

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

JUNE 2019

MODULE 3



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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

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

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PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2019

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 2019-20, unless stated otherwise.

3. Working notes should form part of the answer.

PART A

Question 1

(a) Miss, Nargis, purchased a residential house property in Jaipur for ₹1,20,000 on 15th May, 1975. She further incurred expenses on additions/alteration and modification in respect of the said house property in different years, details of which are :

Particulars of Expenses	Amount (₹)
(a) Construction of a first floor in the F.Y. 1982-83	3,50,000
(b) Construction of a second floor in the F.Y. 2002-03	9,50,000
(c) Modification/alteration/addition in the F.Y. 2012-13	6,00,000

The house property was sold by her on 20th August, 2018 for ₹80,00,000 and the expenses incurred on transfer were of ₹50,000. The value assessed by the stamp valuation authority on the date of sale was of ₹85,00,000. The fair market value of the house property determined as on 1st April, 2001 was ₹12,50,000.

Compute the amount of capital gains chargeable to tax for the assessment year 2019-20. The cost inflation indices for various years are :

Financial Year	Cost Inflation Index
2001-02	100
2002-03	105
2012-13	200
2018-19	280

(5 marks)

(b) (i) The control and management of the business done by Siddharth-HUF is located in London and all policy decisions are being taken therefrom. Mr. Siddharth, the karta of the HUF, born in Jaipur, visited India during the previous year 2018-19 after a gap of 15 years. He came to India on 1st April, 2018 and left for London via Dubai on 30th Nov., 2018.

Determine the residential status of Mr. Siddharth and Siddharth-HUF for the A.Y. 2019-20. (3 marks)

(ii) Explain with brief reasons as per provisions contained under the Income-tax Act, 1961, whether the interest of ₹5,00,000 paid to Mr. John, a non-resident (resident of UK) in the month of February, 2019 by Mr. Smith, a

non-resident (resident of USA) on the money borrowed of ₹50,00,000 for the purpose of doing business in garments at Mumbai shall be subject to tax in India in the hands of Mr. John for the Asst. Year 2019-20. (2 marks)

(c) (i) *Kwatra, a non-resident, made an application to the Authority for Advance Rulings (AAR) on 2nd July, 2018 in relation to a transaction proposed to be undertaken by him. He decided on 31st August, 2018 to withdraw the said application. Can he withdraw the application on 31st August, 2018 ?*

(3 marks)

(ii) *When can an advance ruling pronounced by the Authority for Advance Rulings be declared to be void ?*

(2 marks)

Answer 1(a)

Computation of Capital Gains for AY 2019-20

<i>Particulars</i>	<i>Amount (₹)</i>	<i>Amount (₹)</i>
Gross sale consideration is taken as per section 50C of Income Tax, 1961 which is the value assessed by the stamp valuation authority being the same is higher than the actual consideration on transfer		85,00,000
Less : Expenses on transfer		(50,000)
Net Sale Consideration		84,50,000
Less : Indexed cost of acquisition (Note-(i))		(35,00,000)
Less : Indexed cost of improvement (Note-ii)		(33,73,333)
Long-term Capital Gain		15,76,667

Working Notes:

(i) Fair market value on 1st April, 2001 of ₹12,50,000 is to be taken as the cost of acquisition for the house property as the same is higher than the actual cost of acquisition incurred as on 15th May, 1975. The indexed cost of acquisition thus shall be : ₹12,50,000 x 280/100 = ₹35,00,000

(ii) Indexed cost of improvement is determined as under :

<i>Particulars of Expenses on improvement</i>	<i>Amount (₹)</i>
Construction of first floor in 1982-83* (Expenses incurred prior to 1st April, 2001 is to be ignored whether the assessee opts for the fair market value as on 01.04.2001 or not.	Nil
Construction of second floor in the year 2002-03 (₹9,50,000 x 280/105)	25,33,333
Alteration/modification/addition in the year 2012-13 (₹6,00,000 x 280/200)	8,40,000
Indexed cost of improvement	33,73,333

*(since FMV as on 1st April, 2001 is adjusted, any cost incurred prior to this date must be ignored)

Answer 1(b)(i)

Determination of Residential Status of Mr. Siddharth u/s 6(1) & 6(6) of the Income Tax Act, 1961.

During the previous year 2018-19, Mr. Siddharth, the karta of HUF, has stayed in India in total for (30+31+30+31+31+30+31+30) 244 days and will be treated as resident in India for the previous year 2018-19. However, since he has come to India only after a period of 15 years, he does not satisfy any of the conditions for being ordinarily resident.

Therefore, the residential status of Mr. Siddharth, the karta of HUF, for the previous year 2018-19 relevant to assessment year 2019-20 shall be "Resident but not Ordinarily Resident".

The control & management of affairs of Siddharth HUF is situated wholly outside India (i.e. in London) during PY 2018-19. Therefore, the status of the Siddharth-HUF for the previous year 2018-19 relevant to assessment year 2019-20 shall be a Non-Resident.

Answer 1(b)(ii)

Taxability of Interest Income in Non-Resident's hands : As per section 9(1)(v)(c) of the Income Tax Act, 1961, interest payable by a non-resident on moneys borrowed and used for the purposes of business carried on by such person in India shall be deemed to accrue or arise in India in the hands of the recipient.

Therefore, the interest of ₹5,00,000 paid to Mr. John a non-resident shall be deemed to accrue or arise in India and be subject to tax in the hands of Mr. John for the assessment year 2019-20.

Answer 1(c)(i)

Withdrawal of Application filed before AAR: Section 245Q(3) of the Income-tax Act, 1961 provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application.

Since more than 30 days have elapsed from the date of application filed by Kwatra to the authority for advance rulings, he cannot withdraw the application on 31st August, 2018.

However, the authority for advance rulings (AAR) in M K Jain AAR No. 644 of 2004, has observed that though section 245Q(3) provides that an application may be withdrawn by the applicant within 30 days from the date of the application, the AAR is not precluded from being permitted to withdraw the application after the period of 30 days only where the circumstances so justify.

Answer 1(c)(ii)

As per section 245T of the Income Tax Act, 1961, an advance ruling can be declared to be void ab initio by the Authority for Advance Ruling if, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, it finds that the ruling has been obtained by fraud or misrepresentation of facts. Thereafter, all the provisions of the Act will apply as if no such advance ruling has been made.

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

- (a) Explain with brief reason as to allowability as per the provisions of the Income-tax Act, 1961 of the following payments made during the year while computing income from business or profession for the Assessment Year 2019-20 :
- (i) Purchase of oil-seeds of ₹70,000 by Arun Oil Company from a farmer on 16th August, 2018 by making payment in cash. (2 marks)
- (ii) Tax of ₹25,000 paid on the non-monetary perquisite provided to the employees by Hotel Samode Palace. (2 marks)
- (iii) Salary payment of ₹2,00,000 made outside India by XYZ Ltd., an Indian company, to Ram without deduction of tax at source. (1 mark)
- (b) Explain the term "Advance Pricing Agreement" as specified under section 92CC of the Income-tax Act, 1961. State the purpose and validity of the same. Who are bound by Advance Pricing Agreement ? (5 marks)
- (c) Mr. Pankaj, a resident, aged 58, neither working as a salaried employee, nor doing any business or carrying on any profession, had the following receipts during the P. Y. 2018-19 :

Particulars of Income	Amount (₹)
(i) Directors fee received from a Company	20,000
(ii) Interest on FDRs of Bank	32,000
(iii) Amount credited in bank of which source is not known to him	20,000
(iv) Net amount of winnings from lotteries	70,000
(v) Royalty received on a poetry book written by him for which an amount of ₹1,000 was spent on typing of manuscript	13,000
(vi) Interest received on loan given to a relative	5,000
(vii) Interest on Post Office Savings Bank Account	1,500
(viii) Interest on Monthly Income Scheme of Post Office	63,000

Compute the income chargeable to tax under the respective heads of income for the Asst. Year 2019-20.

Notes : 1. Computation of gross total income will suffice.

2. Computation of tax is NOT required. (5 marks)

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

- (i) Explain by giving brief reasons, whether the following statements are true or false, with regard to the provisions contained in Income-tax Act, 1961 :
- (a) Payment made through a cheque duly crossed as "& Co" in respect of a business expenditure incurred on 16th Feb., 2019 for ₹45,000 is not hit by the provisions of section 40A(3). (2 marks)
- (b) It is a mandatory condition to write off the amount due from debtor in the books of accounts to claim deduction thereof as bad debt. (2 marks)

(c) Failure to deduct tax at source in accordance with the provisions of Chapter XVII-B from the amounts payable to a resident as rent or royalty will not result in disallowance of the expenditure thereof while computing the business income, where the resident payee has also not paid the tax due on such income. (1 mark)

(ii) Mr. Ramesh, a non-resident Indian acquired/purchased shares of a company XYZ Ltd. in foreign currency on 1st Jan., 2008 for ₹10,00,000. These shares were sold by him in the recognized stock exchange through a broker on 1st Jan., 2018 for ₹30,00,000.

The amount of sales consideration of the shares of ₹30,00,000 so received by him was re-invested in purchase of shares of other company ABC Ltd. on 30th March, 2018.

The shares of ABC Ltd. purchased on 30th March, 2018 were also sold by him on 30th June, 2018 for ₹35,50,000.

Discuss the tax implications relating to the two transactions of sales of the shares in the relevant assessment years under the Income-tax Act, 1961. The assessment years involved, must be clearly stated in your answer. (5 marks)

(iii) Compute the book profit of company A Ltd. using the following summarised details of profit and loss account for the year ended 31st March, 2019 :

Sl. No.	Particulars	Debit side ₹(in lakh)	Particulars	Credit side ₹(in lakh)
1	Purchases	37	Sales	90
2	Depreciation (normal)	6	Withdrawal from reserve created in 2006 by debiting profit and loss account	10
3	Depreciation because of revaluation	4	Withdrawal from reserve created in the year 2000 without debiting profit and loss account	9
4	Other expenses	5	Withdrawal from revaluation reserve	4
5	Net profit	61		
	Total	113	Total	113

(5 marks)

Answer 2(a)

(i) Allowable as Deduction : As per Rule 6DD of the Income Tax Rules, 1962, in case the payment is made for purchase of agricultural produce directly to the cultivator, grower or producer of such agricultural produce, no disallowance under

section 40A(3) is attracted even though the cash payment for the expenses exceeds ₹10,000.

Therefore, in the given case, disallowance under section 40A(3) is not attracted since the cash payment for purchase of oil seeds made on 16th August, 2018 was directly to the farmer and is allowable as deduction while computing income from business or profession for the AY 2019-20.

- (ii) *Not allowable as Deduction* : Income-tax of ₹25,000 paid by the employer in respect of non-monetary perquisites provided to its employees is exempt in the hands of the employees under section 10(10CC) of the Income Tax Act, 1961. Therefore, as per section 40(a)(v) of the Income Tax Act, 1961 such income-tax paid by the employer is not deductible while computing income from business or profession.
- (iii) *Not allowable as Deduction* : As per section 40(a)(iii) of the Income Tax Act, 1961, salary paid outside India without deduction of Tax is not allowed as deduction. Therefore payment of salary to Ram outside India without deduction of Tax is disallowed as deduction.

Answer 2(b)

Advance Pricing Agreement : Section 92CC of the Income Tax Act, 1961, was inserted by the Finance Act, 2012 with effect from 1st July, 2012 to provide a frame work for advance pricing agreement (APA) under the Income Tax Act, 1961.

Advance Pricing Agreement (APA) is an agreement between a tax payer and Tax Authority on an appropriate transfer pricing method for a set of international transactions to be entered into by such tax payer over a fixed period of time. The CBDT has been empowered to enter into an advance pricing agreement with any person.

The purpose of advance pricing agreement is to decide about the arm's length price or decide the methodology by which arm's length price shall be computed. The advance pricing agreement shall be valid for the period specified in the agreement which shall not exceed 5 consecutive previous year.

The advance pricing agreement will be binding only on the person and the Tax Authority in respect of transactions in relation to which the agreement has been made.

Answer 2(c)

Computation of Gross Total Income of Mr. Pankaj for AY 2019-20

<i>Particulars</i>	<i>Amount (₹)</i>	<i>Amount (₹)</i>
Income under the head other sources		
Director's fees received from a company		20,000
Interest on Bank FDRs *		32,000
Amount credited in the bank of which source is not known taken as income from undisclosed source		20,000

Net amount of winning from lotteries of ₹70,000 to be grossed up with the amount of TDS-Net received	70,000	
Add : TDS out of such payment (70,000*30/70)	30,000	1,00,000
Royalty on poetry book written	13,000	
Less : Expenses incurred on typing	(1,000)	12,000
Interest on loan given to a relative		5,000
Interest of ₹1500 on Post Office Savings Bank [exempt under section 10(15)]		Nil
Interest on Post Office monthly income scheme		63,000
Gross Total Income		2,52,000

Answer 2(A)(i)

- (a) *False* : As per section 40A(3) of the Income Tax Act, 1961, Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.

In the present case, the payment of ₹35,000 made by cheque crossed as “& Co” will not be allowable. The same will be disallowed u/s 40A(3) of the Income tax Act, 1961 as the cheque is not crossed as account payee.

- (b) *True* : It is mandatory to write off the amount due from debtor as not receivable in the books of account, in order to claim the same as bad debt u/s 36(1) (vii) of the Income Tax Act, 1961.

However, where the debt has been taken into account in computing the income of the assessee on the basis of ICDSs notified under section 145(2) of the Income Tax Act, 1961, without recording the same in the accounts, then such debt shall be allowed in the previous year in which such debt becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the said purpose.

- (c) *False* : Section 40(a)(ia) of the Income Tax Act, 1961, provides that failure to deduct tax at source for rent or royalty payable to a resident in accordance with the provisions of Chapter XVII-B will result in disallowance of an amount of 30% of such expenditure, where the resident payee has not paid the tax due on such income.

Answer 2(A)(ii)

The shares purchased in foreign currency in the year 2008 were sold after a period of nine years i.e. in the previous year 2017-18 and thus were held for more than 12 months and accordingly gain on sale of such shares is a long term capital of the specified assets acquired in foreign exchange.

Such shares since were purchased by the non-resident Indian in foreign currency and the sale consideration so received was invested within a period of six month in the specified assets being shares, therefore, the gain on sale of shares in the previous year 2017-18 is exempt u/s 115F of the Income Tax Act, 1961.

Long Term Capital Gain for AY 2018-19

<i>Particulars</i>	<i>Amount (₹)</i>
Sale Consideration of Shares of XYZ Ltd.	30,00,000
<i>Less</i> : Cost of Acquisition	(10,00,000)
Long Term Capital Gain	20,00,000
<i>Less</i> : Exemption u/s 115F	(20,00,000)
Long Term Capital Gain	Nil

Long Term Capital Gain "LTCG" for AY 2019-20

- 1) LTCG of ₹20,00,000 on the sale of shares purchased in foreign currency by Mr. Ramesh exempt in AY 2018-19 shall become taxable in AY 2019-20 as the shares of ABC Ltd. purchased on 30.03.2018 were sold on 30.06.2018 within a period of three month and were not held as required u/s 115F(2) for a period of three year. Therefore, LTCG of ₹ 20,00,000 shall be subject to tax in AY 2019-20.
- 2) The STCG of ₹5,50,000 (₹35,50,000 – ₹30,00,000) realized on 30.06.2018 shall also be subject to tax in AY 2019-20.

Answer 2(A)(iii)

Computation of Book Profit of A Ltd.

<i>Particulars</i>	<i>Amount (₹) in Lakh</i>
Net Profit as per P&L Account	61
<i>Add</i> : Total Depreciation debited to P&L A/c (6 lakhs + 4 Lakhs) (Note i)	10
<i>Less</i> : Withdrawal from reserve (Note ii)	(10)
<i>Less</i> : Normal Depreciation (Note iii)	(6)
<i>Less</i> : Withdrawal from revaluation reserve (Note iv)	(4)
Book Profit	51

Notes:

- i. Total Depreciation debited i.e. normal as well as extra because of revaluation has to be added.
- ii. Withdrawal from reserve which was initially created by debiting P&L account has to be reduced.
- iii. Normal depreciation (excluding depreciation because of revaluation) has to be deducted.
- iv. Withdrawal from revaluation reserve (not exceeding revaluation depreciation) has to be deducted.

PART B**Question 3**

- (a) Examine the following independent transactions/activities in accordance with the provisions contained under in the CGST Act, 2017 and state in brief whether the same constitute “Supply” under the said Act :
- (i) Arya Pvt. Ltd. entered into a hire purchase agreement for ₹20 lakhs with Anu Machines Pvt. Ltd. for supply of a heavy duty machine unit.
 - (ii) Asha got a LED TV of 52 inches from Sony Electronics Stores in exchange, for her old 52 inches TV.
 - (iii) M/s Bharat Electronics disposed scrap part of its electric unit to a scrap dealer in the normal course of business.
 - (iv) Mr. Babu Lal borrows an amount of ₹1,50,000 from one of his relatives Mr. Shyam Lal and agrees to repay the entire amount of ₹1,50,000 after a year.
 - (v) M/s Raj Enterprises applied for a loan from State Bank of India against which loan processing fees and interest are charged by the bank.

(1×5=5 marks)

- (b) From the following information, compute the SGST/CGST/IGST payable for the month of April, 2018 :

(1) Sales of mixers of grinders within the State (taxable value)	2,20,00,000
(2) Sales of mixers of grinders outside the State (taxable value)	1,40,00,000
(3) Value excluding taxes of steel jars supplied free to buyers, as per promotion scheme for sales outside the state	7,00,000
(4) Cash incentive given to dealers outside the State for achieving target during the year 2017-18	3,28,000
(5) Taxable value of supplies of parts, made free to fulfill warranty obligations	1,50,000
(6) Late payment penalty collected from dealers for delayed payments (intra-State only)	50,000

(5 marks)

- (c) Harry has rented his building consisting of ground floor, first and second floors. The building is located in a residential complex. The ground floor is rented out for the purpose of residence to B. The first and second floors have been rented out for providing commercial coaching to the same person B. Harry charges a lump-sum amount of ₹1 lakh as rent from B. Renting of immovable property for residential purposes is exempted and for commercial purposes attracts 18%.

Is Harry liable to pay GST and if yes, what would be the value on which tax has to be paid, say for the month of April, 2018 ? Would your answer be different, if the rent for residential purposes is ₹25,000 and the rent for commercial purposes is ₹75,000 per month ? Harry has effects other taxable supplies also.

(5 marks)

- (d) Compute the total customs duties and integrated tax payable based on the following information :

Sl. No.	Particulars	US \$
(i)	FOB value of solar cells	1,000
(ii)	Freight from the exporting country	250
(iii)	Insurance	10
(iv)	Buying commission	50
(v)	Date of filing bill of entry 20th Jan., 2019 (Rate BCD 5%, Safeguard duty 70%,	
(vi)	Exchange rate notified by RBI ₹70.05 and by CBIC ₹70 (for 1 USD) on the date of presentation of bill of entry.	

(5 marks)

- (e) PQR Ltd., of Mumbai having its business activities spread over different places/locations in India provides the following particulars/details of its GST liabilities for the quarter ended on 30th Sept., 2018 : (The balance in Electronic Cash Ledger available with PQR Ltd. was of ₹6,25,000) :

S. No.	Particulars	Amount (₹)
(1)	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to July, 2018.	6,00,000
(2)	Demand raised as per the old provisions of Indirect Taxes being applicable on PQR Ltd.	1,10,000
(3)	Tax liability of CGST, SGST/UGST, IGST for supplies made during August, 2018.	1,25,000
(4)	Interest & Penalty on delayed payment and filing of returns belonging to August, 2018.	20,000
(5)	Tax liability of CGST, SGST/UGST, IGST for supplies made during September, 2018.	1,50,000
(6)	Interest & Penalty on delayed payment and filing of returns belonging to September, 2018.	25,000

Suggest the manner in which the company can utilise the balance amount available in the Electronic Cash Ledger for discharging the tax liability.

(5 marks)

Answer 3(a)

- (i) Hire purchase involves transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration, as per schedule II read with section 7 of CGST Act, 2017 and thus be classified as supply of goods.
- (ii) The supply of LED TV in exchange of old TV falls under the scope of supply u/s 7 of the CGST Act, 2017 for Sony Electronics store. But the supply of old TV

by Asha shall be included under scope of supply only if in the course or furtherance of her business.

- (iii) The disposal of scrap part of electric unit to the scrap dealer is in the normal course or furtherance of business of M/s Bharat Electronics and thus shall be considered as supply.
- (iv) The activity of borrowing from a relative is without any charge of interest and hence it will be considered as merely a transaction in money and shall not be treated as supply.
- (v) The activity of borrowing loan amount for which a consideration in form of processing fee has been charged by State Bank of India shall be considered as supply of service.

Answer 3(b)

S. No.	Particulars	Amount in ₹	CGST payable ₹	SGST payable ₹	IGST payable ₹
1	Sales of mixers of grinders within the State (Note 1)	2,20,00,000	19,80,000	19,80,000	
2	Sales of mixers of grinders outside the State (Note 1)	1,40,00,000			25,20,000
3	Steel jars supplied free to buyers of mixers as per promotion scheme for sales outside the State (Note 2)	7,00,000			
4	Cash incentive given to dealers outside the State for achieving target during the year 2017-18 (Note 3)	3,28,000			
5	Supplies of parts made free to fulfill warranty obligations (Note 4)	1,50,000			
6	Late payment penalty collected from dealers for delayed payments (intra-State only) (Note 5)	50,000	4,500	4,500	
Total tax payable			19,84,500	19,84,500	25,20,000

Notes:

1. GST tax rate on mixers of grinders is assumed to be 18%.
2. Activities without consideration shall be treated as supply for cases covered under Schedule I read with section 7 of the CGST Act, 2017. In this case jars have been supplied free to customers to promote the sale. Hence, not taxable subject to input tax credit on the inward supply of such jars has been blocked as provided under section 17(5)(h) of the CGST Act, 2017.

3. In the absence of prior understanding about the discount (though called incentive), it is not deductible from the value. Moreover incentive is not linked to each invoice.
4. Supplies of parts made free to fulfill warranty obligations are not considered free supplies since the value of supply made earlier includes the charges to be incurred during the warranty period, hence no GST is chargeable on such replacements.
5. Penalty, late fee or interest collected from the recipients is includible in consideration for tax purposes as per the provisions of Section 15(2)(d) of CGST Act, 2017.

Answer 3(c)

Even though the building is part of residential complex, it has partly been used for commercial purpose. As the rents for residential purpose and commercial purpose have not been segregated and no break-up is available, the supply is a mixed supply as per the GST law.

In the case of mixed supply, the supply that attracts the highest rate of tax that is commercial renting would be applicable on the entire amount of ₹1 lakh.

Therefore, Harry would be liable to pay ₹18,000 towards GST ($₹1,00,000 \times 18\%$).

If rent for the residential purpose is separately charged and the rent for commercial purpose is also charged separately, even if such charges are collected from a single person, the rent for immovable property rented out for residential purpose is exempt and would not attract the levy of GST.

It will suffice if GST is paid on the rent for the portion used for commercial purpose which comes to ₹13,500 ($₹75,000 \times 18\%$).

Answer 3(d)**Computation of customs duty and integrated tax payable**

<i>Particulars</i>	<i>Amount (US \$)</i>
FOB value of solar cells	1,000
Freight from the exporting country [Note 1]	200
Insurance	10
Buying commission [Note 2]	-
CIF Value	1,210
	<i>Amount (₹)</i>
CIF Value (1210*70) [Note 3]	84,700
Basic Customs Duty 5% [Note 4] (A)	4,235
Safeguard duty 70% [Note 5] (B)	59,290
Social welfare surcharge [Note 6] (C)	423.5
Total	1,48,648.5
Integrated tax leviable at 5% (1,48,648.5*5%) [Note 7] (D)	7,432.4
Total Customs duty payable (rounded off) [A+B+C+D]	71,381

Notes :

1. Actual freight incurred or 20% whichever is less has to be adopted when the import is by air (Assumed). If it is assumed that goods are imported by any mode other than by air then full value of freight US \$ 250 shall be included in assessable value.
2. "Buying commission" is not included in the assessable value as it is the amount paid by importer to his agent [Any amount paid to exporter directly or indirectly is only included].
3. Rate of exchange notified by CBIC on the date of presentation of the bill of entry is considered.
4. Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards whichever is later (Section 15 of Customs Act, 1962)
5. Safeguard duty has to be applied on the CIF Value
6. Social welfare surcharge is levied @ 10% on Basic Custom Duty only.
7. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable Social Welfare Surcharge. Integrated tax rate is assumed to be 5%.

Answer 3(e)

Balance in Electronic cash ledger can be used in the following manner to discharge tax liability by PQR Ltd. for the quarter ended on 30.9.2018

<i>Particulars</i>	<i>Amount (Rs.)</i>
Balance available in Electronic cash ledger	6,25,000
<i>Less :</i> Adjustment of taxes	
Tax liability of CGST, SGST/ UTGST, IGST for supplies made during August, 2018	(1,25,000)
Interest & Penalty on delayed payment and filing of return belonging to August, 2018.	(20,000)
Tax liability of CGST, SGST/ UTGST, IGST for supplies made during September, 2018.	(1,50,000)
Interest & Penalty on delayed payment and filing of return belonging to September, 2018.	(25,000)
Demand raised as per section 73 or section 74 under CGST Act, 2017 of ₹6,00,000/- to the extent of available balance.	(3,05,000)
Balance in electronic cash ledger	Nil

Notes:

1. The balance amount of ₹2,95,000/- (₹6,00,000 - ₹3,05,000) towards demand

raised under section 73 or section 74 under CGST Act, 2017 to be discharged first.

2. The demand of ₹1,10,000/- raised under old provisions of Indirect Taxes shall be discharged after discharge of demand of ₹2,95,000/-

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

Question 4

- (a) GP Scraps, imported during August 2018, by sea, a consignment of metal scrap weighing 8,000 M. T. from China and filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid on the goods. GP Scraps thereafter found, on taking delivery from the Port Trust Authorities (i.e. before the clearance for home consumption), that only 7,500 M. T. of scrap was available at the docks, although they had paid duty for the entire 8,000 M. T., as there was no short-landing of cargo had been indicated. The short-delivery of 500 M. T. was also substantiated by the Port-Trust Authorities, who gave a "weightment certificate" to GP Scraps.

On filing a representation to the Customs Department, GP Scraps has been directed by the Department in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M. T. not delivered by the Port-Trust to them.

You are approached by GP Scraps as 'Counsel' for an opinion/advice. Examine the issues and tender your opinion as per law, giving reasons. (5 marks)

- (b) Anand Nursery engaged in agricultural related services provides the following details of the transactions for the month of December, 2018 :

S. No.	Particulars	Amount (₹ in lakhs)
(1)	Renting of Agro-machinery	5
(2)	Cultivation of Ornamental flowers	2.5
(3)	Processing of Tomato ketchup	3
(4)	Processing of Potato chips	1.5

You are required to compute the value of taxable services of Anand Nursery for December, 2018. Brief reasons to be given for each item along with the working. (5 marks)

- (c) You are required to determine in the context of the provisions contained in the CGST Act, 2017 whether the company ABC Pvt. Ltd., incorporated in Karnataka is liable to be registered under GST Act, when the company has effected following supplies within the state of Karnataka :

S. No.	Particulars	(Rupees)
(1)	Intra-State supply of goods chargeable with GST @ 18%	9,60,000
(2)	Intra-State supply of goods which are wholly exempt from GST u/s 11 of CGST Act, 2017	6,40,000
(3)	Intra-State supply of goods chargeable @ Nil rate	4,25,000
(4)	Export of goods to Dubai	3,75,000

(5 marks)

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

- (i) Explain the provisions for claiming duty drawback and also ascertain whether the exporter is entitled to duty drawback in the following independent cases and if yes, state the amount of such duty drawback :
- (a) FOB value of goods exported is ₹ 5,50,000. Rate of duty drawback on such export of goods is 1.75%. (3 marks)
- (b) FOB value of 2,000 kgs. of goods exported is ₹2,00,000. Rate of duty drawback on such export is ₹ 30 per kg. The market price of goods is of ₹50,000 in the wholesale market. (2 marks)
- (ii) Venus Bakery Products Ltd. is doing business of manufacturing and selling of different types of Cakes, Pastries, Biscuits, Cookies and other bakery products through a network of dealers. The bakery sells the goods to the dealers on the price less discount at a standard rate and pays GST accordingly. It offers additional discount on the stocks when goods remain unsold with the dealers as an incentive to push the sales.
- Can the additional discount so given on unsold stocks be reduced from the price at which the goods were sold and consequential tax adjustments be made? (5 marks)
- (iii) When can an appeal be filed to the Appellate Tribunal under the Customs Act, 1962 as per section 129-A ? State also matters for which the Appellate Tribunal does not hold jurisdiction. (5 marks)

Answer 4(a)**Remission of Customs duty**

As per the provisions of section 23 of the Customs Act, 1962 where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods. Therefore the duty shall be remitted only, if loss has occurred before clearance for home consumption.

In the given case, it is apparent from the facts that quantity of scrap received in India was 8000 metric tons and 500 metric tons thereof was lost when it was in custody of Port Authorities i.e., before clearance for home consumption . The loss of 500 M.T of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, GP Scraps is being advised to take shelter under section 23 of Customs Act, 1962 justifying its claim for remission of duty on the goods short supplied by the Port Trust Authorities as per certificate issued.

Answer 4(b)**Computation of Taxable Services of Anand Nursery**

<i>S. No.</i>	<i>Particulars</i>	<i>Amount (₹ in lacs)</i>
1	Renting of Agro-machinery [Note - 1]	-
2	Cultivation of Ornamental flowers [Note - 2]	-
3	Processing of Tomato ketchup [Note - 3]	3
4	Processing of Potato chips [Note - 3]	1.5
	Value of Taxable Service	4.5

Notes:

1. The above case falls within the purview of Exemption Notification 12/2017 - Central Tax (Rate) Sl. No. 54 under heading 9986. Renting of Agro-machinery is exempt as per the aforesaid notification. Hence, the same is not liable to GST.
2. Cultivation of plants falls within the purview of agriculture which is exempt. Hence, the same is not liable to GST.
3. Potato chips and tomato ketchup are not agricultural produce and thus do not fall under exemption. However, conversion of potato and tomato into potato chips and tomato ketchup respectively amounts to manufacture since after such processing new products with different name, character and use emerge. Therefore, such processing will not fall under exemption and hence, it is liable to GST.

Answer 4(c)

As per section 22(1) of CGST Act, 2017 every supplier shall be liable to be registered under this Act in the State or Union Territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds ₹20 lacs.

According to section 2(6) of CGST Act, 2017 "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-state supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Computation of Aggregate turnover of ABC Pvt. Ltd.

<i>S. No.</i>	<i>Particulars</i>	<i>Amount (₹)</i>
1.	Intra-state supply of goods chargeable with GST @18% (Note 1)	9,60,000
2.	Intra-state supply of goods which are wholly exempt from GST u/s 11 of CGST Act, 2017 (Note 1)	6,40,000

3.	Intra-state supply of goods chargeable @ Nil rate (Note 1)	4,25,000
4.	Exports of goods to Dubai (Note 2)	3,75,000
Total value of supplies		24,00,000

Notes:

- Intra-state supply of goods chargeable with GST @ 18%, supply of goods which are wholly exempt and supply of goods chargeable with Nil rate are included for determination of aggregate turnover.
- Export of goods to Dubai is to be included in computation of aggregate turnover.

ABC Pvt. Ltd. is therefore required to get itself registered under GST Act as the turnover during the year exceeds ₹20 lacs.

Answer 4A(i)

- (a) As per Rule 8(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, no amount of drawback shall be allowed if the rate of drawback is less than 1% of the FOB value, except where the amount of drawback per shipment exceeds ₹500/-. Further, as per section 76(1)(c) of the Customs Act, 1962 drawback is not allowed where the drawback due in respect of any goods is less than ₹50/-

In the given case, since the rate of duty drawback is not less than 1% the drawback due works out ₹9625/- (1.75% of FOB value of ₹5,50,000/-) which is more than ₹50/-. Duty drawback of ₹9625/- shall be allowed.

- (b) Section 76(1)(b) of the Customs Act, 1962 inter alia provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon.

In this case, the market price of the goods is ₹50,000/- which is less than the amount of duty drawback, i.e. 2,000 kgs x ₹30 = ₹60,000/-. Hence, no drawback shall be allowed.

Answer 4A(ii)

Facts of the case : In the given case Venus Bakery Products sold the goods after discount to the dealers. Later on supplier has given additional discount as an incentive to push sales of unsold stocks left with the dealers.

Issue : Whether additional discount given by the supplier as an incentive after supply of goods is deductible from the transaction value.

Legal provisions : As per section 15(3) any discount is deductible after supply, if following conditions are satisfied:

- Such discount is established in terms of agreement entered into at or before the time of supply.
- Such discounts are linked to the relevant invoices.
- ITC proportionate to such discount is reversed by the recipient.

Conclusion : In the given case, Venus Bakery Products has given additional discount after supply of goods which was not agreed at the time of supply. Hence, deduction of such additional discount is not available.

Answer 4A(iii)

Appeal to Appellate Tribunal under the Customs Act, 1962

Person aggrieved by any of the following orders as per section 129A of the Customs Act may appeal to the Appellate Tribunal against:-

- (a) a decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority;
- (b) an order passed by the Commissioner (Appeals) under Section 128A;
- (c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128;
- (d) an order passed by the Board or the Principal Commissioner of Customs or Commissioner of Customs under Section 130.

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b), if such order relates to:-

- (a) any goods imported or exported as baggage;
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- (c) payment of drawback as provided in Chapter- X, and the rules made thereunder.

Question 5

- (a) *Sugandha Enterprises, dealers of Watches, Leather goods and other items is supplying a Kit containing a piece of Watch, a Wallet and a Pen bundled as a Combo Pack for ₹12,500. The rates of GST on pen is 12%, on wallet is 18% and on watch is 28%. The selling price of individual items is Watch ₹11,000, Wallet ₹1,000 and Pen ₹1,500.*

Determine the nature of supply of the combo pack and the rate of GST to be charged. (3 marks)

- (b) *There are separate valuation provisions for goods and services under the CGST, SGST and IGST provisions. Examine the correctness of this statement. (3 marks)*
- (c) *State briefly the provisions of refund of anti-dumping duty with reference to section 9AA of the Customs Tariff Act, 1975. (3 marks)*
- (d) *Ravi Pratap imported certain goods from U.S., for which a bill of entry was*

presented on 28th Nov., 2018 to the Custom Authorities. The assessable value of consignment was 2,00,000 dollars and the rate of exchange on 28th Nov., 2018 was ₹65. Order for the deposit of goods in the warehouse for 3 months was issued on 1st Dec., 2018. Ravi Pratap failed to clear goods from the warehouse within the allowed period of three months and also did not obtain permission for extension of warehousing period. The goods were not cleared from the warehouse till 28th Feb., 2019. The rate of exchange on 28th Feb., 2019 was ₹63 per dollar. Notice under section 72 of the Customs Act, 1962 was served on the importer and finally removed the goods from warehouse on 30th March, 2019. The rate of exchange on the date of removal was ₹64. The rate of Custom duty was 15%, 10% and 8% on 28th Nov., 2018, 28th Feb., 2019 and 30th March, 2019 respectively.

Compute amount of Customs duty payable by assuming that no additional duty or SAD is payable. (3 marks)

- (e) *Explain by giving brief reasons in the context of provisions contained under the CGST Act, 2017 pertaining to composition scheme :*
- (i) *Can a registered person, who purchases goods from a supplier paying tax under the Composition Scheme, avail credit of tax paid on purchases made from the composition dealer ?*
 - (ii) *Can a person paying tax under the Composition Scheme issue a tax invoice under GST ?*
 - (iii) *Can a person who has opted to pay tax under the Composition Scheme avail Input Tax Credit on his inward supplies ? (3 marks)*

Answer 5(a)

Each of the goods in the package has individual identity and can be supplied separately, but is deliberately supplied conjointly for a single consolidated price. Hence, the supply of all the three items in the combo pack would constitute mixed supply as per section 2(74) of CGST Act, 2017.

As per section 8(b) of CGST Act, 2017, the tax rates applicable in case of mixed supply would be the rate of tax attributable to that one supply (goods, or services) which suffers the highest rate of tax from amongst the supplies forming part of the mixed supply.

Therefore, entire package will be chargeable to GST @28%.

Answer 5(b)

Section 15 of CGST Act, 2017 determines the value of supply of goods or services or both. Further, provisions of section 15 as applicable for determining value of taxable supply under CGST Act has been made applicable to IGST Act as well vide section 20 of IGST Act, 2017.

Section 20 of IGST Act inter alia provides that the provisions of CGST Act relating to time and value of supply shall mutatis mutandis apply in relation to integrated tax as they apply in relation to Central Tax.

Thus section 15 is common for all three taxes and also common for goods and services.

Hence, it is concluded that the given statement is not correct.

Answer 5(c)

According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty.

However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as the same is refundable under section 9A(2) of the said Act.

Refund of the excess anti-dumping duty paid is subject to provisions of unjust enrichment as held by the Apex Court in the case of *Automotive Tyre Manufacturers Association vs. The Designated Authority* 2011 (63) ELT 481.

Answer 5(d)

Computation of Assessable value and Customs Duty Payable

<i>Particulars</i>	<i>Amount (₹)</i>
Assessable value (2,00,000 x 65) [Note 1]	1,30,00,000
Basic Custom Duty @ 10% [Note 2] [A]	13,00,000
Social Welfare Surcharge (10% of ₹13,00,000) [B]	1,30,000
Total Custom Duty payable [A+B]	14,30,000

Notes:

1. The rate for determination of assessable value shall be of the date when the bill of entry was presented and accordingly the exchange rate of ₹65/- per dollar be applied.
2. The rate of duty shall be charged on the date when the period of warehousing expired since after import, the goods were kept in warehouse. The duty applicable will be of 28.2.2019 being 10%.

Answer 5(e)

- (i) No, as the composition dealer cannot collect tax paid by him on outward supplies from his customers, the registered person making purchases from a taxable person paying tax under the composition scheme cannot avail credit of tax.
- (ii) No, the person shall be issuing a bill of supply in lieu of tax invoice.
- (iii) No, as per section 10(4) of CGST Act, 2017 person opting to pay tax under the composition scheme cannot avail credit on his inward supplies.

Question 6

- (a) Govinda Exports, a partnership firm, is registered under GST in the State of Gujarat. The firm exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) (a) of the IGST Act, 2017.

The supplies made during a tax period are as under :

S. No.	Particulars	(₹)
(i)	Domestic supplies of taxable product 'P' during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @ 18%]	14,00,000
(ii)	Export of product 'Q' to Austria for Euro 20,000. Assessable value under customs in Indian rupees. [Export duty is levied on product 'Q' at the time of exports]	12,00,000

Product P is not notified as a product, in respect of which refund of unutilized ITC shall not be allowed under section 54(3)(ii) of the GGST Act, 2017.

The ITC available for the above tax period is as follows :

S. No.	Particulars	(₹)
(i)	On inputs (including ₹60,000 on export of exempt supplies)	4,60,000
(ii)	On capital goods	1,40,000
(iii)	On input services (including ₹18,000 on outdoor catering)	2,10,000

You are required to compute the maximum amount of refund admissible to the supplier for the given tax period. (8 marks)

- (b) Vivitha Chemicals Ltd. is a manufacturing company registered under GST in the State of Tamil Nadu. It manufactures two taxable products "Supreme" and "Maroon", and one exempt product "Delight". All purchases are from outside the State from registered suppliers.

On 1st October, 2018, product "Delight" got withdrawn from the exemption notification and product "Maroon" got exempted through an exemption notification.

The supplier furnishes the under-mentioned details (Amounts are excluding GST at 12% for Raw materials and 18% for Capital goods) :

S. No.	Particulars	Price (₹)
(a)	Machinery "D" purchased on 22nd Oct., 2018 for being used in manufacturing products "Supreme" and "Delight".	4,00,000
(b)	Machinery "E" purchased on October 1, three years before 1st Oct., 2018, for being exclusively used in manufacturing product "Delight". From 1st Oct., 2018,	

	<i>such machinery will also be used for manufacturing product "Maroon".</i>	5,00,000
(c)	<i>Raw Material used for manufacturing "Supreme" purchased on 9th Oct., 2018.</i>	7,00,000
(d)	<i>Raw Material used for manufacturing "Maroon" purchased on 27th Oct., 2018.</i>	6,82,000
(e)	<i>Raw Material used for manufacturing "Delight" purchased on 25th Oct., 2018.</i>	2,00,000

Compute the amount of input tax credit credited to Electronic Credit Ledger for the month of October, 2018. (7 marks)

Answer 6(a)**Determination of maximum amount of refund admissible to Govinda Exports**

<i>Particulars</i>	<i>Amount (₹)</i>
Domestic supplies of taxable product 'P' during the period [Note 2]	1,45,385
Export of product 'Q' to Austria [Note 1]	Nil
Total refund claim admissible to supplier	1,45,385

Notes:

1. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Further, the supplier exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017. Therefore, as per clause (i) of first proviso to section 54(3) of the CGST Act, 2017, a registered person may claim refund, of any unutilized ITC in the case of zero rated supply at the end of any tax period. However as per 1st proviso to section 54(3) of the CGST Act, 2017 no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.
2. Refund of unutilised ITC is allowed in case of inverted duty structure, i.e. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies, except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Clause (ii) of the first proviso to section 54(3) of the CGST Act, 2017]

Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula -

Maximum Refund Amount =

$$\frac{\text{Turnover of inverted rated supply of goods and services} * \text{Net ITC}}{\text{Adjusted Total Turnover}} \text{ Less (A)}$$

Where

A= Tax payable on such inverted rated supply of goods or services

"Net ITC" means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

"Adjusted total turnover" means the sum total of the value of:

- (i) the turnover in a State / Union territory, as defined under Section 2(112), excluding turnover of services; &
- (ii) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services, excluding:
 - (a) value of exempt supplies other than zero-rated supplies; and
 - (b) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

Tax payable on inverted rated supply of goods = $14,00,000 \times 5\% = ₹ 70,000$

Here, Net ITC = ₹4,00,000

Adjusted Total Turnover = ₹ 26,00,000 [14,00,000 + 12,00,000]

Turnover of inverted rated supply of goods = ₹14,00,000

Thus, maximum refund amount under rule 89(5) =

$[(14,00,000 \times 4,00,000) / 26,00,000] - 70,000 = ₹1,45,385$

Answer 6(b)

Computation of amount of input tax credit (ITC) credited to Electronic Credit ledger, for the month of October, 2018

S. No.	Particulars	ITC
		₹
(a)	Machinery "D" [Note 1]	72,000
(b)	Machinery "E" [Note 2]	36,000
(c)	Raw material used for manufacturing "Supreme" [Note 3]	84,000
(d)	Raw material used for manufacturing "Maroon" [Note 3]	Nil
(e)	Raw material used for manufacturing "Delight" [Note 3]	24,000
	ITC credited to Electronic Credit Ledger for the month of October, 2018	2,16,000

Notes:

1. ITC in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be credited to the electronic credit ledger [Rule 43(1)(b) of the CGST Rules, 2017].
2. Where any capital goods earlier used exclusively for effecting exempt supplies

is subsequently also used for effecting taxable supplies, the value of capital goods being machinery 'E' shall be arrived at by reducing the ITC at the rate of 5% for every quarter or part thereof and the amount so arrived shall be credited to the electronic credit ledger [Proviso to rule 43(1)(c) of the CGST Rules, 2017].

Thus, ITC on "E" shall be computed as under:

$$= ₹90000 - 54000 (90000 * 5\% * 12 \text{ quarters})$$

$$= ₹36,000$$

3. ITC in respect of inputs used for effecting taxable supplies will be credited in Electronic Credit Ledger. ITC in respect of inputs used for effecting exempt supplies will not be credited in Electronic Credit Ledger [Rule 42 of CGST Rules, 2017].

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

Comment on the following :

- (a) Amalgamation and procedure to be followed for amalgamation of Companies.*
- (b) Essentials of E-contract.*
- (c) Process of registration of Partnership Firm under Income-Tax Law.*
- (d) Drafting and Conveyancing have same meaning and are interchangeable.*

(5 marks each)

Answer 1(a)

Amalgamation is defined as the combination of one or more companies into a new entity. Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or amalgamated company. In other words, property, assets, liabilities of one or more companies is taken over by another or are absorbed by and transferred to an existing company or a new company. The process of merger and amalgamation is given hereunder:

- An application for merger (or amalgamation) shall be filed with Tribunal (NCLT) by both the transferor(s) and the transferee company in the form of petition under section 230-232 of the Companies Act, 2013 for the purpose of sanctioning the scheme of amalgamation.
- Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint-application. In case, the registered office of the companies involved is in different states, there will be two Tribunals having the jurisdiction over those. Both the companies shall have to file separate petition with the respective Tribunals.
- The scheme of amalgamation comprising of various parts containing details about Transferor Company, Transferee Company, details of assets and liabilities, necessity and advantages of the merger, employees, exchange ratio etc. should be drafted.
- Petition to the Tribunal for merger & amalgamation shall be submitted in Form No. NCLT-1 along with following documents:
 - i. A notice of admission in Form No. NCLT-2
 - ii. An affidavit in Form No. NCLT-6
 - iii. A copy of Scheme of compromise and arrangement (Merger & Amalgamation)

iv. The applicant shall also disclose to the Tribunal in the application, the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme. Obtaining the approval of the Board of Directors of the companies involved.

- The Tribunal upon hearing the application may either give relevant directions / order for conducting the meeting of the creditors or class of creditors, or of the members or class of members or may dismiss the application for any appropriate reason.
- The Notice of the meeting pursuant to the order of Tribunal shall be given in Form No. CAA-2.
- Obtaining approval of the stock exchanges in case of listed companies
- Approvals or No objection from Regional Director / Official Liquidator, Income tax departments, CCI etc. and other regulators such as RBI/ IRDA/ DOT etc.
- Filing of final petition with NCLT for approving the Scheme
- Obtaining order for approval for scheme of merger/amalgamation from the National Company Law Tribunal
- Filing the copy of the order with MCA and post order compliances.

Answer 1(b)

E-contract is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract. Traditional contract principles and remedies also apply to e-contracts. As in every other contract, an electronic contract also requires the following necessary requirements:

- An offer or proposal by one party (called offeror or proposer) and acceptance of that offer by another party (called acceptor) resulting in an agreement consensus-ad-idem.
- An intention to create legal relations or an intent to have legal consequences.
- The agreement is supported by lawful consideration.
- The parties to contract are legally capable of contracting.
- Genuine free consent between the parties to contract.
- The object and consideration of the contract is legal and is not opposed to public policy.
- The terms of the contract are certain.
- The agreement is capable of being performed i.e., it is not impossible of being performed.

Section 10 of the IT Act, 2008 gives legislative authority to E contracts. It provides that, "Where in a contract formation, the communication of proposals, the acceptance of

proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.” The offeror is called originator and the acceptor is called the addressee in e-contracts. The signatures in e-contract may be made with digital signature certificate.

Answer 1(c)

The partnership is based on contract of partnership deed or agreement. This deed is executed by all the partners and is drafted as an agreement to carry on certain business in partnership on certain terms and conditions. While drafting partnership deed we should incorporate all terms and conditions that govern a particular partnership business. Partners of any partnership business are normally interested in settling certain terms amongst them before they join hands to carry on business in partnership.

Registration of partnership firm has been made optional under the provisions of Section 58 of the Indian Partnership Act, 1932. However, registration of partnership under the Income-tax Law is distinct from registration of firm under the Partnership Act. A partnership to be recognised for the purpose of income tax liability of the partners and their firm is required to comply with certain provisions of the Income Tax Act. While therefore drafting a deed of partnership the provisions of the Act are required to be taken in to account. Rule 22 of Income-tax Rules, 1962 provides that an application for registration of partnership firm, in form 11 or 11A as the case may be, should be accompanied with an instrument of partnership specifying the apportionment of shares of profit and losses of the business amongst the partners of the firm. If a copy of instrument of partnership cannot be submitted, sufficient reasons towards this shall be narrated. Such application shall be signed by all the partners of the firm. This registration is required to be renewed every year under the orders of the concerned Income-tax Officer.

Answer 1(d)

Both the terms “drafting and conveyancing” have same meaning although these terms are not interchangeable.

- Drafting may be defined as the synthesis of law and fact in a language form. In other words, legal drafting is the crystallization and expression in definitive form of a legal right, privilege, function, duty, or status. It is the development and preparation of legal instruments such as constitutions, statutes, regulations, ordinances, contracts, wills, conveyances, indentures, trusts and leases, etc.
- Conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression
- “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.
- Thus, conveyance is an act of conveyancing or transferring any property whether

movable or immovable from one person to another permitted by customs, conventions and law within the legal structure of the country.

- Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas “drafting” gives a general meaning synonymous to preparation of drafting of documents.

Hence, all conveyancing necessarily includes the element of drafting, whereas all drafting need not relate to conveyancing. Drafting is a wider term.

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

Question 2

Explain the following :

- Appellate authorities under the Companies Act, 2013 on refusal of transfer of Shares.*
- Requisites of a valid award*
- Electronic Data Interchange (EDI)*
- Writ of Mandamus.*

(4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

Write notes on the following :

- Fidelity Guarantee*
- Consent Order*
- Rules of Drafting affidavit*
- Registration of a Will is not mandatory.*

(4 marks each)

Answer 2(a)

Section 58(1) of the Companies Act, 2013 lays down that if a Private Limited Company by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in, the company, it shall, within a period of 30 days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal. Section 58(4) gives similar rights to the proposed transferees in case of shares of public limited companies.

Section 58 of the Companies Act, 2013 further lays down that the transferee may appeal to the National Company Law Tribunal against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in the preceding paragraph, either to register the transfer or transmission or to send notice of its refusal to register the same.

The appeal under above paragraph shall be made within 30 days of the receipt of the notice of such refusal or, where no notice has been sent by the company, within 60 days from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company.

Section 421(1) of the Companies Act, 2013 provides that any person aggrieved by an order of NCLT may prefer an appeal to the Appellate Tribunal (NCLAT) by making an appeal petition within 45 days of the aforesaid NCLT order.

In terms of Section 423 of the Act, any person aggrieved by any decision or order of NCLAT may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order. However, the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Answer 2(b)

The arbitrator makes award after hearing the evidence of both the parties. The award must be within the terms of reference. It is for the arbitral tribunal to lay down its own procedure during the arbitration proceedings. The law should however, be fair and reasonable. The tribunal may decide to ask the parties to adduce evidence by way of affidavits. In that case it would be fair and just to allow cross-examination of the witness whose affidavit has been filed. The general requisites of an award are:

- (a) it must be cogent, consistent with the submission;
- (b) it must be certain; it should be complete;
- (c) it must be fair to the parties;
- (d) it must be final;
- (e) its implementation must be possible or enforceable;
- (f) it should not be opposed to public policy.

Answer 2(c)

The contracts of Electronic Data Interchange commonly known as EDI Contracts are processed in cases that have virtually zero paper work. EDI contracts used in trade transactions which enables the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgement of export and other official documents, leading eventually to the shipment of the goods) can be processed with virtually no paperwork. In this system, there is exchange of information and completion of contracts between two computers almost akin to the contracts entered into by two human beings. In other words, EDI means transfer of (strictly) structured data, by agreed message standards, from one computer system to another without human intervention.

Some of the benefits of EDI are cost saving, speed, accuracy, business efficiency, minimal paper usage, enhanced quality of data, improved turnaround times, improved timelines etc.

Answer 2(d)

Writ of Mandamus : The expression “mandamus” means a command to act. The writ of mandamus is, thus, a command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction or to a government authority not exercising the delegated power. Mandamus can be issued against any public authority. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion.

Mandamus can be issued by the Supreme Court and all the High Courts to all authorities. However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers (Article 360). It also does not lie against a private individual or body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or of a Statute. It is a discretionary remedy and the Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.

Answer 2A(i)**Fidelity Guarantee**

Fidelity Guarantee insurance is an insurance policy designed to indemnify the Insured (the employer) for the loss of money or property sustained as a direct result of acts of fraud, theft or dishonesty by an employee in the course of employment. Fidelity coverage, or a fidelity bond, protects the business owner from employee theft. It might be money, property, forgery or credit card fraud. All of these actions fall within the perils covered by a fidelity bond.

Fidelity guarantee insurance protects employers from financial losses that are a result of employees who embezzle or siphon or in any other manner defraud directly from a company. Such protection may be designed to cover all employees or just one of employees. If the employer of an employee whose fidelity has been guaranteed continues to employ him even after a proved act of dishonesty without notice to the guarantor, the surety is discharged. That is a basic principle implicit in the very nature of a fidelity guarantee. The guarantor in such a case guarantees the fidelity and ensures the loss against the risk of infidelity and not the fact of infidelity. If the employer wants to continue a dishonest servant after his dishonesty has been proved then he must give the guarantor notice of the fact of infidelity so that the guarantor may get an opportunity to say whether he would continue his guarantee or not for a man whose infidelity has been proved.

Answer 2A(ii)

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

The concept of consent orders has been derived from the success of the US Securities

and Exchange Commission in resolving the dispute among different entities. USSEC settles over 90% of administrative / civil cases by way of consent orders. It can also slap penalties on defaulters without taking recourse to long drawn litigation in courts.

The main objective of these consent orders is to reduce the regulatory costs which can further help in saving time and effort of Securities and Exchange Board of India (SEBI), which was earlier consumed to pursue enforcement actions. Another main objective of consent orders is to provide flexibility of wider array of enforcement actions to achieve the twin goals of an appropriate sanction and deterrence without resorting to a long drawn litigation before SEBI / Tribunal / Courts.

Answer 2A(iii)

An affidavit is a sworn statement in writing made especially under oath before an authorized officer. Therefore it has to be drafted carefully. Affidavits to be produced in a Court must strictly conform to the provisions of order XIX, Rule 1 of the Code of Civil Procedure, 1908 and in the verification it must be specified as to which portions are being sworn on the basis of personal knowledge and which, on the basis of information received and believed to be true. In the latter case, the source of information must also be disclosed.

Order XIX Rule 3 provides that affidavit should be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory application, on which statements on his belief may be admitted; provided that the grounds of such belief are stated. The following rules should be remembered when drawing up an affidavit:

- Not a single allegation more than is absolutely necessary should be inserted;
- The person making the affidavit and every person referred therein should be correctly and fully described in the affidavit so that he or it can be easily identified;
- An affidavit should be drawn up in the first person;
- An affidavit should be divided into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct portion of the subject (Order XIX Rule 5);
- When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words “I affirm” or “I make oath and say”;
- Affidavit should generally be confined to matters within the personal knowledge of the declarant, and if any fact is within the personal knowledge any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words “I am informed by so and so” before every allegation which is so verified. If the declarant believes the information to be true, he must add “and I believe it to be true” or “I make oath and say” (Order XIX Rule 8).
- When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced, and his information and belief as to the truth of facts disclosed in such documents;
- The affidavit should have the oath or affirmation written out at the end.

Answer 2A(iv)

A Will is a legal declaration of the intention of a person (testator) with respect to his property or estate, which he desires to take effect after his death. Registration of Will is not mandatory even if it comprises of immovable property. A Will is not a compulsorily registerable document under section 17 of the Registration Act, 1908. It is optional under Section 18(c) Registration Act, 1908. However a registered Will has certain advantages. According to section 18 (e) it is the testator's choice as to whether he wishes to register it. There is no stamp duty payable. But if one chooses to register a Will with the applicable registrar/sub-registrar of assurances, the registration provides evidence that the proper parties had appeared before the registering officer and the latter had attested the same after ascertaining their identity.

Once a Will is registered, it is placed in the safe custody of the Registrar and cannot be tampered with, destroyed, mutilated or stolen. However, non-registration of a Will does not lead to any inference against its genuineness. It doesn't have to be executed before a notary public. Any testator may, either personally or by duly authorized agent deposit with any Registrar his Will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document as per Section 42 of Registration Act, 1908. The testator, or after his death any person claiming as executor or otherwise under a Will, may present it to any Registrar or Sub-Registrar for registration under section 40 of the Registration Act, 1908.

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

Draft the following Documents (Assume facts if necessary) :

- (a) *Family Settlement Deed.*
- (b) *Draft a notice by Tenant to his Landlord to determine the tenancy.*
- (c) *Hire-Purchase Agreement*
- (d) *Relinquishment Deed.* (4 marks each)

OR (Alternate question to Q. No. 3)**Question 3A**

Distinguish between the following :

- (i) *Revision and Appeal*
- (ii) *Probate and Letter of Administration*
- (iii) *Special and General Power of Attorney*
- (iv) *Promissory Note and Bill of Exchange.* (4 marks each)

Answer 3(a)**Family Settlement Deed**

This Deed of Family Arrangement is executed on thisday of ----- in the year 2019 between:

A B S/o MN aged years, occupation R/o (hereinafter called as the first party)

and

CD S/o XM aged years, occupation and R/o (hereinafter called as the second party)

WHEREAS

- (1) The first party has started and carried out the business and undertaking described in Schedule 'C' by his own initiative and efforts with his own capital and funds.
- (2) The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labour and skill for the development of the business rendered valuable services for the same and rendered himself entitled for an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule 'D' and the second party shall hold the share in business and properties described in Schedule 'E'.
- (3) The movable and immovable properties, which is also described in Schedule 'C' have been acquired by the first party out of the funds of the said business in his name and for his use and benefits.

NOW THIS DEED WITNESSETH AS FOLLOWS:

- (1) The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'E' without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.
- (2) The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'D' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule 'D'

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this day of in the year at

Witnesses

Signatures

First Party

Second Party

Answer 3 (b)

Notice by Tenant to His Landlord to Determine the Tenancy

Dear Sir,

Under instructions from my client A.B. of etc., your tenant, I hereby give you notice

that in pursuance of a power contained in the lease deed dated..... day of, 2018 made between you of the one part and the said A. B. of the other part, it is his intention to determine the said lease with the expiry of the 15th day from the date of receipt of the legal notice by you and that he shall deliver up to you the possession therein comprised on the next day after such 15th day.

Dated.....day of.....

Signed.....

Advocate for the said A.B.

(C.D. landlord).

Answer 3(c)

Hire Purchase Agreement

THIS AGREEMENT made this day of between..... (hereinafter called the owners which expression shall include the successors and assigns where the context so admits) of the one part AND..... (hereinafter called the hirer) of the other part.

WHEREAS, the owner is engaged in the business of manufacturing and has agreed to let to the hirer..... and the hirer has agreed to take on hire the said goods more particularly described in the Schedule A hereto for the term of..... years from..... 2019 on the terms hereby agreed to between the owner and hirer as follows:

1. *Hire* : The hirer shall pay to the owner on the execution of this agreement the sum of Rs..... the hire for the first month and on the first day of every calendar month or year during the hiring the sum of Rs..... by way of hire for the said goods, or shall pay the rent specified in Schedule-B hereto and payable without demand on the day therein mentioned.
2. *Option to purchase* : The hirer shall at any time during the hiring have the option of purchasing the said goods for Rs..... and in that event the hirer shall receive credit for all sums previously paid by him under the preceding clause. Until a purchase shall have been effected and the price fully paid the said goods shall remain the property of the owner.
3. *Hirer's covenants*: During the hiring tenure the hirer will:
 - (a) not sell, pledge, hypothecate, charge or in any manner encumber the goods or part with possession of the said goods or any of them;
 - (b) not without the consent in writing of the owner, remove the said goods or any part thereof from the premises of the hirer at..... and shall keep the owner informed forthwith of any change in address or shift of place;
 - (c) will not lend or transfer the goods to any other person without the previous sanction in writing of the owner;

- (d) will keep the goods in good order and condition and will, on the expiry of years or earlier termination of this agreement, return the same to owner in the same condition in which it has been lent, reasonable wear and tear excepted, and all loss or damage due to breakage or any other cause shall be made good by hirer at his own cost;
- (e) pay all taxes, fees, duties, fines, registration charges, other expenses, payable in respect of the assets - when the same shall become due;
- (f) permit the owner or his authorised agent or nominee at all reasonable times to inspect and examine the condition of the said goods;
- (g) shall keep the goods insured against all losses or damage by fire, tempest or theft upto the value of Rs. with an Insurance Company to be approved by the owner and shall punctually pay all premia and produce to owner when so required the receipts for the last premium payable and keep the insurance alive during the continuance of the agreement. If the said hired goods is injured or destroyed by fire or lost by theft all moneys received in respect of such insurance shall be paid forthwith to the owner and the hirer shall pay to the owner all sums of money received in respect of such insurances who shall apply such money in making good the loss by replacement of such damaged part or parts or the entire goods of similar description and value whereupon such substituted part or parts or goods shall become subject to this agreement in the same manner as the original goods;
- (h) in case of default by hirer in payment of any insurance premium as mentioned in sub-clause (g) or the charges mentioned in sub-clause (e) above, the owner may pay the same or any part thereof and any sum so paid by them shall be reimbursed by the hirer together with interest thereon at the rate of 15% p.a. from the date of payment by the owner;
- (i) the hirer shall indemnify the owner against claims by third parties arising by accident caused by user of the asset until the determination of this agreement;
- (j) the hirer shall not use or permit or suffer the asset to be used in contravention of any statute and regulations for the time being in force or otherwise in any way contrary to law excepting as permitted under this agreement.

The clauses should invariably cover inter alia the following matters:

- I. Hirer agrees to make good to the owner all damages to the asset (fair wear and tear excepted) and pay the owner the full value of the asset in event of a total loss, whether the damage or loss be caused accidentally or otherwise and by any reason whatsoever and to keep the asset at the sole risk of the hirer, until the hirer purchases the asset or returns it to the owner.
- II. Hirer agrees to pay expenses for repair deemed necessary by the owner, replace any damaged parts and not make any alteration or addition without previous written approval of the owner.

SCHEDULE A**SCHEDULE B**

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

Witness: 1.

Signature of Hirer

Witness: 2.

Signature of Owner

Answer 3(d)**RELINQUISHMENT DEED**

This deed of relinquishment is made and executed on this ___ day of _____ by _____, _____ (relationship) of Late _____ and _____, _____ of Late _____, residents of _____, hereinafter called the EXECUTANTS/RELEASORS.

IN FAVOUR OF

Mr. / Ms. _____, (holder of PAN _____ / Aadhar _____) _____ (relationship) of Late _____ hereinafter called the Releasee.

Whereas Late _____, was a subscriber under the National Pension System with PRAN _____.

Whereas the said Late _____ died intestate and without nominating anyone to receive the claim for withdrawal of accumulated pension wealth, leaving behind the following legal heirs:-

- 1.
- 2.
- 3.

NOW THIS DEED WITNESSETH AS UNDER:

The Executants/Releasers out of natural love and affection and without any monetary consideration, hereby wish to release and relinquish their respective shares in the claim under National Pension System, in favour of _____, _____ (relationship) of Late _____, and hereby affirm and declare that they and their legal heirs shall have no right, claim or interest in the said claim for withdrawal of accumulated pension wealth of Late _____ and same shall vest absolutely in the said _____, _____ (relationship) of Late _____, the Releasee.

IN WITNESS WHEREOF the Executants/Releasers and the Releasee have signed this deed of relinquishment on this day, month and year first mentioned above in the presence of the following witnesses:-

(A- _____) (B- _____) (C- _____)

(Executants/Releasers)

Answer 3A(i)

Revision : Revision is not a continuation of the suit, but is altogether a separate proceeding. Hence a fresh vakalatnama would be necessary to enable the advocate to file the petition for revision. Section 115 of the Code of Civil Procedure, 1908, empowers a High Court to entertain a revision in any case decided by a subordinate Court in certain circumstances. This jurisdiction is known as revisional jurisdiction of the High court. Unlike the appeal, revision is not a statutory right. The superior court therefore can decide to examine or not examine a decision made by a lower court. The main primary purpose of a revision is to make sure that justice has been administered properly and also to correct any errors that could have led to improper justice.

Appeal : In simpler terms, appeal is the process in which an unsuccessful party in a case decides to take the case to a higher court to seek for reversal of a decision made by a lower court. The party that files an appeal believes that there were errors made either on the laws or facts raised. Although “Appeal” has not been defined in the Code of Civil Procedure, 1908 yet any application by a party to an appellate Court, asking it to set aside or revise a decision of a Subordinate Court is an “appeal”. A right of appeal is not a natural or inherent right but is a creature of a statute. It is the statute alone to which the Court must look to determine whether a right of appeal exists in a particular instance or not. Parties cannot create a right of appeal by agreement or mutual consent. Appeal from original degree is known as first appeal. Second appeal means the appeal from the decree or judgement from the appellate Court.

Answer 3A(ii)

Probate : Probate is a certificate granted under the seal of Competent Court, certifying the Will as the Will of the testator and granting the administration of the estate of the deceased in accordance with that Will to the executor named under the Will.

Letters of Administration : A letter of administration can be obtained from the Court of competent jurisdiction in cases where the testator has failed to appoint an executor under a will or where the executor appointed under a will refuses to act or where he has died before or after proving the Will but before administration of the estate. Letters of Administration are not always necessary in cases of intestacy of Hindus, Mohammedans, Buddhists, Sikhs, Jains, Indian Christians or Parsis. Letter of Administration is always necessary where a person (governed by the Indian Succession Act) dies intestate.

Answer 3A(iii)

In terms of Section 1A of the Powers-of-Attorney Act, 1882, a power of attorney includes an instrument empowering a specified person to act for and in the name of the person executing it. It is always kept by the attorney.

A power of attorney executed for the purpose of a specific act is called a “special power of attorney”. A Special power of attorney (SPoA) is a legal document authorising one person (called an agent) to act on behalf of another (the principal). The principal grants the agent this authority because he is unable to make the decisions his/herself. This SPoA is specific to property. It is irrevocable and the principal must agree to ratify what is done by the SPoA.

A power of attorney executed for the purpose of generally representing another person, or for performing more than one act, is called a 'general power of attorney'. A General power of attorney (GPOA) is a legal document authorising one person (called an agent) to act on behalf of another (the principal). The principal grants the agent this authority because he is unable to make the decisions his/herself. This GPOA is not specific in nature and the agent would have the authority to make legal, medical, financial and business decisions (but not real estate). It is irrevocable and the principal must agree to ratify what is done by the GPOA.

Answer 3A(iv)

Promissory Note : A "promissory note" is defined by Section 4 of the Negotiable Instruments Act, 1881 as "an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument".

For Example, if A signs instruments in the following terms, it is promissory note:

- "I promise to pay B or order Rs.500."
- "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand for values received."

Bill of Exchange : According to Section 5 of the Negotiable Instruments Act 1881, the bill of exchange is defined as "an instrument in writing containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to the order of the certain person or to the bearer of the instrument." Bill of exchange means a bill drawn by a person directing another person to pay the specified sum of money to another person. A bill of exchange is of real use if it is accepted by the person directed to pay the amount.

For example, X orders Y to pay Rs. 50,000 for 90 days after date and Y accepts this order by signing his name, then it will be a bill of exchange.

Question 4

- (a) *What are Underwriting and Brokerage Agreements ? Draft a Sample of Brokerage Agreement. Assume facts.*
- (b) *Define Complaint. Draft a Specimen Petition of Wife under Section 125, Cr. PC 1973 for Maintenance. Assume facts. (8 marks each)*

Answer 4(a)

Underwriting is an insurance against risk. When shares or debentures of a company are issued, they are, by and large, underwritten to ensure that all the shares or debentures issued are taken up and thus the required capital is raised. If the issue is undersubscribed, the Board may call the Underwriters to subscribe the same. Before entering into an underwriting arrangement with a member of any recognised stock exchange, it is the duty of the directors of the concerned company to ensure that the underwriter has sufficient financial resources to meet any obligation which may devolve upon him in the event of the issue not being fully subscribed by public. Such an agreement with the Underwriter is an Underwriting Agreement.

Section 40(6) of the Companies Act, 2013 permits a company to pay certain commissions and prohibits the payment of all other commissions, discounts etc. As per Rule 13 of the Company (Prospectus and Allotment of Securities) Rules, 2014 - a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to certain conditions. Such an agreement with the Broker to assist in subscription of shares for the agreed brokerage is Brokerage Agreement.

Specimen Agreement for Acting as Broker to an Issue

Name and address of the firm of brokers who agree to act as brokers.

Ref. No.....

Date.....

The Board of Directors (Name and address of the company for whose public issue the firm agrees to act as broker)

Dear Sir(s),

Re: Proposed public issue of..... (type of security) Shares/ Debentures of Rs..... each for cash at par of.....Ltd.

We, the undersigned, hereby testify and consent to act as Brokers to the Issue of..... Shares/Debentures of Rs..... each for cash at par as captioned above by..... Ltd. and to our name being inserted as Brokers in the prospectus which the company intends to issue in respect of the proposed issue of capital and we hereby authorise the said company to deliver this consent to the Registrar of Companies..... pursuant to Section 40(6) of the Companies Act, 2013.

As required under Rule 13 of the Company (Prospectors and Allotment of Securities) Rules, 2014, we are agreeable to accept one and a half per cent on the issue price as brokerage on allotment made in respect of applications bearing our rubber stamp as brokers.

Answer 4(b)

Complaint : Complaint under section 2(d) of the Code of Criminal Procedure, 1973 means any allegation made orally or in writing to a Magistrate, with a view of his taking action under this code that some person, whether known or unknown has committed an offence, but it does not include a police report. Complaint is the first document filed with the court by a person or entity claiming legal rights against another. The party filing the complaint is usually called the plaintiff and the party against whom the complaint is filed is called the defendant or defendants. Complaints are pleadings and must be drafted carefully (usually by an attorney) to properly state the factual as well as legal basis for the claim. When the complaint is filed, the court clerk will issue a summons, which gives the name and file number of the lawsuit and the address of the attorney filing the complaint, and instructs the defendant that he/she/it has a specific time to file an answer or other response. A copy of the complaint and the summons must be served on a defendant before a response is required.

SPECIMEN PETITION BY WIFE UNDER SECTION 125, Cr.P.C. 1973 FOR MAINTENANCE

In the Court of _____ Judicial Magistrate 1st Class

Case No. _____ under s. 125, Cr.P.C.

<i>Petitioner W (wife)</i>		<i>Opposite Party H (husband)</i>
<i>Daughter of.....</i>	<i>versus</i>	<i>Son of.....</i>
<i>Village</i>		<i>Village.....</i>
<i>Thana</i>		<i>Thana</i>
<i>Occupation.....</i>		<i>Occupation.....</i>

In the matter of petition for maintenance of petitioner W from the husband H under S.125, Cr.P.C.

The humble petition of W (wife), the petitioner above-named

Most respectfully Sheweth:

1. Your petitioner W is the married wife of the opposite party. The marriage between them was solemnized according to the Hindu rites on
2. The opposite party H is a clerk on the staff of AB & Co. Ltd. holding a responsible position and drawing salary of Rs. 15,000 per month.
3. The opposite party severely assaulted the petitioner on _____ and drove her away from the matrimonial house on _____ in presence of several gentlemen of the locality.
4. That the opposite party leads a life of drunkenness, infidelity and debauchery. Besides, he is a man of uncertain temperament and would fly into rage without any reason whatsoever. He has lost all sense of decorum and would use extremely filthy language.
5. Your petitioner after being driven out of the house by the opposite party came over to her father's place on the same day and has been staying at father's house with his family members.
6. The opposite party was served with a pleader's notice to send your petitioner Rs. 2,000 every month for her maintenance but with no result. Having regard to the violent temper of H and his inhuman way of beating your petitioner she does not venture to go back to the place of the opposite party.

Your petitioner, therefore, prays that Your Honour may be pleased to issue notice on the opposite party and after taking evidence of both sides be pleased to order the opposite party to pay the petitioner maintenance at the rate of Rs. 2000 per month.

And your petitioner, as in duty bound, shall ever pray.

I, W daughter of MN resident at do hereby solemnly affirm and say as following:

1. I am the petitioner above-named and I know the facts and circumstances of the case and I am able to depose thereto.

2. The statements in the paragraphs 1, 2, 3, 4, 5 and 6 of the foregoing petition are true to my knowledge and that I have not suppressed any material fact.

Solemnly affirmed by the said

Mrs. Won the day of 2013 in the Court House at Calcutta

Before me Notary

Question 5

- (a) *Enumerate Appellate Authorities under Telecom Regulatory Authority of India (TRAI).* (8 marks)
- (b) *Write down an application for setting aside Ex-parte decree with the relevant provisions of Law.* (4 marks)
- (c) *Draft an application for Caveat to be filed in Delhi High Court on a Service matter. Assume your data.* (4 marks)

Answer 5(a)

Appellate Authorities under TRAI Act

An Appellate Tribunal, known as Telecom Disputes Settlement and Appellate Tribunal (TDSAT), has been established by the Central Government to adjudicate any dispute between a licensor and a licensee; between two or more service providers; between a service provider and a group of consumers; and to hear and dispose of appeal against any direction, decision or order of the Telecom Regulatory Authority of India. The Tribunal, therefore, exercise both original and appellate jurisdiction. An appeal has been provided against the final order of the Appellate Tribunal to the Supreme Court under Section 18 of the Act. However, there is no appeal against the interlocutory orders of the Appellate Tribunal to the Supreme Court.

Appeal to the Supreme Court Section 18 of the TRAI Act (as amended in 2000) provides that notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in Section 100 of that Code. It further says that no appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties. Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against. The proviso appended to the Section 18 says that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Answer 5(b)

APPLICATION FOR SETTING ASIDE EX-PARTE DECREE

AB S/o..... R/o.....

Plaintiff

Versus

CD S/o..... R/o.....

Respondent

The Respondent/Applicant respectfully states as follows:

1. That the applicant was one of the defendants in the above case and an ex parte decree has been passed against him on January 21, 2019.
2. That he was prevented by the reasons disclosed in the annexed affidavit, which he claims were sufficient, from appearing when the suit was called on for hearing.

The applicant prays that ex parte decree passed against him on January 21, 2019 be set aside.

(Signature of the Applicant)

Place : _____

AB

Date : _____

Advocate for the Applicant

Answer 5(c)

Application for a Caveat

In the Court of the Delhi High Court

Money Suit No...../20.....

In the matter of Money Suit No./20.....

between A.B. S/o of C.D.etc.

Versus

P.Q.S/o of M.N.etc.

And

In the matter of caveat

P.Q, son of M.N. residing at.....

Caveator-Petitioner

The above-named petitioner states:

1. That Mr. A.B. named above has instituted the above money suit against Mr. P.Q. and the said suit is pending. The summons has not been served on the petitioner as yet.
2. That as far as the petitioner could know, the said Mr. A.B. is contemplating to file a petition under Or. 38, r. 5 of the C. P. Code for attachment of your petitioner's properties before judgment.
3. That your petitioner has every right to appear before the court on the hearing of such application, if any.
4. That your petitioner hereby lodges a caveat to the effect:

'Let nothing be done in the matter of application under Or. 38, r. 5, C.P. Code, if any, touching properties of the petitioner without notice to the petitioner'.

Question 6

- (a) Draft a notice of Suit U/S 80 CPC against a public officer of Government of Uttar Pradesh with assumed data. (8 marks)
- (b) You are an employee of XYZ Ltd., your Company desire to engage ABC Advocates to represent your company before National Company Law Tribunal (NCLT). Draft Vakalatnama for aforesaid case. (8 marks)

Answer 6(a)**Notice of suit under Section 80, C.P. Code against a Public Officer of Government of Uttar Pradesh**

Advocate

.....

.....

Date

To,

Shri

Medical Superintendent,

..... Hospital,

.....

Re : Notice under section 80, Code of Civil Procedure

Dear Sir,

Under instructions and on behalf of my client Shri resident of
I hereby give you notice as follows:

1. On or about you were the Medical Superintendent of Hospital and you were also the Head of the Deptt. of Surgery of the said hospital.
2. Shri was admitted to the said Hospital on for surgical operation for removal of stones in the kidneys under your care and supervision and was fixed the date of operation of the said Shri
3. When the said Shri was being operated, you were personally present in the operation theatre and doing the operation with the assistance of junior doctors.
4. After removing the stones, you, while undertaking stitching, had negligently, carelessly and willfully left a big piece of cotton inside the body, due to which my client started to complain severe pain in the kidneys for which you had prescribed some antibiotics on various visits.

- 5. When my client could not get treatment for his pain, he went to and consulted Dr. of Nursing Home who opined that there is some foreign element around the kidney, for which my client was operated on in Nursing Home and a piece of cotton was removed from inside the body and after the removal of the cotton, my client had got relief from pain.
- 6. My client Shri had to undergo physical and mental suffering for the negligence, carelessness and mistake committed by you and he had to spend lot of money for treatment of pain, which was caused due to leaving the piece of cotton inside the body by you, while undertaking operation for removal of stones in the kidney.
- 7. The said therefore demands from you Rs. as damages for physical and mental suffering, Rs. as expenses incurred by him in the operation and treatment, Rs. as expenses incurred by him in transport, hotel, etc. totaling Rs. and I hereby give you notice that if the said amount is not paid, the said will, on the expiry of two months from the date of service of this notice, file a suit against you for the recovery of Rs. as damages and expenses incurred by him, at your entire risk as to cost and consequences.

Yours faithfully,

.....

Advocate

Answer 6(b)

..... No. of 20.....

VAKALATNAMA

Before the Honourable

Between Petitioner / Applicant / Appellant / Plaintiff

Vs.

And Respondent / Non-applicant / Defendant

I / we do hereby appoint Advocate ABC (hereinafter called as "the Advocates") to be my / our advocates in the said Suit /Appeal / Petition / Case/ Reference / Revision / Execution before National Company Law Tribunal (NCLT). I / we authorize the Advocates to do any or all of the following on my / our behalf:

- a. to represent, act and appear for me / us;
- b. to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree of order passed therein;

- c. to sign, file, verify, present, and receive all types of documents including complaints, statements, pleadings, appeals, cross objections, petitions, applications, revision, withdrawal, compromise or affidavits;
- d. to withdraw or compromise or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case;
- e. to deposit, draw and receive money, cheques, cash and grant receipts thereof;
- f. to do all other acts and things which may be necessary or expedient, in the opinion of the Advocates, to be done.

I/We do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

.....

Signatures of Persons Appointing the Advocates

Advocate Name	Enrolment No.	Mobile No.	Signature of Advocate
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Date

Place

BANKING LAW AND PRACTICE (Elective Paper 9.1)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Corporate Governance is an integral part of the Management Control System (MCS) which directly reflects in maintaining the image and the reputation of the company and its strategy because of global competition. Banks in the light of global image and reputation are to be very careful in ensuring their integrity in dealing with the financial aspects of their Constituents. The efforts in the field of Corporate Governance in vague since 1992 when the set of guidelines were provided by Cadbury Committee and thereafter by many other committees on the issues of Corporate Governance.

(A) *Corporate Governance Issues in Banks :*

In today's fast growing economies, the reputation of an organisation has much important as its market value. Added to the financial crisis, the organizations are facing governance issues which are creating reputational and other risks. To overcome these, the Corporate sector is focusing on a new concept called "Corporate Governance". Business ethics, Corporate Governance and Corporate Social Responsibility have become not only an integral part of the present globalised business environment, but also have changed the business model of banks and they are also enforcing such issues.

People have many rights and an attempt by any person to violate any of these right is considered unethical. Right to privacy is violated in many ways. The personal data available with researchers have led to give rise to various junk spam mails, telemarketing calls and so on. In practical situations, it is not always easy to determine whether a particular issue is ethical or unethical. However, on certain perceptions and depending upon the situations, it can be referred to as ethical or unethical. Value is the factor that distinguish an action as ethical or unethical. There are many reasons for an individual or group of individuals or corporate and others to follow ethical or unethical practices. Ethical practices would ensure better and conducive climate in workplace. We come across, unethical practices prevailing in many areas such as HR management, Marketing management, Financial management, Risk management, Production management and so on. These are the basic issues which the banks are facing in global trade now a days.

(B) *Corporate Governance in Banks :*

Banks play an important role in the economic development of a nation as an intermediaries in the financial sector. Banks also act as the trustees of the funds of the depositors. Thus, for efficient functioning and control in banks, an

effective Corporate Governance practices should be an integral part of bank management. Banks should have good Corporate Governance in force which should be much more than complying with legal and regulatory requirements. The objectives of corporate governance in the banks must cover broadly :

- (1) To protect and enhance shareholders value.*
- (2) To protect the interest of all other stakeholders consisting of customers, employees and society at large.*
- (3) To ensure transparency and integrity in communication and to make available full, accurate, clear information to all concerned whether public or the government or any other.*
- (4) To ensure accountability of the employees for work performance and in giving customer services and to achieve excellence at all the levels of their work and services.*

The role of the Board of directors, Chairman and/or CEO and Committees of the board is not only important but crucial in governance matters. The Bank's Board of directors should meet regularly and to provide effective leadership and insight in business and functional areas. They also should monitor bank's performance of business. The Chairman and/or CEO have the responsibility for all aspects of executive management and is accountable to the Board for the ultimate performance of the bank and for implementation of the policies laid down by the Board. A senior executive is made responsible in respect of compliance issues. Board level committees are also formed, to assist the Board of directors in working and to function effectively. These committees provide effective professional support in the conduct of Board level business in key areas and also provide inputs for taking major decisions.

The banks should ensure compliance with the provisions of corporate governance as per SEBI (LODR) Regulations, 2015 as applicable. The bank needs to disclose certain important information as per SEBI (LODR), Regulations, 2015 to the extent that the requirements do not violate the provisions of the Rules and Regulations made thereunder and as per guidelines/directives/orders issued by the Reserve Bank of India (RBI).

The Basel committee guidance provides a foundation for sound corporate governance practices for various banking system across the countries. The guidance is divided into four major sections (i) overview of corporate governance in banks (ii) sound corporate governance principles, (iii) role of supervisor (iv) promotion of an environment to support sound corporate governance. According to the Basel guidance, bank's good corporate governance practices would entail banks for better operational efficiency, greater opportunities to get low cost funds, and a good reputation and increased market value.

(C) Reserve Bank of India and Corporate Governance in the Banking Sector :

The special nature of banking institutions necessitates a broad view of corporate governance where regulation of banking activities is required to protect depositors. Corporate governance in the banking sector is not just a formality but a dire

need of society. In almost every country in the world, there is a watchdog like Reserve Bank of India (RBI) in India which monitors all the transactions and activities undertaken by the banks and regulate the business of the bank by making them to submit regular reports on various aspects related to the business undertaken and dealt. Corporate governance is needed for the bank to protect depositors interest, keep a check on money laundering, financial immoral and criminal acts and transaction of money with the terrorists.

RBI in India plays leading and vital role in formulating and implementing corporate governance. The corporate governance mechanism as followed by Reserve Bank of India is based on three categories (i) disclosure and transparency, (ii) off site surveillance (iii) prompt corrective action.

Disclosure and Transparency : If the banks are not disclosing their transactions to the RBI than they can operate at their whims and fancies and may play with the lifelong investments and savings of the people entrusted to them.

Off Site Surveillance : In addition to performing an annual on site inspection of the records of the banks, the RBI had initiated off site surveillance functions for operationsof banks. The main focus of the off-site surveillance is to monitor the financial health of banks between two on-site inspections. Identifying banks which show financial deterioration, lacking in services, engaged in unethical matters requiring attention. The offsite surveillance is conducted through filing of periodic returns by banks enabling the RBI to take timely remedial action before things get out of control.

Prompt Corrective Action : RBI while promoting corporate governance in banks in India has set various trigger points on the basis of CRAR, NPA and ROA. On the basis of triggers so set by RBI, the banks have to follow 'structured action plan' which are also called mandatory action plans. Besides mandatory action plan RBI has discretionary action plans too. The main reason for classifying the risk-based action points into mandatory and discretionary is that some of the actions are essential to re-store the financial health of banks while other actions will be taken at the discretion of RBI depending upon the profile of each bank and quantum of business.

All commercial banks in India are regulated by the RBI under the Banking Regulation (BR) Act of 1949. Additionally, all public sector banks are regulated by the Government of India (GOI) under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Bank Nationalisation Act, 1980 and the State Bank of India Act, 1955. Section 51 of the amended BR Act explicitly states which provisions of the BR Act apply to the PSBs. It is the demand since a long time that dual control of Public Sector Banks (PSBs) should end and PSBs should be either converted into companies of which control should be with the Reserve Bank of India (RBI), or it should entirely be under the control of Government. These are two aspects of the regulation and supervision of banks governance and of prudential regulation.

The RBI regulates both the governance aspect and the prudential aspect of private sector banks. In the case of PSBs, the government exercises all powers relating to governance, leaving prudential regulation to the RBI. This has been

identified as the problem of dual control which according to banks is providing way for frauds.

It is being noted that the appropriate values on fitness and propriety and internal governance structure are in place with respect to private and foreign banks. Nevertheless, the influence which the RBI may exercise on bank's governance through section 21 of the BR Act, by placement of RBI representatives on banks' boards, with limited authority under the Banking Acts, as well as the practice to hold the PSB board accountable has become problematic. Under the law and according to custom, the RBI cannot hold PSB board accountable for assessing and—when necessary—replacing weak and non-performing senior management and government—appointed board members.

The experience gained over the years and the recent incidents reveal that the Indian banks need to improve their risk management, and to maintain strong governance processes, practices and systems.

Some of India's leading private sector lenders are in the spot light for over the role of their leaders. Some bank faces allegations of conflict of interest over grant of loans to a corporate group. While the bank's board has offered full support to the leadership team. The allegations against the management prove to be true, they could hit the banks reputation and expose it to legal and financial risks. Number of banks in India confront serious governance and risk issues. The 'tone at the top' is crucial relating to Rating of bank; Management's ability and expertise to grow the business sustainability which are being assessed always. The governance and transparency in Indian banking is viewed as a negative factor. This is similar to many other emerging markets. The smooth transition and continuity in management in all the banks in trouble will be an important issue.

However, too much pressure on the banks must not be imposed in the name of corporate governance so that they feel harassed which is having impact on the efficiency leading slowdown of financial transactions. Additionally internal governance must be increased which must be formulated in a way that the efficiency of banks is not eroded and deteriorated and be capable to have check on the collusion of employees with constituents and others.

In this backdrop you are required to give answers in the context of prevailing banking practices and regulations to the following :

- (a) *Should a good Corporate Governance much more than complying with legal and regulatory requirements be applied by the banks ? (5 marks)*
- (b) *Elaborate the role of the Board of directors, Chairman and/or CEO and Committees of the Board in governance matters. List some of the important committees of the Board constituted in bank for the purpose of compliance of governance. (10 marks)*
- (c) (i) *State the responsibility of the senior executives of the bank in respect of compliance related issues in banks. (2 marks)*
 (ii) *What are the mandatory requirements of SEBI (LODR) Regulations, 2015 relating to the Corporate governance ? (3 marks)*

- (d) *State the sound corporate governance principles as outlined by the Basel Committee and also being approved by Reserve Bank of India (RBI).* (8 marks)
- (e) *Describe the corporate governance mechanism as followed by Reserve Bank of India (RBI) for governing the banks operating in India.* (7 marks)
- (f) *Dual control of Public Sector Banks (PSBs) should end. Banking Regulatory Powers in India are not ownership neutral. Elucidate.* (10 marks)
- (g) *State some of the ways to address the governance issues in Indian banks.* (5 marks)

Answer 1(a)

Banks should have good Corporate Governance which should be much more than complying with legal and regulatory requirements.

Corporate governance can be referred to the overall control on the activities of the corporation. In other words, corporate governance refers to the problem arising from the separation of control and ownership. Good governance facilitates effective management and control of business, which enables the banks to maintain a high level of business ethics and to provide value additions to all their stakeholders. Corporate governance is needed for the bank to protect depositors' interest and keep a check on money laundering, financing immoral and criminal acts and transactions of money to the terrorists.

Answer 1(b)

Role of the Board of Directors, Chairman and/or CFO and committee of the Board is governance matter

Role of the Board of Directors

The Bank's Board of Directors should meet regularly and to provide effective leadership and insights in functional areas.

- (i) They should also monitor Bank's performance.
- (ii) Setting up of a framework of strategic control and continuously reviewing its efficacy.
- (iii) Implementation, review and monitoring the integrity of its business and control mechanisms.
- (iv) Overseeing the risk profile of the bank.
- (v) Ensuring expert in management and decision-making, internal control and reporting requirements.
- (vi) Maximizing the interests of its stakeholders.

Role of Chairman and / or CFO : The Chairman and / or CFO have the responsibility for all aspects of executive management and are accountable to the Board for the ultimate performance of the Bank and implementation of the policies laid down by the Board.

Committees of the Board : Important board level committee are formed to assist the Board of Directors to function effectively. These committees provide effective professional support in the conduct of Board level business in key areas.

Some of the Important Committees of the Board constituted in banks for governance

Some of the common board committees of a banking company for sound governing practices are as under.

1. Audit Committee.
2. Remuneration Committee.
3. Management Committee.
4. Investors' Grievances Committee.
5. Fraud Management Committee.
6. Risk Monitoring Committee.

Answer 1(c)(i)

A senior executive is made responsible in respect of compliances onus with all applicable statutes, rules, regulations and other procedures, policies as laid down by the GOI/RBI and other regulators and the Board.

Answer 1(c)(ii)

Mandatory requirement of SEBI (LODR) Regulations, 2015 : Mandatory requirements of SEBI (LODR) Regulations, 2015 include the compliance of the Board of directors, composition and quorum of the Audit committee, non-executive directors, the appointment, reappointment of the statutory auditor and fixation of the fees, having independent directors on the board, besides audit committee, the risk management committee, stake holders relationship committee and constitution of the nomination and remuneration committee.

Answer 1(d)

Sound Corporate Governance Practices : The committee proposed the following eight principles which are considered to be important for an effective corporate governance process:

Principle 1 : Board members should be qualified for their role in corporate governance and be able to exercise sound judgment in handling the affairs of the bank.

Principle 2 : The board of directors should approve and oversee the bank's strategic objective and corporate values that are communicated throughout the organization.

Principle 3 : The board of directors should set and enforce clear lines of responsibility and accountability throughout the organization.

Principle 4 : The board should ensure that there is appropriate oversight by senior management consistent with board's policy.

Principle 5 : The board and senior management should effectively utilize the work conducted by the internal auditors, external auditors and internal control systems.

Principle 6: The board should ensure that compensation policies and practices are in consistent with the bank's corporate culture, long term objectives and strategy.

Principle 7: The bank should function in a transparent manner.

Principle 8: The board and the senior management should understand the bank's operational structure and the jurisdiction.

Answer 1(e)

Corporate Governance Mechanism as followed by the Reserve Bank of India governing the banks is divided into three categories viz; (i) disclosure and transparency; (ii) off site surveillance; and (iii) prompt conservative action.

- (i) *Disclosure and transparency*: The RBI through the requirement of routine reporting of financial transactions of the bank should keep a tab on the activities being undertaken by the banks in India. Any failure to abide by the requirements stipulated by the RBI may lead to heavy fines being imposed along with the cancellation of the licence to operate as a bank.
- (ii) *Off-site surveillance* : The off-site surveillance prepares RBI to take timely remedial action before things get out of control. The off-site returns were introduced for all commercial bank operating in India covering different aspects connected and related to lending and profile of ownership, control and management of domestic banks. Also the returns were introduced for monitoring asset-liability management covering the liquidity and interest rate risk for domestic currency and foreign currencies. The risk band operation strategy has been adopted for more focused governance measure.
- (iii) *Prompt conservative action* : RBI while promoting corporate governance in banks in India has set various trigger points on the basis of Capital to Risk Weighted Assets Ratio (CRAR), Non Performing Assets (NPA) and Return on Assets (ROA). On the basis of trigger points so set by RBI, the banks have to follow structured action plan also called mandatory action plan. Besides mandatory action plans, RBI has discretionary action plans too. The main reason for classifying the rule based action points into mandatory and discretionary is that some of the actions are essential to restore the financial health of banks while other actions will be taken at the discretion of RBI depending upon the profile of each bank and quantum of business.

Answer 1(f)

There are two aspects to the regulations and supervision of banks- governance and regulation. The RBI regulates both governance aspect and the prudential aspect of private sector banks. In the case of Public Sector Banks (PSB), the government access all powers relating to governance, leaving prudential regulation to the RBI. This has been identified as the problem of dual control which according to banks is providing way for frauds.

All commercial banks in India are regulated by the RBI under the Banking Regulation Act, 1949 (B R Act). Additionally, all public sector banks are regulated by government of India under the Banking companies (Acquisition and Transfer of Undertaking) Act, 1970; the bank nationalization Act, 1980; and the State Bank of India Act, 1955. It is the

demand for a long time that the dual control of the public sector banks should end and they should either be converted into companies of which control should be with the RBI or they should be under the control of the Central Government. These are two aspects of the regulation and supervision of governance of banks and of prudential regulations.

Under the regulatory framework of the country and as per custom, the RBI cannot hold PSB boards accountable for assessing and when necessary replacing weak and non performing senior management and government appointed board members. Some of the concerns are:

1. RBI cannot remove directors and management PSBs, as section 36AA(1) of the BR Act, 1949 is not applicable to the PSBs.
2. Section 36 AA(1) of the BR Act, 1949 provides for supersession of a Bank Board and this is also not applicable in the case of PSBs and Regional Rural Banks.
3. Section 10B(6) of the BR Act, 1949 provides for removal of the chairman and managing director of a banking company and this is also not applicable in the case of PSBs.
4. RBI cannot force a merger in the case of PSBs as per section 45 of the BR Act, 1949.
5. PSB's banking activity does not require licence from RBI under section 21 of the BR Act, 1949 hence RBI cannot revoke a licence under section 22 (4) of the BR Act, 1949 as it can in the case of private sector banks.
6. RBI cannot triggers liquidation of PSBs as per section 39 of the BR Act, 1949.
7. Furthermore, in some cases there is duality of Managing Director and the Chairman- they are the same- implying the MD is primary answerable only to himself or herself.

Answer 1(g)

Leadership group in Indian banks needs to ensure that they enhance the risk culture, reputation and financial strength of a bank. The management of the most of the banks need to put in efforts to resolve the issues on quality, improve provisioning level and restructuring of its operating control to make it a control point than the relevant business heads.

Dual control of public sector banks should end. PSBs should be either converted in to companies and the control should be with the Reserve Bank of India or it should entirely with the Central Government.

Question 2

Chirping Birding Limited approached their bankers for working capital requirement. The bank has agreed to sanction the same by retaining margins as under :

<i>Raw materials</i>	<i>18%</i>
<i>Work-in-progress</i>	<i>30%</i>

Finished goods	20%
Debtors	10%

The bank has also acceded to the request of the company to add 10% to the estimated figure of working capital to cover the contingencies. Following projections are being made available to bank by the company :

Estimates	Amount (in ₹)
Annual sales	18,00,000
Cost of production	14,40,000
Raw materials purchased	9,35,000
Monthly expenditure	50,000
Anticipated opening stock of raw materials	1,80,000
Anticipated closing stock of raw materials	1,55,000
Inventory Norms	
Raw material	2 months
Work-in-progress	15 days
Finished goods	1 month

The company enjoys a credit of 15 days on its purchases and allows one month credit on the goods sold.

Company has received advance of ₹2,50,000 against the sales orders.

Given the above and stating assumptions, if any so taken :

- Calculate the working capital required by the company Chirping Birding Ltd. (12 marks)
- Work out and state the working capital limits likely to be approved by the banker to the company on the basis of the provided projections. (8 marks)
- State in which forms the working capital finance may be granted by the bank. (5 marks)
- Describe the factors determining the margin. (5 marks)

Answer 2(a)

Calculation of monthly consumption of raw material, monthly sales and monthly cost of production

Particulars	Calculation	Amount (INR)
Raw Material consumed	= Opening Stock+ Purchase-Closing Stock	= 1,80,000 + 9,35,000 - 1,55,000 = 9,60,000
Monthly Consumption of Raw Material	9,60,000/12	= 80,000
Monthly Sales	18,00,000/12	= 1,50,000
Monthly Cost of production	14,40,000/12	= 1,20,000

Calculation of working capital

<i>Particulars</i>	<i>Calculation</i>	<i>Amount (INR)</i>
Raw Material 2 months Consumption	80,000* 2	1,60,000
Work in progress - 15 days of cost of production	1,20,000/2	60,000
Finished Goods - 1 month of cost of production	1,20,000 * 1	1,20,000
Sundry Debtors - 1 Month sales	1,50,000*1	1,50,000
Expenditure for 1 month	50,000*1	50,000
Total Working Capital		5,40,000
Less : Creditors -15 days purchases	9,35,000/12*0.5	38,958
Less : Advances received on sales order		2,50,000
Net working capital required by the Company		2,51,042
+Provision for contingencies (10%)		25,104
		2,76,146

Answer 2(b)**Calculation of the working capital limit likely to be approved by the banker**

<i>Particulars</i>	<i>Calculation</i>	<i>Amount (INR)</i>
Raw Material 2 months Consumption		
Less 18% margin	1,60,000-28,800	1,31,200
Work in progress - 15 days		
Less 30% margin of cost of production	60,000-18000	42,000
Finished Goods - 1 month of cost of production		
Less 20% margin	1,20,000-24,000	96,000
Sundry Debtors - 1 Month sales		
Less 10% margin	1,50,000-15,000	1,35,000
Expenditure for 1 month	Nil	Nil
Further contingencies		25,104
Total Working Capital		4,29,304

Answer 2(c)

Working Capital finance granted by banks in the form cash credit (CC) and overdraft (OD). Cash Credit is given against hypothecation/pledge of stocks/movable assets for various purposes. While granting cash credit limit the banks requires the value of assets (hypothecated/pledged). Bank allowed the customer to drawdown subject to margin in

which is called the drawing power. If the limit is Rs. 100 lacs and with margin of 25% the drawing power subject to the security (stocks/movable assets hypothecated/pledged) would be Rs. 75 lakh or less.

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

Invariably, CC is given against movable goods/ assets and the OD is given against financial securities like Bills of exchange, fixed deposit receipts and tradable market instrument and book debts.

Answer 2(d)

The factors determining margin are as under:

1. The amount of margin depends upon the likely fluctuations in the prices of the various commodities.
2. In case of shares of industrial concerns the financial position and reputation of the issuing undertaking is also taken into account.
3. Margins are fixed keeping in view the credit and reputation of the borrower concern, i.e. a lower margin may be fixed for the borrower having first class reputation against the security of the same commodity.
4. The margin, determined at the time of sanctioning an advance, may be raised or reduced subsequently according to the variation in the prices of the securities.
5. In case of commodities which are subject to selective credit control of the Reserve Bank, margins are usually prescribed by the Reserve Bank from time to time. It is essential for the banks to keep such margins.

Question 3

Comment on the following in the context of the prevailing banking practices and the statutory provisions :

(a) *In a lien there should be a right of possession.* (2 marks)

(b) *Banker possesses right of set-off and not a lien on the money deposited.* (3 marks)

Answer 3(a)

In a lien there should be a right of possession because, lien is a right of one man to retain that which is in his possession belonging to another. Possession of the goods by the person claiming right of lien, is anterior to the exercise of that right and for which possession whether actual or constructive is a must. [*Syndicate Bank Vs. Davander Karkare* (A.I.R. 1994 Karnataka 1)].

Answer 3(b)

Banker possesses right of set-off and not lien on money deposited. The banker's right of lien extends over goods and securities handed over to the banker. Money deposited in the bank and the credit balance in the accounts does not fall in the category of goods

and securities. The banker may, therefore, exercise his right of set-off rather the right of lien in respect of the money deposited with him. The lien under Section 171 of Indian Contract Act, 1872 can be exercised only over the property of someone else and not own property. Thus when goods are deposited with or securities are placed in the custody of a bank, it would be correct to speak of right of the bank over the securities or the goods as a lien because the ownership of the goods or securities would continue to remain in the customer. But when money is deposited in a bank as a fixed deposit, the ownership of the money passes to the bank and the right of the bank over the money lodged with it would not be really lien at all. It would be more correct speak of it as a right to set-off or adjustment.” [*Brahammaya v. K.P. Thangavelu Nadar*, AIR (1956), Madras 570].

Question 4

What are the popular types of mortgages obtained by a banker ? How the mortgage(s) is/are enforced by the bank ?

Answer be given on the basis of relevant provisions and the prevailing banking practices. (5 marks)

Answer 4

Types of mortgage and their enforcement by the bank:

- i. Mortgage by deposit of title deeds (Equitable Mortgage)
- ii. Simple mortgage
- iii. English mortgage

Enforcement of all these types of mortgages is by way of filing a suit for sale of mortgaged properties. The procedure for filing a suit for a sale is provided for in the Code of Civil Procedure, 1908. The Section 16(c) of the Civil Procedure, 1908 provides that a suit for sale of mortgaged property shall be filed in the Court within whose jurisdiction the mortgaged property is situated. Order 34 of the Code provides for various things to be adhered to while filing suit for sale of mortgaged property. When a suit for sale is filed, the Court after hearing the parties passes a preliminary decree. Through the preliminary decree it directs the mortgagor to pay the mortgage debt within a certain period and in the event of his failure to pay the money due under the mortgage, the Court orders for sale of mortgaged properties by passing a final decree. After passing of the final decree, the mortgagee with the help of the Court gets the mortgaged property sold in execution of the mortgage decree.

Question 5

Explain “SWIFT” and describe the salient features of ‘SWIFT’ system. State further in which ways it is being useful to banks. (5 marks)

Answer 5

SWIFT refers Society for Worldwide Inter-bank Financial Telecommunications (SWIFT) and is a co-operative non-profit making organization established under Belgian law with its head quarter at Brussels. SWIFT is wholly owned by its member banks. SWIFT is a paperless message transmission system.

Key features SWIFT are as under:

- Operates on 24x7 basis throughout the year.
- All messages are transmitted to any part of the world immediately.
- Message formats are standardized.
- Information is confidential and is protected against unauthorized disclosure.
- SWIFT assumes financial responsibility for the accuracy and timely delivery.

Usefulness of SWIFT to banks

- SWIFT has become an integral part of banking system.
- SWIFT transmit authenticated financial and nonfinancial messages.
- SWIFT with its well-standardized and structured message formats have been offering a reliable system of message transmission.
- Banks use SWIFT platform for transmission of financial and non-financial messages covering international finance (settlement of forex deals), international trade (advising of LCs, amendments to LCs etc.).

Question 6

Leverage ratio framework under Basel-III is calibrated to act as a credible supplementary measure to risk based capital requirements. Elaborate its objective in context of report of the committee on Basel-III. (5 marks)

Answer 6

Leverage ratio : One of the underlying features of the crisis was the build-up of excessive on and off-balance sheet leverage in the banking system. In many cases, banks built up excessive leverage while still showing strong risk based capital ratios. During the most severe part of the crisis, the banking sector was forced by the market to reduce its leverage in a manner that amplified downward pressure on asset prices, further exacerbating the positive feedback loop between losses, decline in bank capital, and contraction in credit availability. Therefore, under Basel III, a simple, transparent, non-risk based leverage ratio has been introduced. The leverage ratio is calibrated to act as a credible supplementary measure to the risk based capital requirements. The main objectives of leverage ratio frame work are:

1. The leverage Ratio in Basel III is introduced to reduce the risk of deleveraging in the future and also the damage which can be inflicted on the broader financial system and the economy.
2. To constrain the build-up of leverage in the banking sector, helping avoid destabilizing deleveraging processes which can damage the broader financial system and the economy.
3. It is also directed towards reinforcement of the risk based requirement with a simple, non-risk based backstop measure.

CAPITAL, COMMODITY AND MONEY MARKET
(Elective Paper 9.2)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

- (a) Fenner Belts Ltd. is a listed company. In spite of having excellent financial performance the stock performance in Stock Market was lackluster. It was also noted that retail participation in stock market is quite low.

Shareholding pattern of the Company as on 31st December, 2018 is given below:

Sr. No.	Particulars	No. of Holders	No. of Shares
1	Promoters and Promoters Group	10	75,00,000
2	Foreign Institutional Investors	4	12,00,000
3	Public Financial Institutions	6	8,00,000
4	Bodies Corporates	10	3,00,000
5	Resident Individuals	1,240	2,00,000
	Total	1,270	1,00,00,000

The Company earlier allotted warrants to the Promoters. These warrants were converted into 10,00,000 equity shares of ₹10 each at a premium of ₹90 each. The prevailing price of equity share in the Stock Market is ₹65.

In the light of above answer the following :

- (i) What is the percentage of holding of each kind of shareholders before and after allotment of shares against warrants ? (3 marks)
- (ii) What percentage of holding is required to be maintained by promoters to comply with the continuous listing requirement ? How much of the promoters holding is required to be diluted to adhere to the legal provisions ? (3 marks)
- (iii) Name four options available to the Company/promoters for increasing the public holding so as to meet the provisions of continuous listing.

Also explain in detail with Quantity, Percentage, Ratio and Methodology to be adopted for this purpose.

(6 marks for each option = 24 marks)

- (b) *Supreme Fans Limited came out with an IPO of 100 lakh equity shares at ₹100 each including a premium of ₹90 per share. The allotment was made on 30-11-2018. These stocks were listed in NSE and BSE on 02-12-2018.*

After sometime it was noted that additional funds are required for a new project to supplement the existing project which was not envisaged earlier. It was advised that Preferential Issue route is the quickest way to raise funds.

After Listing the share price hovered between ₹85 and ₹95. Accordingly a resolution was passed by the shareholders on 28-02-2019 to offer and allot 75 lakh shares at a price of ₹90 each subject to various provisions of the law to the following persons/entities :

<i>Persons/Entities</i>	<i>Lakh Shares</i>
1. <i>Ram Kumar Lohia</i>	<i>12.50</i>
2. <i>Liberty Private Ltd.</i>	<i>25.00</i>
3. <i>LDF Asset Management Company (Mutual Fund Registered with SEBI)</i>	<i>25.00</i>
4. <i>Dolly Khanna</i>	<i>5.00</i>
5. <i>Prem Jhunjunwala</i>	<i>7.50</i>
<i>Total</i>	<i>75.00</i>

All the above investors also made investment in the Non-promoter category in the IPO when the shares were allotted at ₹100.

Out of the above Ram Kumar Lohia, and Prem Jhunjunwala partly sold their shares while LDF Asset Management Company sold its entire shareholding during the month of January 2019.

The company made an application with Stock Exchanges which was rejected for Non-Compliance of SEBI Guidelines.

On hearing the verdict the stock price went up and average of weekly high and low for 26 weeks from the date of listing went up to ₹140.

In the light of above answer the following :

- (i) What are the breaches observed in the preferential offer for which the Stock Exchange rejected the listing application ? (10 marks)*
- (ii) What is the meaning of relevant date pertaining to Preferential Issue ? What is the relevant date in present case for preferential issue resolution ? (5 marks)*
- (iii) What shall be final price for allottees of preferential issue of shares ? Explain with reasons. (5 marks)*

Answer 1(a)(i)

S. Particulars No.	Before Allotment of Shares against Warrants		After Allotment of Shares against Warrants	
	No. of Shares	%	No. of Shares	%
1. Promoter and Promoter Group	75,00,000	75	85,00,000	77.27
2. Foreign Institute	12,00,000	12	12,00,000	10.91
3. Public Financial Institution	8,00,000	8	8,00,000	7.27
4. Bodies Corporate	3,00,000	3	3,00,000	2.73
5. Resident Individuals	2,00,000	2	2,00,000	1.82
Total	1,00,00,000	100	110,00,000	100

Percentage of Holding:

Before Allotment of shares against warrants

Promoter Holdup — 75%

Public Holdup — 25%

After Allotment of shares against warrants

Promoter Holdup — 77.27%

Public Holdup — 22.73%

Answer 1(a)(ii)

Total promoter holding after allotment of shares against warrants stands at 77.27

Under Rule 19 (2) & Rule (19)(A) of the Securities Contracts (Regulation) Rules, 1957, the minimum public holding should be 25% which after allotment of sum to the promoters has come down to 22.73%

Public holding required — 25%

Total No. of shares — 11000000

Public holding minimum

to meet the request — 27,50,000

Promoter holding — 82,50,000

Hence promoter must dilute (85,00,000-82,50,000) – 2,50,000 shares to the public i.e. 2.94 of its holding in favor of public

or

The company can issue 3,33,334 equity shares to the public. This will increase total share capital to 11,33,334 shares and the public will hold 28,33,334.

Answer 1(a)(iii)**Option 1**

Issuance of shares to public through prospectus.

The promoters may dilute their shareholding in the company percentage terms by issuing additional shares to public through prospectus. This will increase the share capital of the company and thus bring down the shareholding of promoters.

The company can issue 333334 equity shares to the public. This will increase total share capital to 1133334 shares and the public will hold 2833334 shares this constituting 25% share capital to the company to comply with the listing provisions.

These shares shall be issued by way of public offer through prospectus.

Option 2

Offer for sale of shares by promoters to public through (OFS).

This option is available to promoters to dispense of their excess shareholdings beyond 75% in the stock market through (OFS) on the platform provided by the stock exchange.

In this scenario total share capital of the company is INR 110,00,00.

In this scenario total share capital of the company is 110,00,000 shares. 25% Public shareholding should be 27,50,000 shares and the promoters shareholding. Should be 82,50,000 shares.

Excess shareholding of promoter is $85,00,000 - 82,50,000 = 2,50,000$ shares.

The promoters have to transfer 2,50,000 shares from where it will be distributed to the allottees of OFS. The proceeds of this issue shall be received by promoters. All the expenses are to borne by promoters.

Option 3

Rights issue to public shareholders.

The promoters may dilute their shareholding in percentage terms through issue of additional share to the existing shareholders other than promoters on rights basis.

In such a situation the company has to issue 3,33,334 equity shares to the existing shareholder, holding 25,00,000 shares. The holders of the rights shares shall be 0.13 shares against shares held by a shareholders.

The shares have to be issued at a price lower than the market price so that there is response for the shareholders.

The issue may be under-written for under-subscription, if any.

Option 4

Bonus issue to the public shareholders.

Under this process the promoters have to forego their entitlement of bonus shares which is a bonus for them.

In this scenario 3,33,334 equity shares have to be issued as bonus shares to the existing shareholders other than promoters in the ratio of 0.15 shares against 1 share.

This will increase the total shares capital of the company to 1133334 equity sum. The promoters will hold 85,00,000 shares and the public will hold 28,34,000 shares now fulfilling the condition of quantum rising.

To benefit the public shareholders this formula was adopted by Reliance Bonus Limited.

Answer 1(b)(i)

There are conditions which the company has failed to observe as per SBI Regulations:

- (a) Pricing norms;
- (b) Eligibility of allottees.

Applicable norms for Supreme Fans Ltd.

- (a) The price at which shares were issued by the company in its IPO;
- (b) The average of weekly high and low of the closing prices of the related shares quoted on the stock exchange during the period shares have been risked preceding the relevant date.
- (c) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

In the present case the IPO was made first 13 weeks ago at a price of Rs.100 (Rs.10 face value + Rs.90 premium).

The average of weekly high and low for 13 weeks since listing is Rs.90.

Hence the price at which equity issue was made at Rs.100 is eligible price.

The company chose to issue shares at Rs.90 is in violation of pricing norms under professional issue guidelines.

In the given case law of the proposed allottee namely Ram Kumar Lohia and PranJhunjunwala are not eligible for allotment as they have partly sold their shares allotted to them in public issue. Thus clause is not applicable for Mutual Funds i.e LDF Assets.

Management Company and they will continue to remain entitled for allotment of shares in a professional issue.

Hence the application was rejected on the above two grounds.

Answer 1(b)(ii)

According to SEBI Regulations the relevant date for preferential issue of equity shares shall be:

“The date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue.”

In the present case the general body meeting was held on 28th February, 2019. Hence the relevant date is 29th January, 2019.

(Full marks may be given if a candidate writes 30th or 31st January, 2019).

Answer 1(b)(iii)

As per the pricing norms, if a company allot sum before the completion of 26 weeks under preferential issue of equity shares and the price increases subsequently as in our case :

“Such price shall be recomputed by the issuer on completion of 26 weeks from the date of listing on a stock exchange with reference to the average of weekly high and low of the closing price. During the twenty six weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

In the present case the price shall be 140 and thus difference of Rs.40 (140-100) has to be collected from the allottees.

Question 2

- (a) (i) *What do you understand by term Book Building and what are the additional disclosures to be made in case of Book Building ? (5 marks)*
- (ii) *A company came out with an issue of 1000 shares at Price Band of ₹300-360. The minimum lot size is 50. The company received the following bids:*

<i>Bid</i>	<i>Number of Shares Bid</i>	<i>Price Per Share (₹)</i>
1	250	360
2	250	355
3	100	350
4	450	360
5	150	330
6	250	320
7	150	300

From the above :

- (A) *Decide how the allotment shall be made to each applicant under Book Building Process if the final issue price is ₹300.*
- (B) *What is amount to be charged from the applicant of Bid 1 and 3 ? (5 marks)*
- (b) (i) *What do you mean by Bill Discounting and how it is different from Repurchase Agreement ? (3 marks)*
- (ii) *When an Investor and a Company agree for a particular discounting transaction then what documents are exchanged among them ? (2 marks)*
- (iii) *Determine the Quarterly Return in absolute terms of an investor who has agreed to discount a Bill of ₹2 crore at a discount rate of 21% per annum for 3 months. (3 marks)*

- (iv) Suppose in above case if company defaults after 3 months then what options are available with investor. (2 marks)
- (c) XYZ Mutual Fund launched a Close-Ended Scheme 'Dhan Suraksha' by issuing 10 crore unit of ₹10 each with a maturity period of 3 years.

The fund initially invested 75% of its corpus in Debt Securities and balance in Equities.

However depending upon the market conditions shifting between Debt Securities and Equities were allowed.

During the duration of Fund, While Debt portion (75% of initial corpus) yielded a return of 30%, the Equity portion realised a yield of 40% during the same period.

During the tenure of Fund, a sum of ₹2 crore has been spent on various related expenses such as commission, administration fees etc. and a sum of ₹50 lakh was still outstanding at the time of redemption of the Scheme.

In light of above information answer the following questions :

- (i) What is the Net Asset Value (NAV) per unit of the Scheme ? (5 marks)
- (ii) What will be Annual Yield of an Investor who has subscribed 1000 units at the time of launching of Scheme ? (3 marks)
- (iii) In which Category of Scheme of Mutual Fund you will classify 'Dhan Suraksha Scheme' and why ? (2 marks)

Answer 2(a)(i)

Book Building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be.

The book building process in India is very transparent. All investors including small investors can see on an hourly basis where the book is being built before applying. According to this method, share prices are determined on the basis of real demand for the shares at various price levels in the market.

Apart from meeting the disclosure requirements as specified in SEBI ICDR Regulations, 2018, the following disclosures shall be suitably made:

- (i) The particulars of syndicate members, brokers, self-certified syndicate banks, registrars, bankers to the issue, etc.
- (ii) The following statement shall be given under the 'basis for issue price':
"The issue price has been determined by the issuer in consultation with the Book Runner(s), on the basis of assessment of market demand for the offered securities by way of Book-building."
- (iii) The following accounting ratios shall be given under the basis for issue price for each of the accounting periods for which the financial information is given :
1. EPS, pre-issue, for the last three years (as adjusted for changes in capital).

2. P/E pre-issue
3. Average return on net-worth in the last three years.
4. Net-asset value per share based on last balance sheet.
5. Comparison of all the accounting ratios of the issuer company as mentioned above with the industry average and with the accounting ratios of the peer group (i.e. companies of comparable size in the same industry. (Indicate the source from which industry average and accounting ratios of the peer group has been taken).
6. The accounting ratios disclosed in the offer document shall be calculated after giving effect to the consequent increase of capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital shall be exercised.

(iv) The proposed manner of allocation among respective categories of investors, in the event of under subscription.

Answer 2(a)(ii)

(A) Since total number of shares for which application received is 1600, the allotment shall be made as follows :

<i>Bid</i>	<i>Minimum</i>	<i>Prop. Shares</i>	<i>Total</i>
1.	50	$200 \times \frac{650}{1250} = 104$	154
2.	50	$200 \times \frac{650}{1250} = 104$	154
3.	50	$50 \times \frac{650}{1250} = 26$	76
4.	50	$400 \times \frac{650}{1250} = 208$	258
5.	50	$100 \times \frac{650}{1250} = 52$	102
6.	50	$200 \times \frac{650}{1250} = 104$	154
7.	50	$1000 \times \frac{650}{1250} = 52$	102
	350	650	1,000

(B) Since both bidders 1 and 3 have been allotted 154 and 76 shares respectively a sum of Rs.46200 and Rs. 22800 shall be charged from them.

The balance amount of Rs.43800 (Rs.360 x 250 - Rs.46200) shall be refunded to bidder 1 and an amount of Rs.1220 (Rs.350 x 100-Rs.22800) shall be refunded to Bidder 3.

Answer 2(b)(i)

Bill discounting is a short tenure financing instrument for companies to discount their purchase/sales bills with banks to get funds at discounted value.

Similar to Bill discounting, repurchase agreement (Repo) is also a short term financing arrangement but it involves selling of securities with an agreement to buy them back at a later date at a price inclusive of interest.

Difference between bill discounting and Repurchase Agreement (Repo)

<i>Bill discounting</i>	<i>Repurchase agreement</i>
Generally used by companies	Generally used by bank
Duration or period of bill discounting from 30 days to 90 days as a short term financing arrangement	Generally used for overnight borrowing
Underlying instruments are purchase/sale bills	Underlying instruments are interest bearing securities/bonds
Amount is paid by discounting invoice value of sale/purchase bill	Amount is paid on the basis of dirty price (clean price + accrued interest) after applying appropriate haircut

Answer 2(b)(ii)

When an investor and the company agree to a particular bill discounting transaction, the following is what company gives to investor:

- The original copies of bills to be discounted
- A hundi/promissory note
- Postdated Cheque (PDC)

The investor simply issues a cheque.

Answer 2(b)(iii)

The investor will charge discount :

$$\text{Rs. 2 crore} \times 21\% \times \frac{3}{12} = \text{Rs.10,50,000}$$

$$\begin{aligned} \text{Amount given by investor} &= \text{Rs.200,00,000} - \text{Rs.10,50,000} \\ &= \text{Rs.1,89,50,000} \end{aligned}$$

The quarterly return in absolute term to investor

$$= \frac{10,50,000}{1,89,50,000} \times 100 = 5.541\%.$$

Answer 2(b)(iv)

In case of default the investor will have all the rights available against the investor under section 138 of Negotiable Instrument Act, 1882.

The investor can file a criminal case against the borrower in the court of law for cheating and fraud.

The investor can claim damage for breach of trust, penal interest, and the principle amount from the borrower under various provisions by an order from the court.

Answer 2(c)(i)

Computation of NAV (Net Asset Value) per unit

<i>Particulars</i>	<i>Amount (INR Crore)</i>
Closing value of debt securities (Rs.75 crore x 1.30)	97.50
Closing value of equities (Rs. 25 crore x 1.40)	35.00
Total (Closing value of debt securities + Closing value of Equities)	132.50
Less : Commission, administration fees etc.	2.00
Less : Outstanding Expense	0.50
Net Asset Value (NAV)	130.00

No. of Units = INR 10 Crore

NAV per Unit = INR 130 Crore / 10 Crore = INR 13.00

Answer 2(c)(ii)

Annual Yield of an Investor who has subscribed 1000 units at the time of launching of Scheme

<i>Particulars</i>	<i>Amount (INR)</i>
Amount Invested (INR 10 x 1000)	10,000
Amount Realized (INR 13 x 1000)	13,000
Gain (Amount Invested – Amount Realized)	3,000
Annualized Yield = INR 3,000 / INR 10,000 x 1 / 3 x 100	10%

Therefore, Annualized Yield of an Investor = 10%

Answer 2(c)(iii)

It is a Balanced fund scheme of Mutual fund .Because there is a mix of debt and equity in portfolio of investments and shifting is allowed depending upon prevailing market condition.

Question 3

ZCRA, a Credit Rating Agency which were granted certificate from SEBI is interested in carrying out Bill Discounting business.

(a) Can it do so, state the relevant provisions in this regard.

(b) Further can it give rating to Securitised Instruments. Explain. (5 marks)

Answer 3

As per SEBI (Credit Rating Agencies) (Second Amendment) Regulation 2018, in clause (f) of Regulation 9

“A Credit rating agency shall not carry out any activity other than the rating of securities offered by way of public or sight issue.”

Accordingly ZCRA, cannot carry out the business of bill discount

According to Regulations nothing shall precedent a credit rating agency from rating financial instrument under respective guidelines of financial sector regulator or any authority.

Hence, ZCRA can give rating to securitized instruments.

Question 4

What do you mean by ‘Whistle Blower Mechanism’ ? Is it mandatory or voluntary for a listed company to establish ? (5 marks)

Answer 4

A mechanism for directors and employees to report genuine concern if they found anything is going wrong in the company. It provides adequate safeguards against victimization of employees and directors who avail the mechanism.

As per Section 177(9) of the Companies Act, 2013 and Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 requires every listed company, companies which accept deposits from the public and companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees to establish to establish a Vigil mechanism for directors and employees to report genuine concern. It provide adequate safeguards against victimization of employees and directors who avail of the Vigil mechanism and also provide for direct access to the chairperson of the Audit committee or the director nominated to play the role of audit committee, as the case may be, in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization. The details of establishment of Vigil mechanism shall be disclosed by the company in the website, if any, and in the Board’s Report.

It is mandatory for companies to put in place effective vigil mechanism which will

ensure protection of whistleblowers against any victimization, and not just a listing compliance.

Question 5

Explain the term 'Hostile Takeover' and how it operates. (5 marks)

Answer 5

Hostile takeover can be defined as acquisition of the (target) firm by another firm/ group (i.e. acquirer) that is not supported by management.

Such takeover generally happen when acquirer is of view that the target firm is undervalued due to poor management or otherwise and its value can be enhanced through acquisition.

The acquirer can use any of the following technique to take over the target:

- (i) *Street swap* : the acquirer accumulate large amount of stock in company before making open offer.
- (ii) *Open offer* : The acquirer makes open offer to shareholders of the target at a price which they cannot refuse.
- (iii) *Bear Hug* : The acquirer exert pressure on the management of Target Company by threatening to make open offer.
- (iv) *Strategic alliance* : Instead of buying out a partnership is offered.
- (v) *Brand Power* : Displacing the brand of the target.

Question 6

"If the underlying Assets and Future Contracts are held till maturity, the hedger bears no risk". Discuss. (5 marks)

Answer 6

If the assets and future contract are held till maturity, the hedger bears no risk. Since risk is eliminated because the future price and the spot price at contract maturity becomes equal. Gains and losses on the futures and the commodity positions will exactly cancel. However, if the contract and assets are to be liquidated early, before contract maturity, the hedger bear the basis risk, because the futures price and the spot price need not move in perfect lockstep at all times before the delivery date. In this case, gains and losses on the contract and the assts may not exactly offset each other.

INSURANCE LAW AND PRACTICE
(Elective Paper 9.3)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Sandeep had availed Housing Loan from SBI through whom he had been enrolled as a member of a Group Insurance Scheme on 12.09.2016, specifically designed for Housing Loan Borrowers of SBI group by SBI Life Ins. Co. In the good health declaration signed by him he had mentioned that he was never hospitalized for any critical illness or a condition requiring medical treatment for a critical illness as on date. This being a group insurance, no medical examination was carried out at the time of granting insurance cover. It is to be noted that unlike in individual proposal, where specific answer Yes or No are sought, for the questions on health, are not asked in the application for Group Insurance. Proposal form contains a Good Health Declaration clause where Sandeep had declared that he was in sound health. But unfortunately, Sandeep died on 18.01.2017 within 4 months 11 days of enrolling himself as a member of the Group scheme.

The insurer denied the claim and alleged that Sandeep has suppressed material facts of his suffering from chronic liver disease. To establish pre proposal illness the insurer has submitted two discharge summaries in respect of hospitalization of the deceased life assured. As per the discharge summary of GEM hospital Sandeep was admitted on 13.07.2016 and discharged on 14.07.2016. X- Ray and Scanning reports of Abdomen revealed shrunken liver with coarse Cho pattern splenomegaly, cirrhosis of liver with portal hypertension. The patient was diagnosed for colitis and treated. The above hospitalization is prior to the date of proposal i.e. 12.09.2016. Subsequent to the date of proposal Sandeep was admitted at KMC Hospital Coimbatore on 23.11.2016 and discharged on 2.12.2016. He was diagnosed for Alcoholic cirrhosis of liver with portal HT, c/o abdominal distension, swelling of both legs.

One of the Critical illness is defined in the policy as irreversible kidney/or irreversible liver failure. On a perusal of various documents it has been clearly established that Sandeep had concealed preexisting illness of Alcoholic Cirrhosis of liver disease, portal hypertension. It was also established that Sandep was an alcoholic and smoker. Hence the insurer has denied the claim with the established material facts of his suffering from chronic liver disease.

Sandeep's wife dissatisfied with the denial of the claim, filed a complaint against the insurance company and asks for a remedial action. Ombudsman in resolving this dispute analyzed the case on the following lines :

- *Since on the date of proposal Sandeep had felt that he was in good health and declared that he was in sound health cannot be faulted. Further there was no evidence to say that he was ill on the date he signed the application.*

- *As per the insurer, the critical illness not disclosed in the present case is chronic liver disease. The terminology used in while defining critical illness is Irreversible Liver Failure.*

One cannot come to conclusion that Sandeep was suffering from irreversible Liver failure since as per records he was suffering from cirrhosis of liver.

- *Further Sandeep may not be aware that he was suffering from Irreversible Liver Failure. Hence, Sandeep cannot be faulted for not disclosing his liver problem.*
- *In the present case Sandeep died on 18.01.2017 and, the policy was affected from 12.09.2016. There is a likelihood of his liver having got severely affected during the period of 4 months, in which case he has failed to make a true declaration to that effect before the insurer.*

Considering all facts and in order to render justice to both the parties an ex gratia amount of ₹1,00,000 is awarded by the Ombudsman in full and final settlement of the claim. The complaint is partially allowed.

Based on the case given above, deal with the following issues :

- Is it Speculative risk or pure risk which prompted Sandeep to join Housing Loan Borrowers of SBI group insurance ? Justify your answer by differentiating both the risks. (5 marks)*
- What is a material fact ? How the concept of material fact is related to the principle of utmost good faith in the given case. What is representation ? What are the facts which must be disclosed ? What are the facts which need not be disclosed ? What is the impact of non-disclosure of material facts in an insurance policy ? (10 marks)*
- Will the above case come under misrepresentation, concealment or fraud ? Explain each with suitable example in relation with the above case. (5 marks)*
- What are the rights available, to the insurer when such misstatement or concealments are noticed ? Quotes relevant sections. What actions can the insurers take ? (10 marks)*
- What are the remedies available to Sandeep's wife ?*
 - Can she approach the Grievance Redressal Mechanism ? State the Guidelines as laid by IRDAI ? (10 marks)*
- What is the procedure for making a complaint ? Who is an Ombudsman and what are the eligibility conditions to become an Ombudsman ? What is the role of an Ombudsman in suggesting Recommendations and awards ? Is the award announced by the Ombudsman justified in this case ? (10 marks)*

Answer 1(a)

It is a pure risk which promoted Mr. Sandeep to join Housing Loan Borrowers of SBI group insurance. Speculative (dynamic) risk is a situation in which either profit or loss is possible. Examples of speculative risks are betting on a horse race, investing in stocks/ bonds and real estate. In other business level in the daily conduct of its affairs, every

business establishment faces decisions that entail an element of risk. The decision to venture into a new market, purchase new equipments, diversify on the existing product line, expand or contract areas of operations, commit more to advertising, borrow additional capital etc., carry risks inherent to the business. The outcome of such speculative risk is either beneficial (profitable) or loss. Speculative risk is uninsurable.

Pure risk is a situation in which there are only possibilities of loss or no loss, as opposed to loss or profit with speculative risk. The only outcome of pure risks are adverse (in a loss) or neutral (with no loss), never beneficial. Examples of pure risks include premature death, occupational disability, catastrophic medical expenses and damage to property due to fire, lightning or flood. Hence this case is related to pure risk. The risk of untimely death would result in loan default of Mr. Sandeep.

Answer 1(b)

Material fact : Material fact is a fact that is important, significant or essential to a reasonable person in deciding whether to engage or not to engage in a particular transaction, issue or matter at hand. The term material fact is also used to distinguish the unimportant or trivial detail.

For example, in an insurance fraud case, a material fact would relate to the insurer's liability, policy, or coverage. If a fact is material, it will likely impact the outcome of the case in court.

The concept of material fact is related to the principle of utmost good faith.

Principle of Uberrimae Fidei (Utmost Good Faith) : The Principle of Uberrimae fidei (a Latin phrase), or in simple English words, the Principle of Utmost Good Faith, is a very basic and first primary principle of insurance. According to this principle, the insurance contract must be signed by both parties (i.e. insurer and insured) in an absolute good faith or belief or trust. The person getting insured must willingly disclose and surrender to the insurer his complete true information regarding the subject matter of insurance. The insurer's liability gets void (i.e. legally revoked or cancelled) if any facts, about the subject matter of insurance are either omitted, hidden, falsified or presented in a wrong manner by the insured.

When Mr. Sandeep joined Housing Loan Borrowers of SBI group insurance he was in good health and the same was mentioned in the insurance policy. He was never hospitalized for any critical illness or any treatment required medical treatment before the date he applied for insurance. So the insurance signed between two parties was in good faith.

Representations : Representations are statements made during the negotiations with the object of inducing the other party to enter into the contract i.e. they must be distinguished from statements which are introduced into the contract, and upon the truth of which the validity of the contract is made to depend. Representations may be as to a matter of fact, and, if material must be substantially correct.

Facts, Which Must Be Disclosed

- i. Facts, which show that a risk represents a greater exposure than would be expected from its nature e.g., the fact that a part of the building is being used for storage of inflammable materials.

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

Facts, Which Need Not Be Disclosed

- i. *Facts of Law*: Ignorance of law is not excusable - everyone is deemed to know the law. Overloading of goods carrying vehicles is legally banned. The transporter cannot take shelter behind the excuse that he was not aware of this provision; in the event of an accident.
- ii. *Facts which lessen or diminishes the Risk*: The existence of a good firefighting system in the building.
- iii. *Facts of Common Knowledge*: The insurer is expected to know the areas of strife and areas susceptible to riots and of the process followed in a particular trade or industry. Any fact which is known or which, by law, may be presumed to be known to the insurer, insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer, in the ordinary course of his business, ought to know.
- iv. Facts which could be reasonably discovered, e.g. the previous history of claims which the Insurer is supposed to have in his record.
- v. *Facts which the insurer's representative fails to notice*: In burglary and fire insurance it is often the practice of insurance companies to depute surveyors to inspect the premises and in case the surveyor fails to notice hazardous features and provided the details are not withheld by the insured or concealed by him them the insured cannot be unless inquiry is made, it is not necessary to disclose the following facts:
 - a. Any fact which it is superfluous to disclose by reason of an express or implied condition.
 - b. Any fact as to which information is waived by the insurer.
 - c. Any fact as to which insurer is given sufficient information to put him on inquiry.

Effect of Non-Disclosure: Where there has been non-disclosure, whether innocent or fraudulent, sometimes called concealment the contract is voidable at the option of the insurer. This is the position where the matter is not dealt with by a policy condition. The ground is usually covered by a policy condition which may do no more than state the common law rule.

Answer 1(c)

Misrepresentations and Concealments : A misrepresentation is a statement, whether written or oral, that is false. Generally speaking, in order for an insurance company to revoke a contract because of misrepresented information, the information in question must be material to the decision in order to extend coverage.

Concealment, on the other hand, is the failure to disclose information that one clearly knows about. To rescind a contract on the grounds of concealment, the insurer typically must prove that the applicant willfully and intentionally concealed information that was of a material nature.

Fraud

Fraud is the intentional attempt to persuade, deceive, or trick someone in an effort to gain something of value. Although misrepresentations or concealments may be used to perpetrate fraud, by no means are all misrepresentations and concealments acts of fraud. For instance, if an insurance applicant intentionally lies in order to obtain coverage or make a false claim, it could very well be a ground for the charge of fraud. However, if an applicant misrepresents some piece of information with no intent for gain (such as, for example, failing to disclose a medical treatment that the applicant is personally embarrassed to discuss), then no fraud has occurred.

In this case, Mr. Sandeep may not be aware that he was suffering from irreversible Liver Failure. Hence Mr. Sandeep cannot be faulted for not disclosing his liver problem. So, he would be held accountable under innocent misrepresentation. He will not be covered under the category of fraud and concealment.

Answer 1(d)

Insurance contracts are contracts of utmost good faith, based on the principles of 'ubberima fidae'. The person taking the insurance policy is expected to disclose the information required in the application form concerning his health, occupation, family history, habits and all other material questions truthfully without withholding any information required. This is to enable accurate assessment of the risk and fixing of the premium by the insurer accordingly. Since only the person taking the insurance is privy to the personal information, obligation to disclose truth lies with the person taking the insurance. If there is any misstatement or concealment of a material fact (any information which would have impacted the decision to accept the risk), the insurance company has the right to cancel the contract (repudiation) and deny the policy benefits.

Section 45, of Insurance Act, 1938 however, places burden on the insurer's right to repudiate beyond 3 years from the date the policy was effected. In such cases, the insurer has to prove the following 3 points in order to repudiate any policy benefit:

- (a) Statement(s) made in the proposal for insurance or in any medical report or any other document leading to issue of policy was inaccurate or false on a material matter (i.e. on a matter which could have affected judgment of underwriter)
- (b) The statements were made with fraudulent intention
- (c) The policyholder knew at the time of making the statement that it was false or knew that material facts were suppressed

However, the insurer's right of calling for proof of age even after 3 years subsequent to issuance of policy and adjusting the terms of the policy accordingly would not be affected by the provisions of the above section.

Answer 1(e)(i)

The remedies available to Mrs. Sandeep are as follows:

- (a) She can accept the ex-gratia payment and close the case.
- (b) She can approach the consumer forum and represent the case.
- (c) She can approach the Grievance Redressal Mechanism as per the IRDAI guidelines and present her case before the ombudsman.

Answer 1(e)(ii)

She can approach the Grievance Redressal Mechanism as per the IRDAI guidelines and present her case before the ombudsman.

IRDA Guidelines for Grievance Redressal : In order to enforce timely redressal of Customer grievance, the Insurance Regulatory and Development Authority (IRDA) has issued guidelines for grievance redressal by insurance companies.

A Grievance is defined as an expression of dissatisfaction by a customer on the action or inaction on the standard of service or deficiency of service of an insurance company or any intermediary and asks for remedial action. It is distinguished from inquiry or a request which is seeking information or requesting for a service and are not considered as Grievances.

Every insurance company shall have a designated senior officer at the level of CEO or Compliance Officer of the Company as the Grievance Officer. Further every office of the insurer shall also have a designated Grievance officer for such office.

The process for handling a Grievance is as follows:

- (a) Every grievance shall be acknowledged within 3 working days of receipt of grievance, containing the name and designation of the person who will deal with the grievance.
- (b) The Grievance redressal procedure including the time taken for resolution of disputes shall be mentioned in the acknowledgement.
- (c) Normally a Grievance shall be resolved within 3 days. However, where it is not possible to resolve within 3 days, the insurer shall resolve the complaint within 2 weeks and shall send a final letter of resolution.
- (d) Where a complaint is rejected, the reasons shall be clearly stated along with the recourse available if the customer is still dissatisfied.
- (e) Further if the insurer shall inform the customer that if the customer does not come back within weeks from the date of providing resolution, the grievance shall be treated as closed.

- (f) A grievance can be closed only if the following conditions are satisfied:
- (i) Where the insurance company has acceded to customer's grievance, upon acceding to the request of the customer.
 - (ii) Where the insurance company rejects the customer's grievance, upon receipt of a communication from customer accepting the company's resolution.
 - (iii) Where the insurance company rejects the customer's grievance and the customer does not respond within 8 weeks of receipt of resolution, upon completion of the 8 weeks.
 - (iv) In all the above instances, the Grievance Redressal Officer shall certify that the Insurance company has discharged its contractual, statutory or regulatory obligations.

Every insurance company shall publish the Grievance Redressal Procedure in the website of the insurance company. The Policyholders Protection Committee of the Insurance Company shall receive reports concerning Grievances and shall monitor the process of handling grievances.

Answer 1(f)

Procedure for making a complaint : Any person who has a grievance against the insurer may himself or through the legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complained against is located. The Complaint shall be in writing duly signed by the complainant or through his legal heirs and shall state clearly the name and address of the complainant, the name of the branch or office of the insurer against which the complaint is made, the fact giving rise to the complaint, supported by the documents, if any, relied on by the complainant, the nature and extent of the loss caused to the complainant and the relief sought from the Ombudsman.

In order that a complaint is entertained before the Ombudsman, the following conditions must be satisfied:

- (a) The complainant must have first exhausted the remedies available within the insurance company for settling the grievance and approach the Ombudsman only if either the insurance company rejects the grievance or complainant not satisfied with the reply or the insurer fails to respond within one month of submission of the grievance.
- (b) No complaint can be preferred before the Ombudsman after one year from the date of rejection of final letter from the insurance company on the representation made by the complainant.
- (c) If the complainant has not preferred alternative legal remedies and the proceedings are not pending before any Court or Consumer forum.

Ombudsman : The Governing body shall appoint one or more persons as Ombudsman for the purpose of resolving insurance disputes.

Persons eligible to be appointed as Insurance Ombudsmen

Only the following persons shall be eligible to be appointed as Insurance Ombudsmen:

- (a) Persons who served in the capacity of Chairman or Managing Director in Public Sector Insurance Companies.
- (b) Persons who have served the Indian Administrative Service or the Indian Revenue Service.
- (c) Persons who are retired Judges of the Supreme Court or the High Courts.

An Ombudsman shall be appointed by the Governing body from a panel prepared by a Committee comprising of:

- (a) Chairman, IRDAI.
- (b) Two representatives of Insurance council including one each from Life Insurance business and from General Insurance respectively.
- (c) One representative of Central Government.

Recommendations by the Ombudsman : After hearing both the parties and the submissions made, the Ombudsman can make his recommendations on the case. Copies of recommendations shall be sent to the complainant and the insurance company concerned. Such recommendation shall be made not later than one month from the date of receipt of the complaint. If the complainant accepts the recommendation, a copy of the acceptance is communicated to the insurance company concerned. The insurer shall comply with the terms of recommendation not later than 15 days of receipt of the recommendation.

Award : Where the complaint is not settled by agreement, the Ombudsman shall pass an Award which shall be in writing shall state the amount awarded to the complainant. The amount of compensation shall not grant an award exceeding Rs.20 lakhs (including ex-gratia and other expenses). All Awards shall be passed within 3 months of receipt of the complaint and issue a copy of the Award to both the insurer and complainant. The complainant shall furnish to the insurer within a period of one month of date of receipt of the award, a letter of acceptance that the award is in full and final settlement of the claim. Thereafter, the insurer shall comply with the award within 15 days of receipt of the acceptance letter and shall intimate the compliance to the Ombudsman.

In the present case, the insurance company alleged that there is nondisclosure of material facts. But it may not be intentional. Considering this, an ex gratia amount of Rs. 1,00,000 is awarded by an Ombudsman is justified.

Question 2

- (i) *Kishore insured his machinery and stock of goods stored in the factory premises against damage by fire and a 'protection note' was given, subject to the usual conditions of the company's policy, one warranty clause being "smoking and cooking be strictly prohibited in or about the premises". The stocks were damaged by fire, said to be of accidental nature. There was no eye-witness to the origin of the fire. But the insurance company claimed that smoking a cigarette or bidi carelessly by some employee occasioned the fire and hence denied the claim.*

- (a) *Is the denial of claim justified ? Do you observe any breach of warranty by Kishore. Explain.* (5 marks)

- (b) Anand Kumar Dwivedi owns a restaurant, which he had bought three years ago for ₹20 lakhs. He had bought a fire insurance Policy worth ₹16 lakhs (which is the written down value of his insured property). His restaurant caught fire and the amount of loss suffered was worth ₹5 lakhs. What is the liability of the insurance company to settle the claim ? On what principle of insurance contract, the settlement of claim happens in the fire insurance products ? (5 marks)
- (ii) Sundaram who is an agent of XYZ insurance company persuaded Alok to purchase a Unit linked insurance policy from XYZ insurance company. During persuasion, he advised Alok to buy this Unit linked insurance policy with the reason, that it is the best policy compared to traditional Term insurance policy, which does not give any benefits if the person survives. In contrast, this Unit linked insurance policy gives guaranteed return on survival and sum assured on death. He also suggested the amount he receives after 5 years will be useful to perform marriage to his daughter. Convinced with the reasons Alok was happy to purchase the policy with an equity option. After 5 years when he approached the company with the hope of getting accumulated fund with guaranteed return, he found that the amount what he gets is not even the amount he paid as premium. It was a shock to him. When he tried to contact the agent, he realized that Sundaram left the XYZ Company and joined as a clerk in CBZ Company.

With the information in the above case, discuss the following issues :

- (a) What does 'Treating customers fairly' (TCF) mean ? Was Sundaram fair in his dealings with Alok. Justify. (4 marks)
- (b) Describe the desired outcomes expected upon adoption of TCF for the following : (answer any three)
- Right information
 - Right advise
 - Right guidance
 - Right after sales service. (6 marks)
- (iii) (a) Sumitra's, husband 'Subba Rao' took a policy on the life of 'Surekha', who is the wife of an employee 'Suresh' working for 'Subba Rao'. He later on assigned this policy to 'Sumitra'. On the death of 'Surekha', 'Sumitra' claimed the money from insurance company.
- (b) Sikhar' is a school teacher drawing a salary of ₹20,000 per month. He took a policy for ₹10,00,000 and assigned the same in favour of 'Buddhadev', who paid the premium for 6 months. At this time 'Sikhar' died and 'Buddhadev' claimed the amount from insurance company.

Based on above information briefly discuss the liability of the insurance companies under the above two policies and indicate whether the claims are allowable. Give reasons for your answers, highlighting the underlying principles of insurance. (2+3=5 marks)

- (iv) *Abhiram had engaged a driver for his car, who had negligently driven the vehicle and caused damage to a Third party. Is Abhiram responsible in the above situation? Is insurer obliged to pay to the Third party. Quote relevant sections. (5 marks)*

Answer 2(i)(a)

The denial of claim is not justified as there was no eye – witness to the origin of the fire. The fire insurance policy offers protection against any unforeseen loss or damage to destruction of property due to fire or other perils covered under the policy. The different types of property that could be covered under a fire insurance policy are dwellings, offices, shops, hospitals, places of worship and their contents industrial/manufacturing risks and contents such as machinery, plants, equipment and accessories; goods including raw material, material in process, semi-finished goods, finished goods, packing material etc. in factories, godowns and in the open; utilities located outside industrial/manufacturing risks; storage risks outside the compound of industrial risks; tank farms/gas holders located outside the compound of industrial risks etc.

Warranties are an extension of the terms and conditions contained in the clauses which attach to the policy schedule. As explained, the insured proposes insurance of a particular property and completes a proposal. Based on the same and customary trade conditions and practices, as well as underwriting experience, the insurer would stipulate certain warranties or conditions, which help to minimize the chances of loss. Warranty is a statement by which the insured undertakes to do or not do a particular thing or fulfill a condition, or whereby he affirms or negates the existence of a particular state of facts which affect the incidence of a claim.

Warranties can either relate to facts existing at the time of the contract or relate to the future. It is an undertaking given by the insured either voluntarily or at the instance of the insurer about something that will determine the insurability of the risk.

Since, there is no eye witness to the origin of fire therefore; we cannot say that Kishore has done breach of warranty.

Answer 2(i)(b)

Insurance contracts are contracts of indemnity. Indemnity means making good of the loss by reimbursing the exact monetary loss. It aims at keeping the insured in the same position he was before the loss occurred and thus prevent him from making profit from insurance policy. In the present case, though he has taken insurance for Rs. 16 lacs for the property value of Rs. 20 lacs, the actual loss is 5 lacs, so the settlement will be in the following way:

$$= \text{Rs. (Sum insured / value of insured assets)* actual loss}$$

$$= \text{Rs. (16 lacs /20 lacs)*5 lacs= Rs. 4 lacs}$$

Average clause enumerates - If the property hereby insured shall at the breaking out of any insured peril be collectively of greater than the sum insured thereon, then the insured shall be considered as being his own insurer for the difference for the difference, and shall bear a rateable proportion of the loss accordingly. Every item, if more than one, of the policy shall be separately subject to the condition.

Answer 2(ii)(a)

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

Mr. Sundram was not fair in his dealing with his client Mr. Alok, as he left his insurance agency to take up another job without thinking about his clients at least in the post sales services obligation. This would result in customer losing faith on agents, thereby effecting the reputation of the company. Further, commitment of Sundram to Mr. Alok by saying that the ULIP policy give guaranteed return is also wrong and misleading.

Answer 2(ii)(b)

Treating Customers Fairly is an integral part of Principle 6 of "Principles of Business" published by FSA (Financial Services Authority). The desired outcomes expected upon adoption of this principle :

- i. *Right information* - Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- ii. *Right Advice* - Where consumers receive advice, the advice is suitable and takes account of their circumstances
- iii. *Right Guidance* - Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard.
- iv. *Right after sales services* - Consumers do not face unreasonable post sale barriers.

Answer 2(iii)(a)

An important factor for a valid contract is that it should be not expressly declared to be void by the Act. As per section 30 of Indian Contract Act, 1872 "agreements by way of wager are void". A "wager" is a "a promise to give money or money's worth upon the determination or ascertainment of an uncertain event". An insurance contract in certain cases resembles a wager when it is not supported by "insurable interest", and therefore such contracts are void. In this case, there is a lack of insurable interest and so they are void. The claims are not payable by the insurance company as there is no "insurable interest" in the contracts.

There is a clean evidence of violation of principle of insurable interest. Further the transfer and assignment is not according to law. The contracts are void ab-initio on the ground of absence of Uberrimae Fidei.

Answer 2(iii)(b)

Assignment is the transfer of the rights to receive the benefits under a contract accruing to the party to that contract. In life insurance parlance, assignment is the transfer of rights to receive benefits stated in the life insurance policy from the Policyholder to the Assignee. The benefits under an insurance policy accrue by way of survival benefits and death benefits. While death benefits accrue in every insurance policy, survival benefits typically relate to maturity benefits under an insurance policy with an underlying investment component.

The concept and procedure for Assignment is dealt with under Section 38 of the Insurance Act, 1938. The Section treats an Assignment and a Transfer at par. It lays down that a transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

The insurance policy can be assigned for reasons of 'love and affection' within the immediate family members, or for a 'valid consideration' to any external person or entity.

Answer 2(iv)

As per the Common Law, the master is liable for the tortious acts of the servant, provided the servant does such act in the course of his employment. The common law also recognizes the vicarious liability of the owner of the motor car. In the law of torts, if a person negligently drives his vehicle and causes injury or death to third party, the driver whose negligence caused the damage is liable to the third party. The driver is the servant of the owner, and since he is a person of no means, the owner is liable for all his acts so far that he has done such acts in the course of his employment. In the above case based on third party. It is obligatory on the part of the insurer to pay the third party since, the insurer has no right to avoid or reject the payment of liability to a third party. The duties of the insurer towards a third party are provided in section 96(1) of Motor Vehicles Act, 1988. The court determines the third liability and accordingly compensation is paid. The liability is unlimited.

The insurance company is liable to pay the compensation amount as decided by the court (MACT) is as per third party liability clause.

Question 3

As a compliance officer, elucidate on the need, relevance and coverage of some ICPs applicable to Indian Insurance Industry. (5 marks)

Answer 3

The need, relevance and coverage of Insurance Core Principles are explained as follows:

- (a) Stability of insurance sector is fundamental to the growth of financial services industry. Further it sets the base for protection of interests of policyholders and their beneficiaries which is the fundamental mission of any Insurance Regulator.

- (b) The impact of wide range of social, technological and global economic forces is seen in insurance industry like other financial industry. Insurance supervisory systems and practices must be continually upgraded to cope with these developments. Insurance and other financial sector supervisors and regulators should understand and address financial and systemic stability concerns arising from the insurance sector as they emerge and their interaction with other financial sectors.
- (c) The nature of insurance activity i.e. covering risks for the economy, financial and corporate undertakings and households, when compared with other financial sectors has both similarities and differences. Insurance, unlike most financial products, is characterised by the reversal of the production cycle in so far as premiums are collected when the contract is entered into and claims arise only if a specified event occurs. Insurers intermediate risks directly. They manage these risks through diversification and risk pooling enhanced by a range of other techniques.
- (d) In addition to business risks, significant risks to insurers are generated on the liability side of the balance sheet. These risks are referred to as technical risks and relate to the actuarial and/or statistical calculations used in estimating liabilities, and other risks associated with such liabilities.

Insurers incur market, credit, liquidity and operational risk from their investments and financial operations, including risks arising from asset-liability mismatches. Life insurers also offer products of life cover with savings content and pension products that are usually managed with a long-term perspective. The regulatory and supervisory system must address all these risks.

- (e) Finally, the regulatory and supervisory system must address the increasing presence in the market of insurance groups and financial conglomerates, as well as financial convergence. The importance of the insurance sector for financial stability matters has been increasing which has implications for insurance supervision as it requires more focus on a broad set of risks. Supervisors at a jurisdictional and international level must collaborate to ensure that these entities are effectively supervised so that policyholders are protected and financial markets remain stable; to minimise the risk of contagion from one sector or jurisdiction to another; and to reduce supervisory gaps and avoid unnecessary supervisory duplication.

Scope and coverage of the Insurance Core Principles

The Insurance Core Principles (ICPs) provide a globally accepted framework for the regulation of the insurance sector. The ICP material is presented according to a hierarchy of regulatory or supervisory material. The ICP statements are the highest level in the hierarchy and prescribe the essential elements that must be present in the supervisory regime in order to promote a financially sound insurance sector and provide an adequate level of policyholder protection. The next in hierarchy comes standards that are fundamental to the implementation of ICP statements and then comes guidance material in the hierarchy, which is the lowest level. It provides detail on how to implement an ICP statement or standard.

The provisions of ICP as applicable to Indian Insurance industry are:

1. *ICP Objectives, Powers and Responsibilities of the Supervisor* : The authority (or authorities) responsible for insurance supervision and the objectives of insurance supervision are clearly defined.
2. *ICP 2 Supervisor* : The supervisor, in the exercise of its functions and powers is operationally independent, accountable and transparent, protects confidential information has appropriate legal protection, has adequate resources and meets high professional standards.
3. *ICP 3 Information Exchange and Confidentiality Requirements* : The supervisor exchanges information with other relevant supervisors and authorities subject to confidentiality, purpose and use requirements.
4. *ICP 4 Licensing* : A legal entity which intends to engage in insurance activities must be licensed before it can operate within a jurisdiction. The requirements and procedures for licensing must be clear, objective and public, and be consistently applied.
5. *ICP 5 Suitability of Persons* : The supervisor requires Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of an insurer to be and remain suitable to fulfil their respective roles.
6. *ICP 6 Changes in Control and Portfolio Transfers* : Supervisory approval is required for proposals to acquire significant ownership or an interest in an insurer that results in that person (legal or natural), directly or indirectly, alone or with an associate, exercising control over the insurer. The same applies to portfolio transfers or mergers of insurers.
7. *ICP 7 Corporate Governance* : The supervisor requires insurers to establish and implement a corporate governance framework which provides for sound and prudent management and oversight of the insurer's business and adequately recognises and protects the interests of policyholders.
8. *ICP 8 Risk Management and Internal Controls* : The supervisor requires an insurer to have, as part of its overall corporate governance framework, effective systems of risk management and internal controls, including effective functions for risk management, compliance, actuarial matters and internal audit.
9. *ICP 9 Supervisory Review and Reporting* : The supervisor takes a risk-based approach to supervision that uses both off-site monitoring and on-site inspections to examine the business of each insurer, evaluate its condition, risk profile and conduct, the quality and effectiveness of its corporate governance and its compliance with relevant legislation and supervisory requirements. The supervisor obtains the necessary information to conduct effective supervision of insurers and evaluate the insurance market.
10. *ICP 10 Preventive and Corrective Measures* : The supervisor takes preventive and corrective measures that are timely, suitable and necessary to achieve the objectives of insurance supervision.
11. *ICP 11 Enforcement* : The supervisor enforces corrective action and, where needed, imposes sanctions based on clear and objective criteria that are publicly disclosed.

12. *ICP 12 Winding-up and Exit from the Market* : The legislation defines a range of options for the exit of insurance legal entities from the market. It defines insolvency and establishes the criteria and procedure for dealing with insolvency of insurance legal entities. In the event of winding-up proceedings of insurance legal entities, the legal framework gives priority to the protection of policyholders and aims at minimising disruption to the timely provision of benefits to policyholders.
13. *ICP 13 Reinsurance and Other Forms of Risk Transfer* : The supervisor sets standards for the use of reinsurance and other forms of risk transfer, ensuring that insurers adequately control and transparently report their risk transfer programmes. The supervisor takes into account the nature of reinsurance business when supervising reinsurers based in its jurisdiction.
14. *ICP 14 Valuation* : The supervisor establishes requirements for the valuation of assets and liabilities for solvency purposes.
15. *ICP 15 Investment* : The supervisor establishes requirements for solvency purposes on the Investment activities of insurers in order to address the risks faced by insurers.
16. *ICP 16 Enterprise Risk Management for Solvency Purposes* : The supervisor establishes enterprise risk management requirements for solvency purposes that require insurers to address all relevant and material risks.
17. *ICP 17 Capital Adequacy* : The supervisor establishes capital adequacy requirements for solvency purposes so that insurers can absorb significant unforeseen losses and to provide for degrees of supervisory intervention.
18. *ICP 18 Intermediaries* : The supervisor sets and enforces requirements for the conduct of insurance intermediaries, to ensure that they conduct business in a professional and transparent manner.
19. *ICP 19 Conduct of Business* : The supervisor sets requirements for the conduct of the business of insurance to ensure customers are treated fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied.
20. *ICP 20 Public Disclosure* : The supervisor requires insurers to disclose relevant, comprehensive and adequate information on a timely basis in order to give policyholders and market participants a clear view of their business activities, performance and financial position. This is expected to enhance market discipline and understanding of the risks to which an insurer is exposed and the manner in which those risks are managed.
21. *ICP 21 Countering Fraud in Insurance* : The supervisor requires that insurers and intermediaries take effective measures to deter, prevent, detect, report and remedy fraud in insurance.
22. *ICP 22 Anti-money Laundering and Combating the Financing of Terrorism (AML/CFT)* : The supervisor requires insurers and intermediaries to take effective measures to combat money laundering and the financing of terrorism. In addition,

the supervisor takes effective measures to combat money laundering and the financing of terrorism.

23. *ICP 23 Group-wide Supervision* : The supervisor supervises insurers on a legal entity and group wide basis.

Question 4

Discuss the procedure for claim settlement for general insurance policies. State the fundamental insurance principle governing all general insurance policy claims.

(5 marks)

Answer 4

The procedure for claim settlement for General Insurance Policies: the general procedure for seeking claim settlement is same forms of General Insurance policy which include the following steps:

Step 1- Intimation/Submission of the Claim by the Insured : The insured would intimate the insurance company of the occurrence of a peril or risk which has caused loss of or damage to the insured property.

Step 2 – Evaluation/Registration of Claim : The insurer would briefly initiate process check –

- I. Whether the policy has been issued by the insurer
- II. Whether the policy is in existence
- III. Whether correct premium has been received by the insurer
- IV. Whether the peril causing loss/damage is an insured peril

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

Step 3 – Appointment of surveyor/loss assessor/investigator etc. : The insurer would immediately arrange for surveyor to be appointed who would look into the circumstances of the loss, assess the actual loss suffered in monetary terms and that which can be indemnified in terms of the contract, advise the insurer regarding compliance of the various terms and conditions and warranties under the contract etc.

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

Acid tests applied by the surveyor of the various principles – insurable interest, utmost good faith, proximate cause and of course contribution, help in deciding ultimately, if a claim is payable as well as quantum payable.

If the claim is not paid within the same financial year in which it has occurred, then the surveyor's assessment would enable the adequate provisioning for the claim in its financials.

Step 4 – Settlement of claims : The insurer would ensure claims are settled on the receipt of the final report from the surveyor, generally within the TAT (Turn around time) stipulated by various regulations and committed by the insurance company.

Step 5 – Recovery : The next step for the insurance company, in certain cases is initiating process for recovery from the third person who is party – e.g. in marine cargo transit claims – recovery proceedings, as per applicable statutes are initiated against carriers. In motor third party liability claims – awards are settled with victims of any motor accident and action instituted against the owner of the vehicle for recovery.

The underlying principle for payment of general insurance claim is based on the principle of indemnity, which means that the claim amount is budget to actual amount only or make good of actual only.

Question 5

Briefly describe the following :

- (a) *'Deductible' and Why is it not used in life insurance ?*
- (b) *'Coinsurance' and 'coinsurance clause'.*
- (c) *Reinstatement value with examples.*
- (d) *Principle of Contribution and its application Vs. Double insurance.*
- (e) *Doctrine of Average.* (5 marks)

Answer 5(a)

Deductibles : A deductible is that portion of the amount of an insured loss, which the insured agrees to pay. It is common in almost all types of insurance policies to stipulate a definite amount of money, which is to be borne by the insured. The insurer becomes liable for any amount beyond the deductible amount stated in the contract.

It is a provision by which a specific amount is subtracted from the total loss payment and are usually found in auto, property and health insurance. Deductibles are not used in life insurance because the death of an insured is always a total loss. It is also not used in personal liability insurance because even for a small claim, the insurer must provide a legal defense.

Deductibles may be either compulsory or voluntary. Voluntary deductibles will fetch a discount in the premium (also known as 'excess').

Answer 5(b)

Coinsurance : Where the amount of insurance on large industrial complexes is substantial, it is possible for the insured to interest different insurers in the risk for varying proportions of acceptance, so that the total risk is covered. The practice is for each insurer to issue a policy with a specification or schedule giving a description of the property insured, with the "co-insurance clause" included there in. Survey of the risk,

rating, collection of premium and preparation of the specification is carried out by the “leading office”, that is the office carrying the largest share in the business. All co-insurances are agreed upon prior to the issue of the original policy. In the event of a claim all policies would contribute equally. In case, in rare instances where two policies are extant for a same risk, both would contribute in proportion of their interest in the sum insured at the time of claim. Notably, the policies would contribute in a manner to ensure that the insured is indemnified and not benefitted from the loss.

Answer 5(c)

Reinstatement Value : In fire insurance the principle of indemnity can be modified in the case of building, machinery and other fixed assets where, subject to the sum insured representing the value of similar new property, it can be insured under ‘Reinstatement Value’ clause.

In case of reinstatement value policy, the basis of loss settlement is the value of new property without taking any depreciation into account. This type of insurance enables the owner to replace his property without any financial strain on his own resources and is quite commonly taken by industrialists and building owners.

Answer 5(d)

Principle of Contribution

- The principle is corollary of the principle of indemnity.
- It is applicable to all contracts of indemnity.
- Under this principle the insured can claim the compensation only to the extent of actual loss either from any one insurer or all the insurers.

Principle of Contribution is a corollary of the principle of indemnity. It applies to all contracts of indemnity, if the insured has taken out more than one policy on the same subject matter. According to this principle, the insured can claim the compensation only to the extent of actual loss either from all insurers or from any one insurer. If one insurer pays full compensation then that insurer can claim proportionate claim from the other insurers.

Answer 5(e)

The doctrine of average : The doctrine of average – or average clause is always applied in indemnity policies – primarily in property claims – fire and engineering. At the time of taking the policy the insured has to consider the value of the risk or subject matter of insurance-sum insured. He must ensure that the adequate value has been declared and insured. If, at the time of loss, it is found that the sum insured is less than the actual value of the subject matter, then the proportionate or rateable portion of the claims would be payable. The insured would therefore be his own insurer for the difference.

Question 6

“Claims Management in Life Insurance is a complex exercise”. Explain how does life insurance claim in nature differ from general insurance claim.

Sudhakar purchased a Unit Linked Insurance Policy from XYZ Company limited. The proposal date was 22.02.2016 and has paid one year premium of ₹20,000 towards

the policy taken for a Sum Insured of ₹5,00,000. Within three months of the proposal date he died on 28.04.2016. The fund value as on that date was ₹18,559. Is the insurer liable ? (5 marks)

Answer 6

Claims procedure in respect of a life insurance policy

- (1) A life insurance policy shall state the primary documents which are normally required to be submitted by a claimant in support of a claim.
- (2) A life insurance company, upon receiving a claim, shall process the claim without delay. Any queries or requirement of additional documents, to the extent possible, shall be raised all at once and not in a piece-meal manner i.e. within a period of 15 days of the receipt of the claim.
- (3) A claim under a life policy shall be paid or be disputed giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and clarifications required. However, where the circumstances of a claim warrant an investigation in the opinion of the insurance company, it shall initiate and complete such investigation at the earliest, in any case not later than 6 months from the time of lodging the claim.
- (4) Subject to the provisions of section 47 of the Insurance Act, 1938, where a claim is ready for payment but the payment cannot be made due to any reasons of a proper identification of the payee, the life insurer shall hold the amount for the benefit of the payee and such an amount shall earn interest at the rate applicable to a savings bank account with a scheduled bank (effective from 30 days following the submission of all papers and information).
- (5) Where there is a delay on the part of the insurer in processing a claim for a reason other than the one covered by sub-regulation (4) of Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002, the life insurance company shall pay interest on the claim amount at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.

The basic difference in nature between a general insurance claim and life insurance claim is the value of human life which cannot be measured. While general insurance claims are governed by the principle of actual loss amounts, life insurance policies are basically valued on the sum assured and the entire sum assured becomes payable. Secondly, in case of life insurance policies, every policy sold will definitely result in a claim, either death or maturity claim, in case of general insurance, a claim is contingent in nature, i.e. upon the happening of the issues loss event only, then claim is payable.

In the above case, the claim under the ULIP policy presents an early death claim, which appear to be suspicious and needs thorough investigation regarding the reasons for death immediately, follow the issuance of the policy.

The insurance company is liable to pay at least its existing fund value of Rs. 18,559 as a full and final settlement of the death claim, if the claim is suspicious. If there is no reason to suspect and death is due to natural and genuine reason, then the insurer would be liable to pay the sum assured of Rs. 5 lacs which was agreed at the time of the proposal.

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 given at the end :

The appellant Dr. Robotic Robben is a scientist-engineer. The appellant has to his credit several inventions in the field of wind turbine generators, and wind energy converters. The appellant claims to be the owner and holder of various intellectual property rights, including approximately 2,700 patents (in more than 60 countries). Out of the aforesaid patents, the appellant has about 100 patents in India. The appellant is also engaged in the manufacture of wind-turbines. In the field of wind turbines, he claims a position amongst the three largest manufacturers in the world. The aforesaid manufacturing process is carried out by the appellant under the name of Environ Robben Group, Appellant No. 2, through an assignment agreement on 5th January 2012, having acquired the right, title and interest in all the Indian registered designs and patents (including the pending registrations), belonging to Dr. Robotic Robben. The appellant's manufacturing process, is allegedly, carried out in about 27 countries. The Environ Robben Group claims to employ more than 8,000 people, worldwide. As far as India is concerned, Dr. Robotic Robben has been carrying on the aforesaid manufacturing process, through a joint venture partnership with Ajit Mitra and Abhai Mitra, (respondent nos. 1 and 2 herein). The Indian enterprise is carried on in the trade name of Environ India Limited (respondent no. 3 herein). Ajit Mitra and Abhai Mitra are the directors of Environ India Limited.

Environ India Limited was formed in 1994 as a joint venture, between Environ Robben Group and Respondent Nos. 1 and 2. Environ India Limited was originally carrying on its manufacturing process, in furtherance of licences granted by the appellant Dr. Robotic Robben. According to the appellant, the licences to use technical know-how, were vested by the appellant with Environ India Limited, through written agreements. These intellectual property license agreements were executed between the parties from time to time, and the last agreement was executed on 29.9.2006.

The last agreement entered on 29.9.2006, superseded all the previous agreements (including the technical know-how agreement of 1994, and the technical know-how agreement of 2000). Due to non-fulfilment of the obligations contained in the intellectual property licence agreement dated 29.9.2006, the appellant terminated the last intellectual property licence agreement with Environ India Limited on 8.12.2008.

Despite the termination the respondent nos. 1 to 3, continued the use of the appellant's patents without due authority. This action by respondent nos. 1 to 3 has been of extreme detriment to the appellant, as his technical knowhow was being exploited by the respondents, without consideration or authorisation.

Dissatisfied with the action of the appellant, the respondent approached the Intellectual Property Appellate Board (hereinafter referred to as IPAB) for revocation of patents held by the appellant. In the meantime the appellant Dr. Robotic Robben filed 10 patent infringement suits before the High Court. All 10 patent infringement suits, were filed after Environ India Limited had already instituted 19 revocation petitions, before the Appellate Board under Section 64 (1) of the Patent Act, 1970 (hereinafter referred to as the Patents Act), in January 2009.

The contesting respondents raised a counter-claim, a prayer for the revocation of the patent, which constituted the basis of the patent infringement suit. The same issues are reagitated by the respondents, before the High Court, through the counter-claims.

Decision of the High Court :

As per the provisions (Section 64 (1) and 104) of the Patents Act , the locus standi for revocation of a patent, is available to three different entities, namely, any person interested, the Central Government, and to a defendant in an infringement suit by way of a counter-claim. Depending on the specific part of the provision relied on, such challenge is permissible before two different fora, i.e., the Appellate Board, or the jurisdictional High Court.

Further a perusal of Section 25(2) reveals that only a person interested and not any person (as in the case of 25(1) of the Patents Act) may challenge the grant of a patent, within one year of the publication of such grant, by issuing a notice of opposition to the Controller. Such notice of opposition to the Controller can be made on the grounds depicted in sub-sections (1)(a), (b), (c), (d), (e), (f), (h), (m), and (o) of Section 64 of the Patents Act. The remaining grounds for raising a challenge under Section 25(2) coincide with those contained in 25(1) of the Patents Act.

Where an issue is already pending adjudication between the same parties, in a Court having jurisdiction to adjudicate upon the same, a subsequently instituted suit on the same issue between the same parties, cannot be allowed to proceed. A similar question arises for consideration before this Court, in the present controversy. If the respondents in their capacity as any person interested had filed a revocation petition before the institution of an infringement suit, they cannot be permitted to file a counter-claim on the same cause of action. The natural conclusion in the above situation would be, that the validity of the grant of the patent would have to be determined in the revocation petition. Therefore, in the above situation, while the revocation petition will have to be permitted to be pursued, the counter-claim cannot be permitted to be continued. Therefore, in the above eventuality, it is apparent that the situation would be resolved, in the same manner, as it would have been resolved in cross-suits filed by the rival parties, before different jurisdictional courts. In our considered view, the above conclusion is imperative for a harmonious interpretation of the relevant provisions of the Patents Act.

The appellants did not desire two proceedings, on the subject of revocation of the same patent, to be continued simultaneously before different fora. In our discussion recorded while dealing with the appellants, the court has accepted the contention advanced for the appellants, that only one out of two remedies available under Sec. 64 of the Patents Act, can be availed, so as to assail the grant of a patent. Accordingly the said remedy may be availed of in the capacity of either any person interested, or in the capacity of a defendant in a counter-claim.

In response to infringement suit, Defendant had already sought revocation of patent through counterclaim, and they cannot thereafter assail concerned patent, by way of revocation petition. Having availed one of the above remedies, it is not open to the same person to assail the grant of a patent by choosing the second alternative. The High Court disposed the appeal basing on the above terms and provisions of patent legislation.

Questions :

- (a) *Examine in detail the reasons raised for revocation/infringement proceedings raised by the parties as per the present problem and analyse the provisions of Patent Act, 1970 specifying the two fora for revocation and infringement proceedings. (10 marks)*
- (b) *"Patent is a techno legal document". Enumerate the technical aspects of patent document, kinds of patent and distinctive characteristics of patent application. (10 marks)*
- (c) *'Controller of patent plays an important role in granting compulsory licenses'. In the light of this statement explain when he can grant compulsory licenses, its terms and conditions with appropriate provisions of patent legislation. (10 marks)*
- (d) *'Inventions alone are patentable'. Analyse the concept of invention and objectives of patent legislation. Examine the powers of Intellectual Property Appellate Board (IPAB) and exceptions thereto. (10 marks)*
- (e) *'Micro-organisms are products of nature, however they are legally protected under patent law'. Explain the changes introduced after 1980 in relation to micro-organisms with the help of case law and international conventions in this regard. (10 marks)*

Answer 1(a)

The Appellant terminated the last Intellectual Property License Agreement with Environ India Limited on 08.12.2008, due to non-fulfilment of the obligations contained in the intellectual property license agreement dated 29.09.2006. Despite the termination the Respondents continued the use of the Appellants patents without due authority. This action by Respondents has been of extreme detriment to the Appellant, as his technical know-how was being exploited by the respondents, without consideration or authorization.

Dissatisfied with termination of the licence agreement by the Appellant, the Respondent approached the Intellectual Property Appellate Board for the revocation of the patent held by the Appellant. Meanwhile the Appellant Dr. Robotic Robben filed 10 patent infringement suits before the High Court. All 10 patent infringement suits were filed after Environ India Limited had already instituted 19 revocation petitions, before the Appellate Board under Section 64 (1) of the Patent Act, 1970 in January 2009.

The facts of the case are similar to that in the case of Dr. Aloys Wobben, a scientist engineer and founder of Enercon GmbH, a German company involved in wind turbine manufacturing and Enercon India Ltd. decided by the Supreme Court of India.

The Respondents in the Suit for infringement before the High Court raised a "counter-

claim" with a prayer for the revocation of the patents which constituted the basis of the "patent infringement suit". The issues agitated by the Respondents of Suit before the High Court through the counter-claims are the same issues as those raised in the revocation petition under Section 64(1) before the IPAB.

As per the provisions (Section 64 (1) and 104) of the Patents Act, the locus standi for revocation of a patent is available to three different entities, namely any person interested, the central government and to a defendant in an infringing suit by way of counter – claim. Depending on the specific part of the provision relied on, such challenge is permissible before two different fora, i.e., the Appellate Board, or the High Court.

According to Section 64 (1) of the Act either a counterclaim or a revocation petition can be filed challenging the validity of the patent and both of them cannot be perused simultaneously. This is very clear from the reading of Section 64 (1) of the Act wherein the word "or" is used and this has to be given disjunctive reading and not a conjunctive reading. If such an interpretation is not given it will result in conflicting findings in a revocation petition and a counter claim.

On the issue of whether proceedings can proceed simultaneously before both the fora (IPAB and High Court), the Supreme Court held that when a plurality of fora are available for agitating an issue, proceedings shall not be allowed to take place in both such for a simultaneously. Special emphasis was laid on the use of the word "or" in Section 64(1) meaning thereby that despite there being multiple fora available, the parties must restrict themselves to one of them.

It has to be noted that Section 104 of the Patents Act, 1970, which dealing with jurisdiction provides that: No suit for a declaration under Section 105 or any relief under Section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit, provided that where a counter claim for revocation of the patent is made by the defendant, the suit along with the counter claim, shall be transferred to the High Courts for decision.

From the above, it is clear that revocation and infringement of patent proceedings are initiated at different for a subject to the facts and circumstances of the case but proceedings involving the same issues between the same parties shall not be initiated simultaneously in more than one forum. Section 64 (1) of the Patent Act, 1970 dealt with this concept.

Answer 1(b)

Patent is essentially a techno legal document. Patent Application consists of legal as well as technical part. All the important features of complete specification as per Section 10 of the Patents Act, 1970 forms the part of technical document. Specification is a technical part of the document containing full scientific details of the invention and claims to the patent rights. Specification is a crucial part of the application. Application must disclose the full particulars and various features constituting the invention. Applicant also needs to disclose the best method of performing the invention. Technical part includes back ground of the invention, technical objectives of the invention, diagrams, figures, tables and flowcharts as applicable, summary of the invention, claims and abstract of the invention.

Patent is granted for novel inventions which have an industrial application. Patent rights may be categorised into two types – process patent and product patent. In process patent, a novel process of performing a technical/industrial activity is granted a patent protection whilst in case of product patent, a novel end product is granted a patent. Section 5 of the Patents Act, 1970 had provided for grant of process patent in certain categories of inventions. Before 2005, India mainly adopted process patent. After 2005, India being a signatory for TRIPS and has to follow product patent.

Except few categories, India also follows product patent. An explanation appended to Section 5 provided that chemical process, includes biochemical and microbiological process. This section was deleted by Patents (Amendment) Act, 2005, thereby paving way for product patents.

Characteristics of Patent Application

The most important features of patent application are as follows:

Title : The invention must bear a short and descriptive title.

Claims : Claims are the legally-operative part of a patent application. Claims draw a boundary around the technology as described in the patent application and indicates to the reader of the patent specification, the exact extent to which the ownership rights of the invention bests with the owner of the patent.

Detailed Description or Specification : The Patent law in India mandates that technical description of the invention should be such that a person who has ordinary skill in that technology is able to read the patent specification and understand and practice the invention by himself without need for undue experimentation. Failing to sufficiently disclose the invention is a ground for opposition or revocation of a patent.

Drawings : Drawings are accompanied by a short description in words and reference number such as 'Clock 12'. Drawing section begins with statement indicating that drawings are illustrative of one or more embodiments of the invention.

Background : This section should be fairly short and merely set the stage for the technical disclosure to be provided in the detailed description. It could describe the prior art at a very high level. It should also include short, crisp statement about the shortcomings of prior art.

Abstract : Describe the invention very clearly in the fewest possible words.

Summary : It highlights the important aspects of invention including claims.

Besides the above features, it also includes subject matter of the invention, field, name of the invention and priority information.

Answer 1(c)

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

- a. That the reasonable requirements of the public with respect to the patented invention have not been satisfied, or

- b. That the patented invention is not available to the public at a reasonably affordable price, or
- c. That the patented invention is not worked in the territory of India.

An application for compulsory license may be made to the Controller by any person including the licensee. Application for Compulsory License (CL) has to contain a statement setting out the applicant's interest, and the grounds on which the application is made. The controller on being satisfied that the grounds made have been established, may grant Compulsory License (CL) upon such terms as he may deem fit.

Power of Controller

Section 88 of the Patents Act, 1970 provides that if the controller is satisfied that the grounds mentioned under Section 84 of the Patents Act, 1970 are established, he may grant Compulsory License (CL). If the application is made by the licensee of the patent holder as per Section 84, the Controller can make order for the grant of Compulsory License (CL) to the applicant and may issue an order to cancel the existing license or direct an amendment to the existing license.

When two or more patents are held by the same patentee and the applicant established the grounds for Compulsory License (CL), if the controller is satisfied, he may direct the grant of license or the patent in regard to which a license is granted. Terms and Conditions are settled by the controller. The applicant after the expiry of 12 months can make an application for revision of terms and conditions.

Terms and Conditions of Compulsory Licensing

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

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

- ix. In case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted, if need be, to export the patented product.

As per Section 90 (2) and (3) of Patents Act, 1970, the import of patented article is not allowed. Central Government may direct the controller for such import if it is necessary in public interest. This shows that controller plays an important role in granting Compulsory Licensing for public benefit.

Answer 1(d)

Patent is granted for an invention which may be related to any novel process or product. An invention is different from a discovery. Discovery is something that already existed but had not been found.

Under Section 2(1)(j) of The Patents Act, 1970, the word “invention” means “a new product or process involving an inventive step and capable of industrial application.

Under the patent law, patent is granted only for an invention and not for discovery.

The objectives of patent legislation in India are as follows:

- a. To encourage inventions.
- b. To secure that these inventions are worked on commercial scale without undue delay.
- c. To enjoy exclusive monopoly rights for a secured term.
- d. To secure award and reward to the inventor for his invention.
- e. It will help in the development of our economy.
- f. Transfer of technology for the development of the country.
- g. To generate and promote scientific temper.

All the above objectives are reiterated by the court in *Bishwanath Prasad Radhey Shyam vs. Hindustan Metal Industries (1982)*.

Intellectual Property Appellate Board (IPAB)

In the year 2002, due to an amendment, a specialized forum called IPAB has been established by the Central Government to hear and adjudicate appeals against the decisions of the Registrar under the Trade Marks Act, 1999 and Geographical Indications of Goods (Registration and Protection) Act, 1999. IPAB is authorized to hear and adjudicate the decisions, orders, or directions made by the Controller of the Patents. All pending appeals from the Indian High Courts under the Patent Act were transferred to the IPAB from April 2007. Headquarters of IPAB is at Chennai. Under Section 117A of The Patents Act, 1970, IPAB is having jurisdiction against the decision of the Controller or Central Government of India.

IPAB has power to entertain cases pertaining to revocation of patent, other than counter claim in a suit for infringement and rectification of register pending before the Indian High Courts was transferred to IPAB.

In case of counter claim in a suit for infringement, the High Court continues to be the competent authority to adjudicate the matter.

Exceptions

Section 117A lays down the powers and exceptions of the IPAB. The IPAB has powers to hear appeals in all matters concerning Patent process except appeals against orders passed by the Central Government of India with respect to inventions related to defence purposes, including directions of secrecy in respect of such inventions, revocation if the patent is contrary or prejudicial to public interest, or related to atomic energy. Furthermore, an order of the Controller, granting an extension of time under any provision of the Patent Act 1970 is also not appealable.

Answer 1(e)

In 1972, Anand Chakrabarty, a microbiologist, researcher to the General Electric Company filed a patent application in relation to a bacterium from the genus pseudomonas containing therein, at least two stable energy generating plasmids, each of the said plasmids providing a separate hydrocarbon degradative pathway. It was a man-made, genetically engineered bacterium capable of breaking down multiple components of crude oil. It was asserted that because of this property, which is possessed by no naturally occurring bacteria, the invention could treat oil spills.

The patent claims were of three types:

- First process claim for the method of producing the bacteria
- Second, claims for an inoculum comprised of a carrier material floating on water such as straw and the new bacteria, and
- Third, claims to the bacteria itself.

The Patent Examiner allowed the claims falling into the first two categories, but rejected the claim for bacteria. The decision rested on two grounds:

- that microorganisms are products of nature, and
- that as living things, they are not patentable subject-matter.

Later, the Patent Office Board of Appeals reiterated the examiners' decision on the ground that micro-organisms do not fall within the ambit of patentable subject matter since they are living things. Moreover the Court of Custom and Patent Appeals emphasized that this issue was not whether the claimed bacterium was living or inanimate but whether, it constituted an invention made by human intervention. The Court reaffirmed that the bacterium was not a handiwork of nature rather it was Charabarty's own invention. The four statutory categories of inventions, which can be granted patents are process, machine, manufacture and composition of matter. Therefore, on the question as to in which category would the invention fall, the Supreme Court held that Genetically Engineered oil consuming bacterium could be categorized either as composition of matter or a manufacture. The court read the term manufacture in accordance with its dictionary definition, to mean the production of articles for use from raw or prepared materials by giving to these materials, new forms, qualities, properties or combinations whether by hand labour or by machinery.

The court obviously turned back to legislative intent of the drafters of the US Patent Act to ascertain the rationale behind using general and broad terminology “any composition of matter” or “manufacture.” According to the court, this selection of broad language suggested that the drafters’ goal was to stimulate innovation in a wide range of then unknown technologies and scientific fields, a goal that would be frustrated if Congress was repeatedly required to amend the statute so as to explicitly delineate new categories of patentable inventions. The court observed that the legislative history of the Patent Act connotes that the patentable subject matter includes “anything under the sun that is made by man.” Chakrabarty simply shuffled genes, changing bacteria that already existed. The widest interpretation by the court, let the broadest amplitude to patentability to the living subject matter.

Before 1980, Micro-organisms were not considered as patentable inventions.

After this historic decision, the US biotech industry flourished and numerous patents have been granted on human made higher life forms such as transgenic crops, mice, fish, cows etc.

International Conventions

TRIPs supported the argument for patenting of microorganism in Article 27.3 of TRIPs. It excludes two specific classes of subject matter from patentability:

1. Diagnostic, therapeutic and surgical methods for the treatment of human and animal; and
2. Plants and animals other than microorganism and essentially biological processes for the production of plants or animal other than no biological and microbiological processes.

TRIPs allow patenting of the microorganism, however does not define microorganism leaving on member states to formulate their own standards relating to it. Indian Patent Act under Section 3 allows the patenting of microorganism and microbiological processes to be patentable. Therefore, India does not allow patenting of microorganism already in the nature, however genetically modified versions of the same microorganism that result in enhancement of its known efficacies are patentable.

An international treaty called "Budapest Treaty" was signed in Budapest in 1973 and later on amended in 1980. India became a member of this Treaty with effect from December 17, 2001. This is an international convention governing the recognition of deposits in officially approved culture collections for the purpose of patent applications in any country that is a party to this treaty. Because of the difficulties and virtual impossibility of reproducing a microorganism from a description of it in a patent specification, it is essential to deposit a strain in a culture collection center for testing and examination by others.

According to Indian patent legislation if the invention uses a biological material which is new, it is essential to deposit the same in the International Depository Authority (IDA) prior to the filing of the application in India in order to supplement the description. The description in the specification should contain the name and address of the IDA and date number deposition of biological material as per Section 10(4)(d)(ii). Many international depositors in different countries are recognized under the Budapest Treaty.

Question 2

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

The plaintiff Mr. Shivanand Barucha is a film graduate from the prestigious Film and Television Institute of India (FTII), Pune and has been in the profession of film making for the past more than 29 years. The plaintiff specializes in documentary films and his films have been exhibited in various national and international film festivals and have won numerous awards.

The plaintiff being a documentary film maker of repute within the film and television industry, both in India and abroad, directed and produced his films through his production house Movie Plus.

The defendant No.1 is a Hecta Company incorporated under the Companies Act having its registered office at Bungalow No.101/101, Opposite Rama Krishna Public School, N V S. Nagar, Andheri (East), Mumbai and Mr. Sajan Rathod, the defendant No. 2 herein is the director and the principal shareholder of the said company and the defendant No. 3 herein, Mr. Prabhakaran Pillai is the Managing Director of the said company.

On 25th December 2015 the plaintiff contacted one Ms. Leela Madhuri, an author of repute, who has written a book titled "Pyaar Ki Deewani and Deewana" with a proposal to secure the rights to make a television serial/film based on the book to which the author agreed. Subsequently an agreement was entered into between the author and the plaintiff on 1st January, 2016. The author conferred on the plaintiff, the exclusive right to produce a television series based on the book with the exact title as that of the book. Thereafter the plaintiff entered into an agreement on 9th January 2016 with the Department of Adult Education (hereinafter referred to as DAE) of the Ministry of Human Resource Development, Government of India, for funding the proposed venture. In return of which the plaintiff assigned the rights in the proposed serial/film in favour of the DAE, which assignment was to come into effect upon delivery of the master tapes to the DAE upon completion of the said serial.

The plaintiff thereafter set upon the task of getting the cast and crew for the serial together and with the funds of the DAE along with his own funds filmed the serial day and night in Rampur Village, Karnataka from 14th February 2016 till 13th April 2016 and completed the serial. For the purposes of editing the plaintiff required a studio and Mr. Ahuja Javeri, the editor of the serial, identified a studio in Mumbai known as "Prime Film Studio", which is owned by defendant No. 2. The deal to execute the said film was executed through one Mr. Anil Advani, a video editor and a friend of defendant No. 2 and the plaintiff. The process of editing took place on the non-linear machines of the Prime Studio between the first week of May and 10th June, 2016. After editing the master prints and DVDs were handed over to the plaintiff on 4th July 2016. The plaintiff paid the agreed consideration amount via cheque dated 7th July 2016 to Mr. Anil Advani and another cheque dated 10th July 2016 in the name of Mr. Ahuja Javeri, at Mr. Advani's request. The plaintiff after making all the final payments for use of the studio to Mr. Anil Advani, requested him and the owner of the studio to delete all the software material and/or any other aspect of the serial work or parts thereof which was stored in the computers of the studio.

The plaintiff has averred that somewhere in the second week of August, 2016 the plaintiff was informed by certain members of the crew of the serial that three episodes of a television serial titled "Aur Ek Prem Kahani" have been broadcast by the Doordarshan Kendra, Marathwada during the first week of August, 2016 and the said three episodes are identical to the episode no. 5, 6 and 7 of the plaintiff's yet to be telecast, the serial based on the book. The plaintiff, received confirmation of this fact from the DAE, who were upset that the serial for which they own the copyright had been broadcasted without their permission. Thereafter the plaintiff along with the DAE officials were shocked upon viewing the footage of the serial as telecast by the Doordarshan, Marathwada that was identical to the episode 5, 6, and 7 of the serial produced and directed by the plaintiff. The plaintiff has also stated that the credits appearing in the impugned serial were modified to replace plaintiffs name and other names as well, however the name of the author of the book as well as the cast was not changed.

The argument of the plaintiff was that the actions of the defendants amount to infringement/breach of the plaintiffs author's special rights enshrined in Section 57 of the Copyright Act, 1957 as the defendants have not attributed the work to the plaintiff and have also distorted, mutilated and modified the plaintiff's film work to create the impugned serial and such acts of the defendants are malafide and amount to the tort of breach of trust and confidence and misappropriation of the plaintiffs property in the serial and conversion of the said property entrusted to the defendant No. 2 and his studio.

Further, the plaintiff also mentioned that under Section 57 the author shall have a right to claim the authorship of the work. He has also a right to restrain the infringement or to claim damages for the infringement. These rights are independent of author's, copyright and the remedies open to the author under Section 55.

The Maharashtra High Court had granted an exparte ad interim injunction in favour of the plaintiff and against the defendants restraining them from broadcasting/telecasting the impugned serial on 6th September 2016. Thereafter the defendants entered their appearance on 15th September 2016 and sought time on various dates to file written statement. But eventually the High Court issued the order on 15th October, 2016, closed the right of the defendants to file their written statement under Order 8, Rule 10 Civil Procedure Code.

Thereafter, the plaintiff adduced his evidence and produced himself as PW1 and despite granting number of opportunities the defendants failed to cross examine the plaintiff PW1 and accordingly on 15th December 2016, the right of the defendants to cross examine the plaintiff was closed. Thereafter the defendants filed an application under order 9 Rule 7 for recall of the order dated 15th October, 2016 which was allowed by this court on 22nd December 2016, subject to payment of costs of Rs. 10,000. On 5th January, 2017, as the plaintiff was again present to be cross examined by the defendants, there was no one present for the defendants and in the interest of justice the date was again fixed on 21st January, 2017. Again on the said date none appeared and thus the right of the defendants to cross examine the plaintiff PW1 stood closed. Thereafter on 14th February, 2017 the plaintiff argued before this court that the defendant has been deliberately causing delay in the matter and prayed that a decree in terms of order 8 Rule 10 be passed in his favour.

The plaintiff in evidence appeared as PW1 and tendered his affidavit. He tendered the original agreement between him and Ms. Leela Madhuri and the agreement between him and the Department of Adult Education. The defendants, as is a matter of record, failed to cross examine the plaintiff PW1. The other two witnesses who appeared were Mrs. Anjan Sharma who tendered her affidavit in evidence as PW2 and Ms. Anushka Barma as PW3 who tendered her affidavit in evidence as PW3.

The two witnesses PW2 and PW3 stated that they both had acted in the serial "Pyaar Ki Deewani and Deewana" produced and directed by the plaintiff. They have stated that the defendants did not engage their services for any T.V. serial under any other title that is verbatim to the serial "Pyaar Ki Deewani and Deewana" produced and directed by the plaintiff. Their services were hired exclusively for the T.V. serial "Pyaar Ki Deewani and Deewana". They further stated that the defendants have never taken their services to act in the T.V. serial "Aur Ek Prem Kahani" that has been telecasted on Marathwada Doordarshan.

Decision of the High Court :

Plaintiff is not only the producer of the cinematograph film embodying the serial but also the author of the said cinematograph film under the Copyright Act, 1957. Further he averred that even after assigning the copyright in the said work, he still retains the Author's special Rights enshrined under Section 57 of the Act. He also stated that he had hired the prime Film Studio to get the serial edited and the said serial was on the computers of the said studio on his trust and confidence and no one could use or exploit or convert to their own use the said film work without his permission which was never given by him. On the contrary he had categorically asked the studio to delete the said work. It is the contention of the plaintiff that the actions of the defendants amount to infringement of his special rights as per Sec. 57 of the said act as the defendants have not attributed the work to him and have also distorted, mutilated and modified his work to create the impugned serial which is prejudicial to the honour and reputation of the plaintiff.

The plaintiff has further stated that due to the action of the defendants the DAE was adamant on terminating the agreement dated 9th January, 2016 with him, thereby seriously prejudicing his honour and reputation and future business prospects to deal with any government or other departments.

In the present case the defendant have no defence to raise to rebut the arguments of the plaintiff. The defendants certainly have been callous and the complete inaction on their part cannot defeat the right of plaintiff and the court has to act to protect the interest of the plaintiff. Hence, this court proceeded to pass a judgment under Order 8 Rule 10 of Civil Procedure Code, against the defendants.

What was aired was the exact reproduction of the episodes filmed by the plaintiff with the changes that the credits appearing in the impugned serial were modified to replace the plaintiffs name as the producer and director, with that of the other persons, including defendant no. 2 herein. The names of the producer, director, camera man and editor were all changed. The executive producers of the impugned serial were credited to be defendant no. 2 and defendant no. 3 and the name of the serial was changed to "Aur Ek Prem Kahani" from "Pyaar Ki Deewani and Deewana". However, the name of the author of the book as well as the cast was not changed. In the light

of legal principles enunciated above, this court is of the considered view that the modifications made in the work of the plaintiff are covered within the ambit of Section 57 of the act.

After perusal of the documents produced and the testimony of the witnesses, this court considered the view of the plaintiff, that he is the author of the impugned work and the defendants have modified the said work of the plaintiff without permission.

In the light of the aforesaid discussion, a decree of permanent injunction is passed in favour of the plaintiff and against the defendants restraining the defendants, their partners, affiliates, directors, officers, employees, representatives from exhibiting the impugned serial or any other film works that are identical or substantially similar to the plaintiff's serial works or parts thereof. The defendants are also restrained from distorting, mutilating, modifying, or committing any other act in relation to the said serial work which would be prejudicial to the plaintiffs honour or reputation.

Questions :

- (a) *'Injunction is a preventive remedy'. Elaborate the grounds on which injunction can be granted by the Court and state the terms of copyright in literary work as per copyright legislation. (5 marks)*
- (b) *"The infringement is not defined but violation of any rights of the owner amounts to infringement". Explain this statement in the light of concept of infringement with judicial pronouncements, and authorities set up under the Copyright Act. (5 marks)*
- (c) *'Even after assignment the author retains special rights in the assigned work'. Examine the Special rights (Moral rights) available to author under National and International regime with appropriate case/provisions as per copyright. (10 marks)*
- (d) *Analyse the grounds, evidence and provisions of law on which the High Court awarded the judgment in favour of the plaintiff in the present copyright problem. (10 marks)*

Answer 2(a)

In case of violation of rights of the owner of copyright, the owner can approach the appropriate authority to claim the remedy. Violation of owner's rights amount to infringement. Sec. 55 of the Copyright legislation provides three types of remedies in case of infringement, i.e. Civil, Criminal and administrative remedies. Civil remedy includes preventive remedy (injunctions), damages/compensation etc.

Court can issue injunction to prevent a person to do or not to do a particular act. Injunction is of two types: temporary and permanent or perpetual injunction.

Court grants injunction if the following conditions are satisfied:

- a. There must be a prima facie case.
- b. Balance of convenience must be in favor of the party praying for injunction.
- c. If the court refuses injunction the party may suffer irreparable loss.

In civil proceedings for infringement of copyright it is the district court which will have jurisdiction.

Terms of copyright in literary work

Term of copyright is the duration for which the copyright is enforceable to protect the interest of author and owner and for public. This term is provided to provide an opportunity for the creator/owner to recover his investment and make a profit. After the term expires, the copyrighted work enters the public domain and becomes public property. Public can exploit such work without consent or permission.

Sec.22 to 29 of the copyright law deal with terms in respect of published literary, dramatic, musical and artistic work — anonymous, pseudonymous and posthumous work.

Literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus 60 years after his death. In case of joint authorship that implies collaboration of two or more authors in the production of the work, the term of copyright is to be construed as a reference to the author who dies last.

In case of copyright in posthumous, anonymous and pseudonymous work the term of protection is 60 years from the beginning of the calendar year next following the year in which the work has been first published.

Answer 2(b)

Copyright registration provides exclusive rights to the owners of the work to reproduce the work enabling them to derive financial benefits by exercising such rights. If any person without authorization from the owner exercises these rights in respect of the work which has copyright protection it constitutes an infringement of the copyright. If the reproduction of the work is carried out after the expiry of the copyright term it will not amount to an infringement.

Section 51 of the Act mentions the situation where copyright in the work shall be deemed to be infringed—

- (a) When any person, without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Act does
 - i. Anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or
 - ii. Permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright
- (b) When any person—
 - i. Makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
 - ii. Distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

- iii. By way of trade exhibits in public, or
- iv. Imports into India, any infringing copies of the work:

[Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work, for the private and domestic use of the importer.]
 Explanation.—for the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

The copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything, the sole right to do which is conferred on the owner of the copyright. [*Kartar Singh Giani v. Ladha Singh & Others (1934)*].

The *Bombay High Court in Hindustan Lever Ltd., v. Nirma Private Limited*, AIR (1991) held there was prima facie infringement of copyright. The case dealt with the infringement of the copyright in the label when there were only few changes made in the colourable imitation of label.

Authorities under Copyright Law

There are two important authorities who administer copyrights. They are

1. *Copyright Office* : Section 9 of the Copyright Act, 1957 requires for establishment of an office to be called the Copyright Office for the purpose of the Act. The Copyright Office is to be under the immediate control of a Registrar of Copyrights to be appointed by the Central Government, who would act under the superintendence and directions of the Central Government.
2. *Copyright Board* : Section 11 of the Copyright Act, 1957 provides for the establishment of the Copyright Board and empowers the Central Government to constitute the same consisting of a Chairman and not less than two, but not more than fourteen members. Chairman of the Board should be a sitting or retired judge of the High Court or a person qualified to be appointed as judge of the High Court. The Registrar of Copyright to act as Secretary of the Copyright Board.

Answer 2(c)

Moral Rights of the author are the soul of his works. The author has a right to preserve, protect and to nurture his creations through his moral rights.

Sec.57 of the Copyright Act, 1957 provides for what are termed as “Author’s Special Rights,” better known as “Moral Rights.” Founded on Article 6bis of the Berne Convention, moral rights have two key prongs:

1. Right to claim authorship of the work (sometimes referred to as Rights of Attribution/Paternity Rights) and
2. Right against distortion, modification or mutilation of one’s work if such distortion or mutilation would be prejudicial to the author’s honour or reputation (or “Integrity Rights”).

Section 57 reads in relevant part - Author's special rights

- (1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right-
 - (a) to claim authorship of the work; and
 - (b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.

The Delhi High Court, in *Amar Nath Sehgal v. Union of India (2005)* discussed the issue of moral rights and upheld the moral right first time extensively. Moral rights are independent of the author's copyright. They exist even after the assignment of the copyright, either wholly or partially.

Copyright — International Conventions

The first multilateral agreement on copyright is the Berne Convention that concluded in 1886 and was meant to provide protection to literary and artistic work. The Berne Convention was revised seven times in 1896, 1908, 1928, 1948, 1967 and 1971 (at Paris).

The post Second World War saw the emergence of the need for protecting Copyright on a universal basis. In 1952 the Intergovernmental Copyright Conference was convened in Geneva which led to the adoption of another historical copyright convention that is Universal Copyright Convention (UCC). It was not a substitute for Berne Convention. It tried to establish link between the countries on the Berne Union and other territories.

TRIPS Agreement negotiated at the Uruguay Round of General Agreement on Tariffs and Trade (GATT) in 1994 came into effect on 1st January, 1995. The text comprises 73 articles grouped in seven different parts. The standards for specific IPRs such as copyright and related rights are discussed under Article 9 to 14 of the Agreement

Answer 2(d)

The High Court verified the documents and witnesses produced by the plaintiff. Despite providing opportunities the defendant failed to appear before this court to produce evidence or to examine the witnesses. Following documents were produced by the plaintiff as evidence before the court:

1. The plaintiff in evidence appeared as PW1 and tendered his affidavit. He produced the original agreement between him and Ms. Leela Madhuri and the agreement between him and the Department of Adult Education (DEA).

The plaintiff has further stated that due to the action of the defendants the DAE was adamant on terminating the agreement dated 9th January, 2016 with him, thereby seriously prejudicing his honour and reputation and future business prospects to deal with any government or other departments.

2. Further two witnesses PW2 and PW3 stated that the defendants did not engage their services for any T.V. serial under any other title that is verbatim to the serial "Pyaar Ki Deewani and Deewana" produced and directed by the plaintiff.
 - (a) Their services were hired exclusively for the T.V. serial "Pyaar Ki Deewani and Deewana".

- (b) They also stated that the defendants had never taken their services to act in the T.V. Serial "Aur Ek Prem Kahani" that has been telecasted on Marathwada Doordarshan.

3. Grounds:

- Defendant failed to cross examine the witnesses. Despite granting number of opportunities the defendants failed to cross examine the plaintiff and other witnesses, as a result the right of the defendants to cross examine the plaintiff was closed.
- The defendants chose to not partake in the proceedings despite repeated notices. Plaintiff argued before this court that the defendant has been deliberately causing delay in the matter and prayed that a decree in terms of Order 8 Rule 10 be passed in his favour.
- The aired serial was the exact reproduction of the episodes filmed by the plaintiff with the changes that the credits appearing in the impugned serial were modified to replace the plaintiffs name as the producer and director, with that of the other persons.
- The defendants had no defense to raise to rebut the arguments of the plaintiff. The defendants certainly have been callous and the complete inaction on their part cannot defeat the right of plaintiff.
- Careful reading of the Provisions of copyright legislation specially Sec. 57 (Author's moral rights), Sec. 55 (remedies) and Order 8, Rule 10 of CPC.

After perusal of the documents produced and the testimony of the witnesses, the High Court considered the view of the plaintiff, that he is the author of the impugned work and the defendants have modified the said work of the plaintiff without permission. Taking into account the interest of the plaintiff the court proceeded to pass a judgment under Order 8 Rule 10 of Civil Procedure Code, and granted injunctions against the defendants.

Question 3

Critically analyse the background and controversial cases for enacting the Geographical Indications of Goods (Registration & Protection) Act, 1999 in Indian scenario. (5 marks)

Answer 3

Geographical Indications (GI) serve to recognize the essential role geographic and climatic factors and/or human know-how can play in the end quality of a product. Like trademarks or commercial names GIs are also IPRs, which are used to identify products and to develop their reputation and goodwill in the market. The Agreement on Trade Related Aspects of Intellectual Property (TRIPS), prescribes minimum standards of protection of GIs and additional protection for wines and spirits. Articles 22 to 24 of Part II Section III of the TRIPS prescribe minimum standards of protection to the geographical indications that WTO members must provide.

Under the Agreement on Trade Related Aspects of Intellectual Property (TRIPS),

countries are under no obligation to extend protection to a particular geographical indication unless that geographical indication is protected in the country of its origin. India did not have such a specific law governing geographical indications of goods which could adequately protect the interest of producers of such goods.

This resulted into controversial cases like basmati and rasgulla.

1. Basmati is a variety of rice grown in India and is internationally famous for its taste, flavor, smell and texture. Farmers from Madhya Pradesh who grew the variety made attempts to have themselves registered as growers of Basmati rice and take advantage of the GI by accessing the international market. After a long drawn battle, in 2018 Madhya Pradesh was excluded from the territory which could claim the GI tag of Basmati by an order of the IPAB
2. The states of West Bengal and Odisha found themselves involved in a tussle over GI of Rasgulla. Finally West Bengal was granted "Banglar Rosgolla" and Orisha is in the process of getting "Jagannath Rasgulla" registered for their version of the roshgolla which emanates from the Jagannath Temple tradition.

To prevent such unfair exploitation, it became necessary to have a comprehensive legislation for registration and for providing adequate legal protection to geographical indications. Accordingly the Parliament enacted a legislation titled the Geographical Indications of Goods (Registration and Protection) Act, 1999 which came into force with effect from 15th September, 2003.

The objectives of the Act are three fold. They are:

- To protect the interest of producers,
- To exclude unauthorized persons from misusing GI, and
- To promote Indian goods for export.

Question 4

Company A introduced a new washing machine in the market and the design of the new washing machine is registered under Design Act. After few months Company A came to know that Company B is selling similar design washing machine in the market. Company A complained that Company B imitated their washing machine design and you have been asked to suggest the Company A what remedial measures available by quoting similar cases. (5 marks)

Answer 4

Design is defined as "*drawing or the deception of an original plan for a novel pattern, model, shape, configuration, that is chiefly decorative or ornamental.*"

Piracy of a design means the application of a design or its imitation to any article belonging to the class of articles in which the design has been registered for the purpose of sale or importation of such articles without the written consent of the registered proprietor. Publishing such articles or exposing them for sale with knowledge of the registered proprietor. Unauthorized application of the design also involves piracy of the Design.

In Design Act, 2000, Section 22 deals with the piracy of the registered design in India. Section 22(1) lays down as follows:

22. Piracy of registered design.—

- (1) During the existence of copyright in any design it shall not be lawful for any person—
 - (a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or
 - (b) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or
 - (c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

Furthermore the consequences and remedies of violation of a design right is laid down in Section 22(2) and reads as follows:

- (2) If any person acts in contravention of this section, he shall be liable for every contravention—
 - (a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or
 - (b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly: Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees: Provided further that no suit or any other proceeding for relief under this sub-section shall be instituted in any court below the court of District Judge.

Therefore, Company A which has a registration over the design in dispute can initiate action against Company B and recover monies in the form of damages. Furthermore, Company A can also bring a suit for injunction against ongoing or future infringement.

In *M/S. Cello Household Products Vs. M/S. Modware India* the Bombay High Court in 2017 compared two competing bottles and one made by Cello and the other by Modware, where Cello held registration over the design of their bottles and upon a detailed analysis found the bottles made by Modware to be deceptively similar to the bottles protected under the Design Act.

The proprietor of the design gets exclusive right to apply the design to the article in a class in which the design is registered. During the existence of copyright over any

design, other persons are prohibited from using the design except or with the permission of the proprietor, his licensee or assignee.

The facts of the case are similar to that of *Whirlpool Of India Ltd. vs Videocon Industries Ltd.* decided by the Bombay High Court on 27 May, 2014.

Question 5

'Trademark Mark legislation does not specify requisites for registration of trademark'. Elaborate this statement in the light of fundamentals for registration of trademark, and validity of trademark with appropriate case law. (5 marks)

Answer 5

The Trade Marks Act, 1999 does not expressly list any requisites for registration. Instead of detailing requisites for registration, grounds for refusal are listed in Section 9(1), (2) and (3) & Section 11 of Trade Marks Act, 1999, which conversely are requisites for registration.

To get registration for any mark, the mark should not be hit by any of the two grounds for refusal or other specific prohibitions.

- a. It should be a Trade Mark within the meaning of the Trade Marks Act, 1999 as per Section 2(1)(zb).
- b. Distinctive Character – Capable of distinguishing goods of one person from those of others. The mark must be distinctive. The distinctive character may be inherent or acquired.

The legal requirements to register a Trade Mark under the Act are:

- The selected mark should be capable of being represented graphically (that is in the paper form).
- It should be capable of distinguishing the goods or services of one undertaking from those of others.

It should be used or proposed to be used as a mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person having the right either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person.

The fundamental principle governing Trademark Law is that Trademarks which are deceptively similar to Trademarks already registered or applied for in a given class must not be granted protection. Neither should such trademarks be allowed to be used in the course of Trade as such act would cause a confusion in the minds of the consumers as to the source and quality of the goods or services bearing such deceptive trademark.

On the other hand, the reason Trademark registration is limited to Classes of Goods or Services is to prevent traders from obtaining any monopoly in the use of words as trademarks to the detriment of the members of the public, who, in the future and in connection with their goods might desire to use them.

In 2018, the Supreme Court in *Nandhini Delux v. Karnataka Co-Operative Milk*

Producers Federation Ltd discussed the law governing registration of Trademarks with emphasis on Section 9 (Absolute Grounds of Refusal) and Section 11 (Relative Grounds of Refusal)

Duration of Trade Mark

Trade mark protection in India is perpetual subject to renewal of the registration after every 10 years. The application for renewal can be filed six months before the expiry of the validity period of the trade mark. Section 25 of the Trade Mark Act, 1999 allows registration of a trade mark for a period of 10 years.

Question 6

If you are hired by a technology company for assessment and evaluation of company intellectual property rights (IPRs) then which appraisal technique you will use and why you will use that technique for valuation of IPR. (5 marks)

Answer 6

Discounted Cash Flow (“DCF”) Analysis is probably the most comprehensive of appraisal techniques. Potential profits and cash flows need to be assessed carefully and then restated to present value through use of a discount rate, or rates. DCF mathematical modelling allows for the fact that 1 Euro in your pocket today is worth more than 1 Euro next year or 1 Euro the year after. The time value of money is calculated by adjusting expected future returns to today’s monetary values using a discount rate. The discount rate is used to calculate economic value and includes compensation for risk and for expected rates of inflation.

With the asset you are considering, the valuer will need to consider the operating environment of the asset to determine the potential for market revenue growth. The projection of market revenues will be a critical step in the valuation. The potential will need to be assessed by reference to the enduring nature of the asset, and its marketability, and this must subsume consideration of expenses together with an estimate of residual value or terminal value, if any. This method recognizes market conditions, likely performance and potential, and the time value of money. It is illustrative, demonstrating the cash flow potential, or not, of the property and is highly regarded and widely used in the financial community.

The discount rate to be applied to the cash flows can be derived from a number of different models, including common sense, build-up method, dividend growth models and the Capital Asset Pricing Model utilising a weighted average cost of capital. The latter will probably be the preferred option.

These processes lead one nowhere unless due diligence and the valuation process quantifies remaining useful life and decay rates. This will quantify the shortest of the following lives: physical, functional, technological, economic and legal. This process is necessary because, just like any other asset, IPRs have a varying ability to generate economic returns dependent upon these main lives. For example, in the discounted cash flow model, it would not be correct to drive out cash flows for the entire legal length of copyright protection, which may be 70 plus years, when a valuation concerns computer software with only a short economic life span of 1 to 2 years. However, the fact that the legal life of a patent is 20 years may be very important for valuation purposes, as often

illustrated in the pharmaceutical sector with generic competitors entering the marketplace at speed to dilute a monopoly position when protection ceases. The message is that when undertaking a valuation using the discounted cash flow modelling, the valuer should never project longer than what is realistic by testing against these major lives.

While some of the above methods are widely used by the financial community, it is important to note that valuation is an art more than a science and is an interdisciplinary study drawing upon law, economics, finance, accounting, and investment. It is rash to attempt any valuation adopting so-called industry/sector norms in ignorance of the fundamental theoretical framework of valuation. When undertaking an IPR valuation, the context is all-important, and the valuer will need to take it into consideration to assign a realistic value to the asset.

INTERNATIONAL BUSINESS – LAWS AND PRACTICES (Elective Paper 9.5)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Case study :

With India's 'Look East' Strategy, ASEAN Must 'Look West'

ASEAN-India relations have come a long way since their turbulent Cold War phase. India has shared a close relationship with ASEAN countries since the time of its independence. It started expanding its influence in the Southeast Asian region during the 1950s by supporting the Indonesian struggle for independence and involving itself in the Indo-China crisis in the 1960s. It also signed friendship treaties with Indonesia, Burma (now Myanmar) and the Philippines and consolidated its bilateral and diplomatic relations with them. However, with the signing of an "India-Soviet Peace and Friendship Cooperation Treaty", relations between India and ASEAN took a downturn. The ASEAN members' perception of the Soviet Union was far from benign and the signing of the treaty made them suspicious of India's intentions. Further, under the influence of the Soviet Union, India recognized the People's Republic of Kampuchea regime that was propped up in Vietnam in July 1980 and through the decade, built strong political and military relations with Vietnam. This was contrary to the ASEAN view which condemned the Kampuchean regime and resulted in the worsening of relations between India and ASEAN. Through the 1980s, relations between India and ASEAN were uncertain and plagued by various political and diplomatic differences which resulted in a compromise of economic relations between them.

For the past two decades, India has pursued its engagement with East Asia under its 'Look East' Policy. ASEAN constitutes the foundation and core of this policy. The centrality of ASEAN in India's 'Look East' Policy was first articulated by the then Prime Minister of India in Singapore in 1994. Subsequently it was reiterated by all the succeeding Indian Prime Ministers.

The first phase of India's 'Look East' policy was ASEAN-centered and focused primarily on trade and investment linkages. The new phase of this policy is characterised by an expanded definition of 'East', extending from Australia to East Asia, with ASEAN at its core. The new phase also marks a shift from trade to wider economic and security issues including joint efforts to protect the sea lanes and coordinate counter-terrorism activities.

India and ASEAN Bilateral Relations :

There is a differentiated structure in India's bilateral relations within ASEAN. One can identify three layers of these relations. To begin with relations with Singapore

would constitute a first category, as it is the most intense partner of India from the perspective of bilateral economic as well as security cooperation. Singapore has the highest trade, investment and security cooperation with India among all the ASEAN members and has often taken initiatives and leads in facilitating India's integration with the regional grouping. Relations with countries comprising new ASEAN (for their late membership) i.e. Cambodia, Laos, Myanmar and Vietnam (CLMV) are being paid special attention, and would constitute another category of relationship. Among the CLMV countries, Myanmar shares a common territorial border with India and the other countries, besides being on the periphery of China. In the third category, India's multifaceted cooperation with Thailand, Malaysia, Indonesia and Philippines is growing in a natural way. In the long run, the prospects of India-Indonesia cooperation becoming more intense look promising as Indonesia is emerging as a significant player in regional affairs.

Over the past decade, trade and investment relations between India and ASEAN have continued to improve. Total bilateral trade increased more than threefold from US\$21 billion in 2005-06 to US\$65 billion in 2015-16. India's exports to ASEAN increased from U.S. \$ 10.41 billion in 2005-06 to U.S. \$ 25.20 billion in 2015-16 and imports over the same period quadrupled from U.S. \$ 10.81 billion in 2005-06 to U.S. \$ 39.84 billion. This reflects a compound annual growth rate (CAGR) of about 9.2 per cent in exports to the ASEAN region and close to 14 per cent per annum growth in imports during 2005-06 to 2015-16. Concomitantly, India's trade deficit with the ASEAN surged from US\$0.5 billion in 2005-06 to US\$14.6 billion. In terms of market share, the share of imports in India's total imports from ASEAN went up from 7.3% in 2005-06 to 10.5% in 2015-16. Over the same period, the share of exports to ASEAN in India's total exports fell from 10.1% to 9.6%.

In commodities, petroleum oils and meat products accounted for a share of about 15 and 10.5 percent of India's total exports to ASEAN respectively. Other top export items to ASEAN were: transport equipment (8.5%), chemicals (6.7%), mechanical appliances (6.4%), nonferrous metals (5.2%), iron & steel (2.9%) and pharmaceuticals (2.8%) to total trade.

In contrast, India's imports from ASEAN are concentrated and dominated by petroleum oils, palm oil, coal briquettes, chemicals, electrical and electronic equipment and mechanical appliances. These five items accounted for more than 50% share in India's total imports from the ASEAN.

India also maintains relations with some ASEAN members outside of the ASEAN framework. Myanmar, for instance, has become an Observer in the South Asian Association for Regional Cooperation (SAARC). Thailand joined hands with India in 1997 to establish BIMSTEC (Bay of Bengal Initiative for Sectoral Technical and Economic Cooperation). All other members of SAARC, with the exception of Pakistan and Maldives, are members of BIMSTEC since 2003.

Why ASEAN to India ?

India's active participation in the ASEAN Connectivity will benefit not only ASEAN but also India, as it would demonstrate India's commitment to further integrate itself with Southeast Asia and other parts of East Asia. ASEAN is a fast expanding trade bloc in Asia with a growing economic clout. With a combined population of more

than 620 million, ASEAN's aggregate economic size surpasses US\$ 2.5 trillion. Unlike the BRICS, whose fortunes were based largely on individual economic competitiveness, ASEAN's strength is buttressed on its "competitive interconnectedness". ASEAN lies at the heart of many important global industrial production chains in manufacturing and services trade. These allow countries to specialize in different parts of the production process, tapping the competitive advantages of each location. The bulk of intra-Asia trade comprises parts, components, raw materials and machinery needed in export-oriented production and consumer goods are also increasingly traded within Asia. Some of the opportunities for India because of the notable aspects of ASEAN's economic development during the course of its evolution are :

- (a) ASEAN is the third largest economy: If treated as a single entity, the ASEAN with a combined GDP of more than \$2.5 trillion would rank as the third largest economy in Asia and seventh largest in the world (after the US, China, Japan, Germany, the UK and France) based on 2014 figures in current US \$ terms.
- (b) ASEAN is a growing hub of consumer demand: Income growth has remained strong since 2000, with average annual real gains of more than 5 percent. Some member nations have grown at a torrid pace: Vietnam, for example, took just 11 years (from 1995 to 2006) to double its per capita GDP from \$1,300 to \$2,600. Besides, an expanding middle class in ASEAN, estimated to be around 150 million or one-quarter of the ASEAN population, has been fuelling consumer spending and retail sales in the organised channels.
- (c) ASEAN is well positioned in global trade flows: ASEAN is the fourth-largest exporting region in the world, trailing only the European Union, North America, and China/Hong Kong. ASEAN exports to the world in 2014 stood at US\$1.3 trillion, with intra-ASEAN exports making up 26 per cent of those exports. Vietnam specializes in textiles and apparel, while Singapore and Malaysia are leading exporters of electronics.
- (d) The ASEAN Economic Community (AEC) : AEC was officially launched on 31st December 2015 to create a single market to enable an easier movement of goods, services, investment, capital and people across the region. This will result in a common market of more than 600 million people, dwarfing the EU's 500 million and NAFTA's over 400 million.
- (e) The removal of tariffs: This removal throughout the AEC presents a significant advantage for Indian companies in two ways. First, companies that manufacture in the region will be able to take advantage of the free flow of goods through the AEC when exporting finished goods. Second, Indian companies that rely on ASEAN nations for intermediate goods in their supply chain will benefit from reduced costs not only in goods, but also in simplifying the 'paperwork' necessary to move goods through the region.

ASEAN Responsibility to India:

ASEAN has to bear some of the responsibility for the slow pace of engagement. As a response to India's 'Look East' strategy, ASEAN has to adopt 'Look West' strategy to India. There is an accepted divergence in the interests and approaches of ASEAN

members towards India's integration with the region. The less developed members have been hesitant in ratifying the FTA in goods in order to protect their local interests. ASEAN has also not been ready yet to complete the FTA process as the agreement on trade in services and investments continues to face hurdles. Some of the ASEAN countries also initially resisted India's membership of East Asian Community (EAC) and many of their bilateral agreements with India in defense and economic sectors have not been implemented as expected. The economic downturns in some of the ASEAN countries and uncertainties arising out of the global economic slump have forced almost everyone to go slow on new ventures. India is also awaiting ASEAN responses to a number of its project proposals submitted for endorsement and implementation under the joint India-ASEAN Cooperation Fund.

On account of the language barrier and other factors, Indian services providing companies have traditionally engaged in business transactions mainly with Western companies, but recently, taking advantage of swelling demand, they are doing more business with Japan, China, and other East Asian countries. It is possible for India's firms to join in the ASEAN production networks by using computer and information services to develop deeper ties with this region. The ASEAN India Investment and Services Agreement came into force on 1st July 2015. ASEAN is not yet adequately integrated on the services front and also remains relatively closed to Foreign Service providers. Hence, a preferential deal on services trade with the region will bring significant gains to India.

Constraints to ASIAN-India Relations:

- (a) *Logistics: It is addressed that there are some issues that need to be implemented to improve the logistics like (a) improved agreements for an integrated road transport market amongst ASEAN nations; (b) better and synchronized transport regulations (c) simplified and rationalized import, export, transit procedures and processes to decrease clearance costs and time and; (d) Service Level Agreements to improve predictability of clearance time.*
- (b) *Shipping connectivity : The Liner Shipping Connectivity Index (LSCI aims at capturing a country's level of integration into the existing liner shipping network by measuring liner shipping connectivity. The index for Singapore, Malaysia and Vietnam is much higher compared to India.*
- (c) *Trade transaction barriers: There is a need to reduce bureaucratic delays and paperwork involved in border crossings between member countries; standardizing trade rules and products. The customs and clearance procedures at borders need to be streamlined to reduce delays and costs of transit. For instance, it takes less than 3 days to put an export consignment (standard 20 feet container) from factory gate to ship in Thailand whereas it takes more than 7 days to undertake the same process in India. Also the burden of customs procedures is much higher in case of India.*
- (d) *Non-tariff barriers (NTBs) : NTBs to trade continue to maintain a strong presence in the ASEAN region. One needs to exercise prudence to separate the legitimate public policy objectives of non-tariff measures from a desire to protect local interests.*

The ASEAN-India partnership holds ample potential for a successful future. As things stand, it is evident that both India and ASEAN are keen to establish a strong

relationship with a longterm emphasis on greater cooperation and integration, apart from the strengthening of economic and strategic ties. While there are definite challenges to be addressed before achieving a consolidated East Asian Community, it is evident that conscious efforts are being made on both the sides in developing synergies for the shared prosperity and mutual benefit of India, ASEAN and the Asian region at large.

Referring to the above case, answer the following questions :

- (a) What do you mean by regional trading blocks ? Discuss the aims and purposes of ASEAN that are set out in the ASEAN declaration. (10 marks)*
- (b) Why is India interested in ASEAN ? What are the opportunities that India is looking for in this relationship ? (10 marks)*
- (c) "Over the past decade, trade and investment relations between India and ASEAN have improved considerably". Justify this statement. (10 marks)*
- (d) Why it has been said that as a response to India's 'Look East' strategy, ASEAN must adopt 'Look West' strategy to India ? (10 marks)*
- (e) "The ASEAN-India partnership to expand in long-run requires addressing some challenges". Elaborate on challenges. (10 marks)*

Answer 1(a)

Regional Trade Blocs or Regional Trade Agreements or Free Trade Agreements are a type of regional intergovernmental arrangement, where the participating countries agree to reduce or eliminate barriers to trade like tariffs and non-tariff barriers. The Regional Trading Blocs are thus known for promoting trade within a region by reducing or eliminating tariff among the member countries. With waves of globalization and economic liberalization, trade blocs have emerged as an instrument to expand trade, promote economic growth, enhance economic prosperity and improve the standard of living of people.

Various countries have established tariffs on goods produced by member states, import quotas, government subsidies, onerous bureaucratic import process and technical and other non-tariff barriers for protection from global trade competition. On the other hand each country trades with the rest of the world for reasons such as diplomacy, not self-sufficient in fulfilling the domestic demand, improving the terms of trade, generating the foreign exchange, export competitiveness and increasing the share of global market. Regional trading blocs are formed to promote trade within the blocks and defend its members against global competition. Since trade is not an isolated activity, member states within regional blocks also cooperate in economic, political, security, climatic and other issues affecting the region.

These trade blocs lead to increased regional trade (trade creation) and reduced comparative trade with the rest of the world (trade diversion).

ASEAN is also one of the trade blocks. As set out in the ASEAN declaration, the aims and purposes of ASEAN are as under:

- To accelerate economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in

order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations.

- To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter.
- To promote active collaboration and mutual assistance on matter of common interest in the economic, social, cultural, technical and administrative fields.
- To promote assistance to each other in the form of training and research facilities.
- To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, etc.
- To promote Southeast Asian Studies.
- To maintain close and beneficial cooperation with existing international and regional organizations with similar aims.

Answer 1(b)

India's active participation in the ASEAN Connectivity will benefit not only ASEAN but also India, as it would demonstrate India's commitment to further integrate itself with Southeast Asia and other parts of East Asia. India considers ASEAN countries to further its economic gains far beyond in Far-East Countries of Japan, South Korea and China and with Regional Comprehensive Economic Agreement (RCEP) negotiations. India want to integrate its economy with Australia and New Zealand through ASEAN Countries. ASEAN is a fast-expanding trade bloc in Asia with a growing economic clout. With a combined population of more than 620 million, ASEAN's aggregate economic size surpasses US\$ 2.5 trillion. Unlike the BRICS countries, where the terms of trade are largely based on individual economic competitiveness, ASEAN's strength is buttressed on its 'competitive interconnectedness'. ASEAN lies at the heart of many important global industrial production chains in manufacturing and services trade. These allow countries to specialize in different parts of the production process, tapping the competitive advantages of each location. The bulk of intra-Asia trade comprises of parts, components, raw materials and machinery needed in export-oriented production; consumer goods are increasingly traded within Asia.

Some of the opportunities for India because of the notable aspects of ASEAN's economic development during the course of its evolution are as follows:

- (a) *ASEAN is the third largest economy* : If treated as a single entity, the ASEAN with a combined GDP of more than \$2.5 Trillion would rank as the third largest economy in Asia and seventh largest in the world (after the US, China, Japan, Germany, the UK and France) based on 2014 figures in dollar terms.
- (b) *ASEAN is a growing hub of consumer demand* : Income growth has remained strong since 2000, with average annual real gains of more than 5 percent. Besides, an expanding middle class in ASEAN, estimated to be around 150 million or one-quarter of the ASEAN population, has been fueling consumer spending and retail sales in the organized channels.

- (c) *ASEAN is well positioned in global trade flows* : ASEAN is the fourth-largest exporting region in the world, trailing only the European Union, North America, and China/ Hong Kong. ASEAN exports to the world in 2014 stood at US\$ 1.3 trillion, with intra-ASEAN exports making up 26 per cent of those exports. Vietnam specializes in textiles and apparel, while Singapore and Malaysia are leading exporters of electronics.
- (d) *The ASEAN Economic Community (AEC)* : AEC was officially launched on 31st December 2015 to create a single market to enable an easier movement of goods, services, investment, capital and people across the region. This will result in a common market of more than 600 million people, dwarfing the EU's 500 million and NAFTA's over 400 million.
- (e) *The removal of tariffs* : This removal of tariffs throughout the AEC presents a significant advantage for Indian companies in two ways. First, companies that manufacture in the region will be able to take advantage of the free flow of goods through the AEC when exporting finished goods. Second, Indian companies that rely on ASEAN nations for intermediate goods in their supply chain will benefit from reduced costs not only in goods, but also in simplifying the 'paperwork' necessary to move goods through the region.

A pillar of the ASEAN-India agenda is improving economic, digital, and socio-cultural connectivity. Infrastructure projects that enhance transportation links between ASEAN and India are a key component of the economic connectivity and integration strategy.

India may ensure peace and security in the Indian Ocean Region (IOR) by leveraging the good relation with ASEAN. Inclusive growth digitalization over the next five years and cyber security are two areas of focus in ITES between India and ASEAN.

India and ASEAN stand to benefit significantly from increased labour mobility and existing migration flows between the two regions show massive promise. ASEAN and India partnership over the next five to ten years may become influential soft power.

Answer 1(c)

There is a differentiated structure in India's bilateral relations within ASEAN. One can identify three layers of these relations. To begin with relations with Singapore would constitute a first category, as it is the most intense partner of India from the perspective of bilateral economic as well as security cooperation. Singapore has the highest trade, investment and security cooperation with India among all the ASEAN members and has often taken initiatives and leads in facilitating India's integration with the regional grouping. Relations with countries comprising new ASEAN (for their late membership) i.e. Cambodia, Laos, Myanmar and Vietnam (CLMV) are being paid special attention and would constitute another category of relationship. Among the CLMV countries, Myanmar shares a common territorial border with India and the other countries, besides being on the periphery of China. In the third category, India's multifaceted cooperation with Thailand, Malaysia, Indonesia and Philippines is growing in a natural way. In the long run, the prospects of India-Indonesia cooperation becoming more intense look promising as Indonesia is emerging as significant player in regional affairs.

Over the past decade, trade and investment relations between India and ASEAN

have continued to improve. Total bilateral trade increased more than threefold from US\$ 21 billion in 2005-06 to US\$ 65 billion in 2015-16. India's export to ASEAN increased from US\$ 10.41 billion in 2005-06 to US\$ 25.20 billion in 2015-16 and imports over the same period quadrupled from US\$ 10.81 billion in 2005-06 to US\$ 39.84 billion. This reflects a compound annual growth rate (CAGR) of about 9.2 per cent in exports to the ASEAN region and close to 14 per cent per annum growth in imports during 2005-06 to 2015-16. Simultaneously, India's trade deficit with ASEAN surged from US\$ 0.5 billion in 2005-06 to US\$ 14.6 billion. In terms of market share of imports in India's total imports from ASEAN went up from 7.3% in 2005-06 to 10.5% in 2015-16 over the same period share of exports to ASEAN in India's total exports fell from 10.1% to 9.6%.

In contrast, India's imports from ASEAN are concentrated and dominated by petroleum oils, palm oil, coal briquettes, chemicals, electrical and electronic equipment and mechanical appliances. These five items accounted for more than 50% share in India's total imports from the ASEAN. There is an increasing trend in bilateral investment between India and ASEAN countries in the last one decade.

Answer 1(d)

ASEAN has to bear some of the responsibilities for the slow pace of engagement. As a response to India's 'Look East' strategy, ASEAN has to adopt 'Look West' strategy to India. There is an accepted divergence in the interests and approaches of ASEAN members towards India's integration with the region. The less developed members have been hesitant in ratifying the Free Trade Agreement (FTA) in goods in order to protect their local interests. ASEAN has also not been ready yet to complete the FTA process as the agreement on trade in services and investments continues to face hurdles. Some of the ASEAN countries also initially resisted India's membership of ASEAN and many of their bilateral agreements with India in defense and economic sectors have not been implemented as expected. The economic downturns in some of the ASEAN countries and uncertainties arising out of the global economic slump have forced almost everyone to go slow on new ventures. India is also awaiting ASEAN responses to a number of its project proposals submitted for endorsement and implementation under the joint India-ASEAN Cooperation Fund.

The ASEAN-India Commemorative Summit, followed by diplomats' attendance as joint chief guests at the Republic Day parade in 2018, underlined the new consensus on the need for Southeast Asia and India to boost cooperation. First, as the demand for goods in Western economies comes down, the region needs to look deeper within to grow markets and increase trade. Second, continuing tensions between the 'great powers' — between the U.S. and Russia, or the U.S. and China — are forcing the unaligned countries of ASEAN and India to forge a common understanding. China's moves in particular, both its naval forays in the Indo-Pacific and its Belt and Road Initiative connectivity project, have the potential to change equations in the region. Third, as Singapore's Prime Minister and the Chairman of ASEAN, Lee Hsien Loong, reminded the world in an editorial, and Prime Minister Narendra Modi said in his speech at the summit, India's cultural and trade ties with Southeast Asia go back 2,000 years — and with Southeast Asia having come out of the overhang of Cold War divisions, India and ASEAN have a unique opportunity to reap the potential of their geographic proximity. The Delhi Declaration they signed articulated their urgent concerns as ASEAN and India called for measures to deepen security, economic and socio-cultural cooperation, and

connectivity. These include joint mechanisms for maritime transport, trade and a 'code of conduct' for the South China Sea.

On account of the language barrier and other factors with ASEAN countries, Indian services providing companies have traditionally engaged in business transactions mainly with Western companies, but recently, Indian companies have started taking advantage of soaring demand in ASEAN and Far-East countries. They are doing more business with Japan, China and other East Asian countries. It is possible for Indian firms to join in the ASEAN production networks by using computer and information services to develop deeper ties with this region. The ASEAN-India Investment Services Agreement came into force on 1st July, 2015. ASEAN is not yet adequately integrated on the service front and also remains relatively closed to Foreign Service Providers. Hence, a preferential deal on services trade with the region will bring significant gains to India.

Answer 1(e)

The ASEAN-India partnership to expand in long-run requires addressing the following challenges:

- (a) *Logistics* : There are some issues that need to be implemented to improve the logistics like (a) improved agreements for an integrated road transport market amongst ASEAN nations; (b) better and synchronised transport regulations; (c) simplified and rationalised import, export transit procedures and processes to decrease clearance cost and time and; (d) Service Level Agreements to improve predictability of clearance time.
- (b) *Shipping connectivity* : The Liner Shipping Connectivity Index (LSCI) aims at capturing a country's level of integration into the existing liner shipping network by measuring liner shipping connectivity. The index for Singapore, Malaysia and Vietnam is much higher compared with India.
- (c) *Trade transaction barriers* : There is a need to reduce bureaucratic delays and paperwork involved in border crossing between member countries; standardising trade rules and products. The customs and clearance procedures at borders need to be streamlined to reduce delays and costs of transit. For instance, it take less than 3 days to put an export consignment (standard 20 feet container) from factory gate to ship in Thailand whereas it takes more than 7 days to undertake the same process in India. Also, the burden of customs procedures is much higher in case of India unlike in ASEAN countries.
- (d) *Non-tariff barriers (NTBs)* : Non-tariff barriers to trade continue to maintain a strong presence in the ASEAN region. One needs to exercise prudence to separate the legitimate public policy objectives of non-tariff measures from a desire to protect local interest.

Question 2

- (a) *The Go-vegetarian movement is gathering stream around the world. A home grown restaurant chain Arnapurna Ratna is planning to open its outlets abroad starting with the US, the UK and Canada. The management of Arnapurna Ratna has decided to foray into overseas market through the franchisee model. Do you think the decision taken by the management to enter foreign market is correct ? Justify your answer. (6 marks)*

- (b) *P & P, a multinational sweets and dry food chain, wants to enter the Gulf market. Given the nature of global environment, what are the cultural issues which the management is likely to face ? Discuss. (6 marks)*
- (c) *“Globalisation is not always beneficial to developing countries”. Do you agree ? Give reasons in support of your answer. (6 marks)*
- (d) *M & N, an Indian leading automobile company, is building electric vehicles that will cover 300 kilometers on a single charge in collaboration with Pininfarina, the Italian car designer company. Which type of foreign collaboration is this ? Discuss why M & N has chosen for such collaboration. (6 marks)*
- (e) *It has been claimed by a group of experts that “Geographical Information System (GIS) can simplify logistics operations in India by reducing the complexity by bringing out subtle geographic patterns and relationships that can form the basis of good decisions”. Do you agree with the claim ? Justify your answer. (6 marks)*

Answer 2(a)

Seizing the Go-vegetarian movement, the management of Arnapura Ratna has decided to foray into overseas market through franchisee model starting with the US, the UK and Canada. There are market research inputs which indicates that the number of vegetarians in the UK has risen significantly. In this context, the decision taken by management to go global is correct and it is further worth-mentioning that ‘franchise model’ is better than other modes of operation because it has the following advantages:

- (a) *Suitable for business expansion* : Franchising is one of the only means available to access venture investment capital without the need to give up control of the operation of the chain in the process. After the brand and formula are carefully designed and properly executed, franchisors are able to sell franchisees and expand rapidly across countries and continents using the capital and resources of their franchisees and can earn profits commensurate with their contribution to those societies while greatly reducing the risk and expense that would be inherent in conventional chain operations.
- (b) *Legal considerations* : The franchisor is relieved of many of the mundane duties necessary to start a new outlet, such as obtaining the necessary licenses and permits. In some jurisdictions, certain permits (especially alcohol licenses) are more easily obtained by locally based, owner-operator type applicants while companies based outside the jurisdiction (and especially if they originate in another country) find it difficult if not impossible to get such licenses issued to them directly. For this reason, hotel and restaurant chains that sell alcohol often have no viable option but to franchise if they wish to expand in another state or province.
- (c) *Operational considerations* : Franchisees are said to have a greater incentive than direct employees to operate their businesses successfully because they have a direct stake in the start-up of the branded business and the tangible assets that wear the brand name. The need of franchisors to closely scrutinize the day-to-day operations of franchisees (compared to directly-owned outlets) is greatly reduced.
- (d) *Cost considerations* : The franchisee models enables the principal organization to reduce fixed costs as the major infrastructure costs are shared by the franchisee.

Answer 2(b)

P&P as a multinational company may face a number of different cultural issues as it moves forward to Gulf market for business expansion. Many of these problems are internal business culture but some may be of an external nature also as discussed below:

- *Diversity* – One of the main cultural challenges faced by multinational companies is the diversity of cultural perspectives found within the organization. This can cause problems in terms of management and policy development, because it makes it difficult for the organization to make company-wide policy decisions without having to take into consideration the variety of cultural viewpoints represented within the organization itself.
- *Organizational culture* – Along the same lines as an overabundance of diversity, multinational companies also face the difficult task of developing a unified organizational culture from within. Because of the different cultural perspectives represented within the organization as a whole, company leaders generally face the difficult task of having to create a workplace culture to which all employees can adhere. Gulf Countries specify that major share (more than 51%) must be with locals, meaning the control of the company and internal organizational culture will be dominated as per Gulf countries values.
- *Human Resources* – Multinational companies face problems when it comes to human resources operations. Finding employees at home who are qualified or willing to step in and fill such positions in a context outside of their home country may also prove problematic. Some employees may simply not want to serve in certain parts of the world. Expatriates are considered productive employees however with increased emphasis for employment to local people, P&P management has to find a fine balance in recruiting manpower.
- *Sales* – Companies run the risk of developing products and strategies that run contrary to the cultural norms of the people to which they are attempting to market the products. For example, P&P is a food chain offering sweet, it must comply Halal Certification for its food products to be compatible with local markets.
- *Communication and Cultural Norms* – Another significant issue faced by multinational companies is how business is conducted across international lines. Differences in communication for instance, make it essential to understand cultural norms in the countries in which these companies operate. For example, one must comply with Islamic way of dressing, covering full body, and one should not eat and drink during Ramadan. One must show utmost respect to Islamic traditions in Gulf countries.
- *Etiquette and Customs* – Multinational companies also have to position representatives and leaders who know how to avoid violating or ignoring cultural practices and customs in business meetings. For example, shaking hand with women is not common in Gulf countries and talking about Liquor is considered bad in Gulf countries.

Answer 2(c)

Various benefits of globalization are mentioned below:

- (i) Increase in competitive strength of domestic industry
- (ii) Access to advanced technology
- (iii) Access to foreign investment
- (iv) Reduction in cost of production
- (v) Growth and expansion in participating countries
- (vi) Higher volume of trade
- (vii) Consumer welfare
- (viii) Benefits like help in professionalization of management, promotion of mutual cooperation, paving way for world peace.

The support for globalization is the lowest in the USA and even in certain other developed countries including Britain, France and German. People are generally wary of immigration that accompanies the opening up of the economy. These countries feel threatened as it could endanger their culture and environment.

The dynamics of globalization process reveals that developed and developing countries participate in unequal footings. Developed countries along with their mighty MNCs exert a very strong force globally while developing country governments and civil society organization hold much less say. Developed country governments often reserve and exercise the right to take unilateral and bilateral actions.

Economic efficiency argument in support of globalization ignores real social consequences. Farmers in developing countries commit suicides as commodity prices crash, workers lose jobs as they are retrenched from factories because developing countries like India, Mexico, and Philippines do not have the advantage of economies of scale.

Globalization is often accused of contributing to the rise in poverty in developing countries. Poorer countries (Africa, the Balkans, parts of Caribbean) share in world trade has fallen over the past 20 years.

Income inequality has risen in most regions such as in developing Asia, emerging Europe, Latin America. Despite all claims of welfare in the globalized era, more than a billion people in the world still live on less than a dollar a day.

On an average, developed countries impose tariffs on developing countries four times higher than those on developed ones. Rich countries incur cost three times more in trade restrictions than they give in development aid. Globalization pushes workers from the organized to the unorganized sector where they enjoy much less job security and sometimes lower wages as well.

Answer 2(d)

M&N, an Indian leading automobile company is building electronic vehicles that will

cover 300 Kms. on a single charge in partnership with Pininfarina, the Italian car design company for getting advantage in technology. M&N looks to go on an overdrive in the zero-emissions category. The market for electric vehicles is minuscule in India at the moment and is characterized by high vehicle prices, low single charge running range and weak design aesthetics.

This type of collaboration between M&N and Pininfarina is called as Technical Collaboration.

In case of technical collaboration, the inflow of foreign technology takes place in the domestic (host) country. Technical collaboration includes integration of foreign technology with domestic (indigenous) technology. In technical collaboration, the foreign company provides technological know-how, professional services and expertise, installs automated machineries, etc., in the domestic country. Here, an inflow of modern technology takes place from the developed country to the developing country. Technical collaboration helps to remove an existing technological gap. Therefore, the governments of developing countries encourage such collaborations. In developing countries, most of the foreign collaborations are technical in nature. It is a win-win situation for both M&N and Pininfarina as one has understanding of market and other is strong in technology where each can benefit from each other strengths while offsetting their weakness to increasingly expand and diversify in growing market like India.

Answer 2(e)

Geographic Information System (GIS) : The application of Information Technology can support and help in resolving several problems and issues. Geographic Information System (GIS) enable storage, manipulation, analysis and display of geographically referenced data. The rate of growth in the GIS industry has accelerated in the 1990s as businesses have adopted GIS to relate different sources of information to one another through a common geographical reference. Global Positioning System (GPS), Radio Frequency Identification (RFID) and Bar Coding are some of the important pillars of such GIS system. The greatest challenge of logistics is a routing of vehicles especially in India as the geographical spread is fairly large. Some of the applications of GIS in logistics are:

- Vehicle tracking and dispatch involves being able to keep track of the location and the inventory on board every vehicle in the field and having the latest information on its position and operating status.
- Route analysis is the operation which aims at minimizing the cost of travel involved in transporting goods from one location to another whether in terms of trips required or time or distance or a combination of these.
- Warehouse operations become significant in cost reduction when the operation grows big and each warehouse becomes a very large operation in itself.
- Facilities and depot management involves minimizing waste by considering the location aspects, the available capacity, the inventory in question and the range or effective covered area of each facility.
- Routing and scheduling aim at minimizing all kinds of costs including mileage, overtime and maximizing all benefits including customer satisfaction, adherence to schedules, etc.

- The system can also be joined to an inventory control system in ERP software like SAP R/3 which could help create geographically aware inventory packets for delivery, taking into account the locations of the address and the capability of the truck that will service the specific route.

Question 3

The Hindustan Motors, India's Pioneering automobile company, which put the iconic Ambassador car on the road as a power symbol of the country announced that a French automobile major, the Peugeot SA Group is planning to acquire the brand. It is expected that the car will soon hit the Indian roads in its new 'avatar' (look). Explain the reasons for this acquisition by French Peugeot. (5 marks)

Answer 3

Hindustan Motors (HM) was India's pioneering automobile company, which put the iconic Ambassador car on road as a power symbol of the country. But in the era of post-liberalization, the model began losing its dominant position when, in 1984 Maruti Suzuki introduced its low priced 800 hatchback model. Hindustan Motors has for long been struggling and suffering huge losses.

An acquisition is when one company purchases most or all of another company's shares to gain control of that company. Purchasing more than 50% of a target firm's stock and other assets allows the acquirer to make decisions about the newly acquired company.

The reasons that Peugeot has considered to acquire an existing business of Hindustan Motors especially brand Ambassador are mentioned below:

- *Speed*: Acquisition is one of the most time-efficient growth strategies. It offered Peugeot the opportunity to quickly acquire HM resources. In addition, the risks and costs typically associated with new product development may be less.
- *Market power*: An acquisition will quickly build market presence for Peugeot and will increase market share while reducing the competitor's stronghold. Where competition is particularly challenging, growth through acquisition can reduce other competitors' capacity and level the playing field. Market synergies are achieved.
- *Brand*: Peugeot is buying a brand name. The on-going benefits of any marketing or networking the prior owner has done will transfer to Peugeot. When one has an established name in the business community, it's easier to place cold calls and attract new business than with an unproven start-up. It makes sense for Peugeot to buy Ambassador Car brand.
- *New resources and competencies*: Businesses may choose acquisition as a route for gaining resources and competencies currently not held. These can have multiple advantages, ranging from immediate increases in revenues to improving long term financial outlook to making it easier to raise capital for other growth strategies. Diversity and expansion can also help a company to weather periods of economic or market slump.
- *Financial gain*: Acquiring organizations with low share value or low price earnings

ratio can bring short-term gains due to assets stripping. Synergy between the surviving and acquired organizations can mean substantial cost savings as well as more efficient use of resources for soft financial gains.

- *Reduced entry barriers*: Acquiring an existing entity can often overcome formerly challenging market entry barriers while reducing risks of adverse competitive reactions. Market entry can otherwise be a costly proposition, involving market research among other upfront expenses, and take years to build a significant client base.

Question 4

Both anti-dumping and normal customs duty are collected and levied by the Customs authorities. Are both the duties the same? When the country can apply anti-dumping duty and normal customs duty? (5 marks)

Answer 4

Anti-dumping Duty – Dumping is said to occur when goods are exported by one country to another country at a price lower than the normal value of goods in the domestic market of exporting country. Anti-dumping duty is the action of charging extra import duty on the particular product from particular exporting country in order to bring its price closer to the normal value or to remove the injury to domestic industry in the importing country.

Customs Duty – This is charged on the commodities by countries as trade policy instrument, within international trade context, if is associated with import duties.

Although anti-dumping duty is levied and collected by the Customs authorities, it is entirely different from the customs duties not only in concept and substance, but also in purpose and operation. The following are the main differences between the two:

- Conceptually, anti-dumping and the like measures in their essence are linked to the notion of fair trade. The objectives of these duties is to guard against the situation arising out of unfair trade practices while customs duties are there as a means of raising revenue and for overall development of the economy.
- Customs duties fall in the realm of trade and fiscal policies of the Government while anti-dumping and anti-subsidy measures are there as trade remedial measures.
- The object of anti-dumping and allied duties is to offset the injurious effect of international price discrimination while customs duties have implications for the government revenue and for overall development of the economy.
- Anti-dumping duties are not necessarily in the nature of a tax measure inasmuch as the authorities are empowered to suspend these duties in case of an exporter offering a price undertaking. Thus, such measures are not always in the form of duties/tax.
- Anti-dumping and anti-subsidy duties are levied against exporter/country inasmuch as they are country specific and exporter specific as against the customs duties which are general and universally applicable to all imports irrespective of the country of origin and the exporter.

Thus, the anti-dumping duty is levied over and above the normal customs duty chargeable on the import of goods in consideration.

Question 5

Being an exporter why you will support and argue in favour of organizations under Ministry of Commerce such as Federation of Indian Export Organization, Indian Diamond Institute, Surat and Footwear Design & Development Institute (FDDI).

(5 marks)

Answer 5

The Federation of Indian Export Organizations (FIEO) set-up in 1965, is an apex body registered under the Societies Registration Act, 1860, of various export promotion organizations and institutions. The main objective of FIEO is to render an integrated pack of services to various organizations connected with export promotion. It provides the policy input for export promotion, render valuable training services on critical issues to exporters, help them participate in trade fairs, conduct market studies for export promotion and act as an ambassador of exporters with government officials for grievances redressal and policy easing. It also functions as a primary servicing agency to provide integrated assistant to its members comprising professional exporting firms holding recognition status granted by the Government — consultancy firms and service providers. The Federation organizes seminars and arranges participation in various exhibitions in India and abroad. It also brings out 'FIEO News', for creating awareness amongst its members, exporters and importers.

Indian Diamond Institute (IDI) was established as a Society in 1978 with the objective of enhancing the quality, design and global competitiveness of the Indian jewellery, with its office located at Surat. The institute conducts various diploma and other courses related to diamond trade industry. The three-year diploma course on Diamond, Gem & Jewellery Design & Manufacture has been accredited by All India Council for Technical Education (AICTE). The Institute also has certified services for diamonds, coloured stones and gold jewellery. IDI has a Gem Testing Lab (GTL), which is recognized by Government of India as an approved Diamond Grading / Certification Institution for cut and polished diamonds up to weight of 0.25 carat. The Institute has been recognized world over as a Diamond Certification and Grading Institute.

Footwear Design and Development Institute (FDDI) was established in the year 1986 with an objective to train the professional manpower. It is an ISO:9001 and ISO:14001 certified Institute, which conducts wide range of long-term and short-term programs in the area of Retail Management, Fashion, Footwear Merchandising, Marketing, Creative Design & CAD/CAM and Leather Goods & Accessories Design, etc. Crossing the national boundaries, the Institute is providing consultancy and training to the South Asian Association for Regional Cooperation (SAARC) countries besides African countries in the area of footwear design, technology and management.

The exporters will argue in favor of these organizations as these organizations help exporters in the following ways:

Promoting Government Schemes : These organizations help and promote the exporters by making them aware of the government schemes and other benefits.

Collect and restoring data : They further promote and collect the export data to compare the industry growth and solve any hurdle in between.

Sending trade delegations : These organizations help in making arrangements for sending trade delegations and study teams to one or more countries for promoting the export of specific products and to circulate the reports of specific products and diversifying to new products.

Other roles : They also play various roles at the policy level for promotion and growth of the industry.

Question 6

Should countervailing measures be taken in cases where subsidization has not caused any 'injury to domestic industry' ? Justify your answer by analyzing important parameters that determine countervailing measures. (5 marks)

Answer 6

Countervailing duties, also known as anti-subsidy duties, are trade import duties imposed under World Trade Organization (WTO) rules to neutralize the negative effects of subsidies. They are imposed after an investigation finds that a foreign country subsidizes its exports, injuring domestic producers in the importing country. No, in case of no injury, the measure is not taken.

The Agreement on subsidies and countervailing measures addresses two separate but closely related issues, multilateral disciplines regulating the provision of subsidies and countervailing measures to offset injury caused by subsidized imports.

Countervailing duty can be imposed only after it is determined that there are subsidized imports, injury to a domestic industry and a causal link between the subsidized imports and the injury.

- *Types of subsidies against which action is permitted* : Action against subsidy is normally in the form of levy of countervailing duty by the importing country, which would be equivalent to the amount of subsidy provided by the exporting country. In this regard, subsidies that are specifically provided to an enterprise or industry or group of enterprises or industries are restricted and against which action is permissible. This is for the reason that subsidies of such nature can distort, the allocation of resources within an economy and accordingly are subjected to discipline. In case a subsidy is widely available within an economy, then such a distortion in the allocation of resources is presumed not to occur. Accordingly, only subsidies that are specific are subjected to the levy of countervailing duty.
- *Exempted specific subsidies* : The following subsidies have been exempted even if they are considered to be specific:
 - research activities conducted by or on behalf of persons engaged in the manufacture, production or export; or
 - assistance to disadvantaged regions within the territory of the exporting country; or

- assistance to promote adaptation of existing facilities to new environmental requirements.

Countervailing measures would mean levy of countervailing duty on import of specified subsidized articles. The countervailing measures would be resorted only when the subsidizing nation refuses to remove/withdraw the specific subsidy. Further, countervailing measures are levied only when subsidies are of such nature that causes serious injury to the domestic industry.
