructure and Atal Innovation Mission (AIM) for Innovation Promotion Platform.
- (ii) *eBiz* : This portal is a single-window system on the web for firms to navigate the documentation related formalities of setting and managing a business in India. This will reduce the complexity and multiplicity of paperwork, as it is one of the major causes of red tapism in India.
- (iii) *Labour Law* : The amendments to labour laws will allow companies to hire more employees without having to fulfill heavy labour law requirements as it is proposed that companies with 10-40 employees will now be exempt from provisions under labour laws.
- (iv) *Taxation* : A direct tax regime in the shape of GST has been proposed; GAAR has been deferred; reduction of corporate tax from 30 % to 25 % over the next 4 years and proposals to rationalization of tax structure sends out a positive message that India is far stable and predictable tax regime.

Answer 1(d)

In November 2001, China joined the WTO, a global institution that sets the rules for trade among nations. WTO membership obligates China to continue to reform its business environment, moving towards transparent, rule-based, enforcement- oriented standards. Some forecast that China could double its exports, gain an extra percentage point of economic growth for the decade and double its FDI stocks within the next 5 years.

China accession to WTO in year 2001 has been game changer for global trade system as China, banking on its manufacturing capabilities enhanced its exports significantly to world markets because:

- (a) WTO offers rule based and fair trade regime to Chinese exporters and business people.
- (b) Transparent and predicable trade policies of WTO helped Chinese to gain greater markets access in untapped markets of Africa, Asia and Iain America.
- (c) China garnered billions of dollars through trade which it invested back in mineral sectors thus importing low cost raw material for value addition and export from China.
- (d) Non-discriminatory dispute resolution with trading partners at low cost and time

With increased trade, China has increased economic status in global significantly in the last one and half decade.

FDI amounted to about 8% to 10 % of annualized gross fixed capital formation in China between 1998 and 2006, suggesting that FDI is an important source of economic

growth in China. The reason for this investment trend is obvious. With a population of more than 1.21 billion people, China represents the largest market in the world. Historically, import tariffs made it difficult to serve this market via exports, so FDI was required for a company if it wanted to tap into the country's huge potential. Furthermore, a combination of cheap labour and tax incentives, particularly for enterprises that establishes themselves in special economic zones, makes China an attractive base to serve Asian or World markets with exports.

Blinded by the size and potential of China's market, many firms may not have paid enough attention to the complexities of operating a business in China until after the investment purchasing power translates into relative weak markets for many western consumer goods.

Another problem is lack of a well-developed transportation infrastructure or distribution system outside the major urban areas. A shifting tax and regulatory regime, and a highly regulated environment can create problems in conducting business transactions.

However, the Chinese government is stimulating with various incentives to attract more FDI from the WTO member's network.

Answer 1(e)

As a sign of 'shining', the FDI inflow has been continually increasing and also include big ticket announcement to follow in coming years. The year 2012 saw FDI inflows of Rs. 1.2 trillion which went up to Rs. 1.3 trillion in the year 2013 and further to Rs 1.75 trillion in 2014. During the year 2015, the FDI is expected to be Rs. 2.4 trillion. A \$7.6 billion TAPI gas pipeline agreement was signed in December 2015. Some major global players are interested for setting businesses in India, among them China's Foxconn (\$2 billion), General Motors (\$ 1 billion), Airbus (\$2 billion), Russian Helicopters (\$ 700 million) are major announcements. Japan's bullet train project (\$15 billion) is another big investment worth waiting.

There are number of factors that attract USA to India, major factors are:

- (i) Population of India is 1.21 billion (about 17.4% of world population).
- (ii) India accounts for 2.5% of world GDP in US dollar term and 5.5% in purchasing power parity (PPP) terms.
- (iii) India has a middle class that is by some counts larger than the entire US population. It presents a huge market, an economy driven by internal consumption rather than exports.
- (iv) The projected economic growth at 7% + in the coming years is a centre of attraction.
- (v) America is now the largest supplier of military hardware to India replacing Russia.
- (vi) Stable government at the centre with strategic vision.
- (vii) US favors India for its democratic credential and foresee it as important force to counter-balance the growing weight of China in global order.

Factors discouraging the US towards China are:

- (i) China's relatively poor record of intellectual property rights (IPR) enforcement

and alleged widespread cyber economic espionage against the US firms by Chinese government entities.

- (ii) Mixed record of China on implementing its WTO obligations.
- (iii) Its extensive use of industrial policies (such as financial support of state-owned firms, trade and investment barriers and transfer of technology) to promote the development of industries favored and protected by government from Foreign competition.
- (iv) China is getting belligerent to all its major neighbors and its actions in South China Sea have made all major powers nervous of its future designs and actions.

Question 2

- (a) *Siemens' association with India goes back to 1867, when it played a key role in laying 11,000 Kms. long Indo-European telegraph line from London to Kolkata. Since then, it has been contributing in many ways in the country's growth story. Now it is looking at playing an active role in the government's 'smart city' project. Indicate few opportunities and threats that the company should consider.*
(5 marks)
- (b) *Comment on the recent ban on entry of several generic drugs manufactured by Indian pharmaceutical companies into the US market. What ethical issues may be involved in similar other cases ?*
(5 marks)
- (c) *You are the Company Secretary of Pavi Exports Ltd. The company was recently incorporated and has just started its operations in India. Mention in brief the process of registration of export operations to be followed by the company.*
(5 marks)
- (d) *"The TRIPS agreement runs counter to the neo-liberal arguments in favour of competition." Is this a fair assessment ? Justify your answer giving reasons.*
(5 marks)
- (e) *Birju, entrepreneur, a traditional handloom manufacturer of Varanasi, is desirous of international expansion. The entrepreneur has little knowledge of international markets. Which mode of entry should be adopted by him ? Give reasons.*
(5 marks)
- (f) *"The Indian industry must be able to show that dumped imports are causing or are threatening to cause material injury to the Indian domestic industry." Discuss by highlighting two major areas.*
(5 marks)

Answer 2(a)

Opportunities

1. The Government of India has a clear vision and road map for the economic reforms.
2. India is having a stable government; this project is a dream project of the present government at the centre.
3. Siemens India has a long history of associating with Indian market and has a good understanding of the nature of Indian Economy.

4. The share of manufacturing in India's GDP is likely to grow manifold in the coming years.
5. India is a big market for FDI investors.
6. There is a big consumer class in India and a strong potential future growth.
7. There is availability of young and skilled work force making it lucrative to make in India.

Threats

1. Siemens is not the only driver in the smart city project.
2. Competitors from Germany, France, Japan, South Korea, China, etc have also expressed their interest on the project.
3. The quality Control and supply chain management system is not effective in existing Indian cities.
4. Many Indian Cities are not having potential to expand territory.
5. Lack of integrated industry approach in India.
6. The political environment in India with an increase of regional political forces poses a threat for sustainable smooth operation

Answer 2(b)

There are so many causes behind the regular ban on the entry of several generic drugs manufactured by Indian Manufacturers. Earlier Ranbaxy had experienced the same issue. More recently, Dr. Reddy and Sun Pharmacy are on the US radar of scanning.

The U.S. government has made it mandatory for Active Pharmaceutical Ingredients (APIs) to be manufactured locally. The US Food and Drug Administration, has made it compulsory to the manufactures to provide information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of one or more human drugs. Some companies are cited for manipulating lab tests, as well as unjustified and unrecorded deviations from written lab mechanisms.

Further, scandals and bankruptcies in the US at companies like Enron and WorldCom Inc. have focused attention on the abuse of the power entrusted to executives by shareholders, employees and customers and they underscore the need for reforms to bolster business ethics. In addition, corruption is not inherent to any society, its reach is global. 15% of all companies in industrialized nations have to pay bribes to win or retain business.

Again, ethical issues in business have become more complicated because of the global and diversified nature of many large corporations. Social issue along with environment issue acts as a pro-catalyst in the process of Internationalization. These factors cannot be ignored while discussing on the regular ban of India's Pharmaceutical Products.

Answer 2(c)

Foreign trade is regulated in India and nodal agency regulating, promoting and

facilitating the foreign trade in India is Director General of foreign Trade. To start export-import business following registrations are required.

(i) *Registration with DGFT*

It is necessary to get registered with DGFT (Directorate general of Foreign Trade), Ministry of Commerce, Govt. of India. DGFT will provide a unique 10-digit code IEC number to Pavi exports Ltd. to carry out export-import activities.

(ii) *Registration with Export Promotion Council (EPC)*

Pavi exports Ltd. will have to obtain a Registration-cum-Membership Certificate (RCMC) from the EPC. An application with appropriate membership fee has to be submitted to the EPC. The RCMC is valid for 5 years from 1st April of the licensing year to the 31st March of the expiring year, unless otherwise specified.

In addition to this, for tax neutralization, following registrations are required:

- a. Excise Control code is issued by Central Excise department and as global practice "goods are exported; taxes are not" hence to neutralize the incidence of taxes at both input stage and output stage, Pavi Exports Ltd has to get register with Central Excise Department in their zone.
- b. Pavi Export Ltd should also get Services Tax registration from concerned zone so as to ensure neutralization/ refund of service tax at both input and output stage.
- c. Pavi Export Ltd. should also have VAT/ CST registration so as to neutralize the incidence of sales taxes for their export and import operations, following the two golden rules first, "goods are taxed, taxes are not" and second "goods are exported, taxes are not".

In addition to that, Pavi Export Ltd may have to register to domestic regulatory body such as FSSAI (in case of food business), BIS (engineering goods) seeds/ plants/ eatables (Plant quarantine) pharma (Drug Controller) etc. depending on nature of their business operations.

Answer 2(d)

TRIPs relate to trade related intellectual property rights (IPRs). The history of IPRs goes back to the Paris Convention for Protection of Industrial Property, 1883. References of IPRs were present in the GATT, 1947. The main features of TRIPs agreement are:

- (i) Minimum standards of Protection to be provided by each member
- (ii) Domestic Procedures and remedies for the enforcement of IPRs
- (iii) Dispute settlement between the WTO members

Yes, this is a fair assessment because the issue of harmonization of national and regional patent laws has been a contentious one for many decades, primarily because of the differing interests and priorities of developed and developing nations. While the former set of nations have consistently argued for several decades that national patent laws need to be harmonized, which in other words implies that there should be a 'one

size fits all' International Patent System; the latter set of nations argue that the International Patent System should have adequate flexibility so as to enable developing countries to adopt patent laws suited to their development needs. This shows that the TRIPs agreement runs against the tide of neo-liberal competition.

But while the WTO has been looking for ways to resolve the widely differing perceptions of its members over the framework for patent protection that must be accepted, the World Intellectual Property Organisation (WIPO) has been engaged in a parallel process of negotiations for harmonization of [patent laws in order to develop an International Patent System. This, however, is still to be finally concluded.

Answer 2(e)

Mode of International Business expansion is an international mechanism by which a firm expands its operations overseas. Various modes of expansion are broadly classified as (a) trade related; (b) Contractual and (c) investment mode.

In this case the entrepreneur has to use Trade related mode of international business expansion. The reason behind this choice is that financial requirements and resource commitment in Trade related mode is considerably less than other modes. This mode of International expansion is low risk expansion mode, highly suitable for simultaneous expansion in geographically diverse nations.

However, a firm has to substantially rely upon external agencies for its international expansion. Major forms of trade-related mode include exporting, piggybacking or complementary export, counter trade and e-channels.

In view of India's strength as a low-cost manufacturing hub, global retail chains are outsourcing a wide variety of products from India. These global retail chains not only provide a marketing outlet for Indian firms but also facilitate manufacturers of Indian goods to become globally competitive. Global retail chains, such as J.C. Penny and Target have set up their sourcing offices in India. Marks and Spencer's, the UK based retailer with over 540 stores in 30 countries has a sourcing centre in Bangalore.

Answer 2(f)

The Indian Industry must be able to show that dumped imports are causing and threatening to cause material injury to the Indian 'domestic industry'. Material retardation to the establishment of an industry is also regarded as injury. Sufficient evidence must be provided into two major areas:

- (i) *The Volume Effect* : The authority examines the volume of the dumped imports, including the extent to which there has been or is likely to be a significant increase in the volume of dumped imports, either in absolute terms or in relation to production or consumption in India and its affect on the domestic industry.
- (ii) *The Price Effect* : The effect of the dumped imports on prices in the Indian Market for similar articles including existence of price undercutting or the extent to which the dumped imports are causing price depression or preventing price increase for the goods which otherwise would have occurred. The consequent economic and financial impact of the dumped imports on the concerned Indian Industry can be demonstrated, *inter alia* by :
 - Decline in output

- Loss of sales
- Loss of market share
- Reduced profits
- Decline in productivity
- Decline in capital utilization
- Reduced return on Investments
- Price effects
- Adverse effect on cash flow, inventories, employment, wages, growth, etc.

Thus, injury analysis is a detailed and intricate examination of all the relevant factors. It is not necessary that all the factors concerned relevant should individually show injury to the domestic industry.

Question 3

What would be the best transportation mode for the following :

- (a) *Frozen vegetables*
- (b) *High volume compact bio-medical equipment*

Give reasons in support of your answer.

(5 marks)

Answer 3(a)

Frozen vegetables are perishable commodities and daily consumable items. The distributor has to drop the packets at the door steps of each vender. Hence the best suggested transport mode would be Road (Truck).

Further, road is a frequently used transportation mode of the transportation companies. This mode facilitates scheduled delivery, days and next day delivery services, etc. Goods are packed or grouped in box vans or in containers.

Few other advantages for using this mode in transportation of frozen vegetables are— cost effectiveness, faster delivery, ideal for short distances, refrigerated vans can be easily used for transportation, easy to monitor location of goods, etc.

If the goods are to be traded internationally, for frozen vegetables, the best mode of transport will be air transportation.

Answer 3(b)

High volume compact biomedical equipments have a dense structure or part or units closely packed or joined. These products need high security while carrying and are costly products. These products also need smoother mode of transportation. Air transport mode is most suitable for such type of products, this has an advantage of fast delivery, ideal for costly products, lesser inventory, improved service levels, etc.

Question 4

In view of the problems associated with developing countries like India, critically evaluate various trade policy options and their suitability in promoting economic growth.

(5 marks)

Answer 4

There exists a huge gap in per capita income between developed and developing countries. Most of the world's population lives in the countries that are considerably poor. Efforts to bridge the income gap between developed and developing nations, to raise living standards by increasing income levels and to cope with the uneven development in the domestic countries. With low production base and constraints in value addition. Most developing countries remain marginal players in international trade.

To address all these challenges, developing countries like India should follow following trade policy instruments:

- (a) *Attract investment for value addition in their primary sector* - This opens up fields of action for macroeconomic policy which range from investment incentives in general to specific incentives for investment in tradeable or non-tradeable sectors.
- (b) *Develop trade infrastructure so as to create economic efficiency in system thus making goods available at low costs*
- (c) *Negotiate more trade options rather than foreign aid* – Its better to seek trading options with a country than to seek foreign trade for continuous and repeat business and economic upliftment.
- (d) *Negotiate preferential market access in areas of strengths.*
- (e) *Build partnership with shared interests*
- (f) *Enhance skill level of people for service sector growth and services exports*
- (g) *Effective Utilization of Resources* : Better utilization of existing resources can boost the economy better than exporting natural resources in raw form.
- (h) *Import quotas* : An import quota always raises the domestic price of the imported good.
- (i) *Local Content Requirement* : Local content laws have been widely used by developing countries trying to shift their manufacturing base from assembly into intermediate goods.

Question 5

You are the Company Secretary of Shine Ltd., which is planning to enter into a joint venture with Glamour Ltd. (based in Singapore) for marketing and selling a new product launched by your company.

Advise your company on the principal matters which should be dealt with comprehensively while negotiating the joint venture agreement. (5 marks)

Answer 5

While negotiating definitive Joint venture agreement, the following matters should be dealt with comprehensively:

- (i) *Purpose of Joint Venture* : A well defined objective being a crucial issue in the

agreement, parties must take into account the scope and size of joint venture business, management and operational responsibilities of parties, decision-making process, terms of any ancillary agreement between joint venture and either of the parties.

- (ii) *Contribution of Parties* : Refers to the respective contribution, both tangible and intangible, of the parties.
- (iii) *Capital Structure* : To avoid any dispute concerning return on invested capital, management, control and administration of the enterprise.
- (iv) *Management, Control and Administration* : The parties must strike a balance between the powers and rights of the parties and the BOD.
- (v) *Governance* : The BOD should comprise of an odd number of Directors/
- (vi) *Allocation of risks and rewards* : Covering dividends distribution, capital calls and allocation of losses.
- (vii) *Alternative dispute Resolution Provision and Deadlock Provisions* : Setting forth detailed provisions and procedures for mediation and arbitration
- (viii) *Termination of Joint Venture* : It lasts as long as parties continue in business.
- (ix) *Issue of further capital* : In order to maintain the proportion of capital contributed by the parties, further issue of capital has to be strictly regulated.
- (x) *Operational Issue* : Like borrowing of Capital, Expansion and diversification of business of Joint Venture, dividend policy, investment by the joint venture in the purchase of the companies need to be clearly spelt out.
- (xi) *Regulatory Issues* : To address issues like export and import controls, corrupt practices, handling / compliance as per law, etc.
- (xii) *Ownership Transfer* : Provisions relating to restrictions on the transferability of ownership
- (xiii) *Governing Language* : The agreement is written in the language of both the parties, one language should be designated to prevail in case of any alleged inconsistency between documents and their translations.
- (xiv) *Restrictive Covenants* : Like restricting a former employee to work for a specific time and within a specific area, non-competition provisions, non-disparagement, confidentiality, etc.
- (xv) *Intellectual Property Provisions* : Delineate all rights to IP, technology, software and the like.

Question 6

The trends in business world indicate that strategic alliances have not always yielded desired results. Mention the risks and problems that need to be analysed to pave way for the success of strategic alliances. (5 marks)

Answer 6

The following are the risks and problems resulting in the failure of Strategic Alliance that need to be analysed:

- (i) *Clash of cultures* : Cultural problems consisting of language, egos, chauvinism, attitude, etc.

- (ii) *Lack of Trust* : Results in despondent relationship, misunderstandings, doubt and suspicion.
- (iii) *Lack of clear goals and objectives* : Dis-similar objectives, inability to share risks, lack of trust, etc lead to an early alliance demise.
- (iv) *Lack of coordination between management team* : It can prove disruptive, especially at instances where companies remain competitors in spite of their strategic alliances.
- (v) *Difference in Operating procedures and attitude among partners* : The problem may occur where a company may deliver its goods behind schedule or do a bad job producing the goods or services.
- (vi) *Relational Risk* : where partner firms lack commitment to thje alliance, their opportunistic behavior causes undermining the prospect of alliance.
- (vii) *Performance Risk* : Sources of performance risks may be environmental factors, government policy change, war, epidemic, lack of competence in critical area or sheer bad luck, etc.
- (viii) *Livelihood of a future local or Global Competitor* : A partner might use the alliance to test a market and prepare the launch of wholly owned subsidy.
