

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

JUNE 2021 SESSION

MODULE 3



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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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.

C O N T E N T S

Page

MODULE 3

1. Advanced Tax Laws and Practice	1
2. Drafting, Appearances and Pleadings	20
3. Banking Law and Practice (<i>Elective Paper 9.1</i>)	35
4. Capital, Commodity and Money Market (<i>Elective Paper 9.2</i>)	48
5. Insurance Law and Practice (<i>Elective Paper 9.3</i>)	64
6. Intellectual Property Rights - Law and Practice (<i>Elective Paper 9.4</i>)	84
7. International Business – Laws and Practices (<i>Elective Paper 9.5</i>)	103

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2021

ADVANCED TAX LAWS AND PRACTICE

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

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

PART A

Question 1

(a) Akansha received the following gifts on her birthday on 3rd July 2020 :

- (i) Car worth ₹6,78,000 from her brother.
- (ii) Jewellery worth ₹28,000 from her husband cousin.
- (iii) Bonds worth ₹36,000 from friend A and debentures worth ₹12,000 from friend B.

Examine with brief reasons, whether the above gifts would be taxable in the hands of Akansha for Assessment Year 2021-22. (5 marks)

(b) Mishra retired from service on 1st November, 2020 after serving 20 years and 8 months. He received ₹5,00,000 at the time of his retirement by encashing his unavailed leave. He furnished the following details at the time of retirement :

Basic Salary ₹10,000 p.m. (₹1,000 was increased from 1.4.2020)

Commission ₹1,000 p.m.

Dearness Allowance (D. A.) ₹4,000 p.m. (60% is included for retirement benefits)

Bonus ₹2,000 p.m.

Leave Entitlement - 30 days for each year of service.

Leave availed while in service - 450 days.

You are required to calculate the taxable leave encashment if Mishra is a :

- (i) Government Employee
- (ii) Non-government Employee. (5 marks)

(c) When does the Authority for advance ruling not allow an application for advance ruling? State the time limit to withdraw an application and to pronounce advance ruling. (5 marks)

Answer 1(a)

As per provision of section 56(2)(x) of the Income tax Act, 1961, where any person receives, in any previous year, from any person or persons any property, other than immovable property:

- a) without consideration, the aggregate fair market value of which exceeds Rs. 50,000, the whole of the aggregate fair market value of such property;
- b) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs. 50000, the aggregate fair market value of such property as exceeds such consideration.

Shall be taxable under the head income from other sources.

However, there shall not be levy of tax, where the sum of money or property is inter received from any 'relative' and the word relative in case of an individual has been defined as below:

- (A) spouse of the individual;
- (B) brother or sister of the individual;
- (C) brother or sister of the spouse of the individual;
- (D) brother or sister of either of the parents of the individual;
- (E) any lineal ascendant or descendant of the individual;
- (F) any lineal ascendant or descendant of the spouse of the individual;
- (G) spouse of the person referred to in items (B) to (F); and

"**property**" means immovable property being land or building or both; shares and securities; jewellery; archaeological collections; drawings; paintings; sculptures; any work of art; or bullion.

- (i) Car worth Rs. 6,78,000 received by Ms. Akansha from her brother is not chargeable to tax as the car is not covered under the definition of 'Property' as per section 56(2)(x) of the Income Tax Act, 1961. Further, the same will also not taxable as car has been received from her brother who is covered in the definition of a **Relative**.
- (ii) Jewellery worth Rs. 28,000 received by Ms. Akansha from her husband cousin is chargeable to tax since, her husband cousin is not covered under the definition of 'relative' and jewellery is well covered in the definition of 'property'.
- (iii) Bonds and debentures worth Rs. 48,000 [Rs. 36,000 + Rs. 12,000] received by Ms. Akansha from her friends will be chargeable to tax since friends is not covered under the definition of relatives and bond and debentures are securities, covered within the definition of property.

In view of above, the aggregate fair market value of taxable Gift received during the previous year exceeding Rs. 50,000, i.e., Rs. 76,000 [Rs. 28,000 + Rs. 48,000]. Therefore, whole of the amount i.e. Rs. 76,000 will be taxable during the previous year 2020-21.

Answer 1(b)

(i) Computation of Taxable Leave Encashment if Mishra is a Government Employee

<i>Particulars</i>	<i>Amount (Rs.)</i>
Leave Salary Received	5,00,000
Less : Exempted u/s 10(10AA)	(5,00,000)
Taxable Leave Salary	Nil

(ii) Computation of Taxable Leave Encashment if Mishra is Non-government Employee

<i>Particulars</i>	<i>Amount (Rs.)</i>
Leave Salary received	5,00,000
Less : Exempted u/s 10(10AA)	
a) Actual amount Received Rs. 5,00,000	
b) Statutory Limit Rs. 3,00,000	
c) 10 Months average salary $[(10000 \times 7) + (9000 \times 3)] + (60\% \times 4000 \times 10) / 10 \times 10 = [(70000 + 27000 + 24000) \times 10] / 10 = \text{Rs. } 1,21,000$	
d) Cash Equivalent of unavailed leave @ 30 days for each year of completed service $(30 \times 20) - 450 = 150$ days $(1,21,000 \times 150) / (10 \times 30) = \text{Rs. } 60,500$	
a / b / c / d whichever is less	(60,500)
Taxable Leave Salary	4,39,500

Note : Commission is not considered while calculating 10 month average salary as the commission is fixed and not based on turnover.

Answer 1(c)

As per section 245R of the Income-tax Act, 1961, the authority shall not allow an application for advance ruling when the question raised in the application is:

- Already pending before any Income-tax authority or appellate tribunal or any court of law or
- Involved with determination of fair market value of any property or
- In relation to a transaction or issue which is designed prima facie for the avoidance of income-tax.

An applicant for advance ruling may withdraw the application within 30 days from the date of the application.

The authority will pronounce the advance ruling in writing within six months from the receipt of the application.

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

- (a) Sesha, a British citizen comes to India on 24th December 2020 to meet his grandparents living in India. During the previous years 2016-2019, he stayed with them for 430 days. He left India on 31st May, 2021. Determine his residential status for the Assessment Year 2021-22.

Also determine the total income of Sesha from the below mentioned particulars for the Assessment Year 2021-22.

Particulars	Amount (in ₹)
(i) Interest on non-resident external Bank A/c	1,00,000
(ii) Profits from a business in India which is managed by his friend Ramesh. Ramesh concludes all the contracts on behalf of Sesha	3,00,000
(iii) Income earned from collecting news/information about India for publishing in a foreign magazines	80,000

(5 marks)

- (b) From the following information given by Duke Ltd., for the Previous Year 2020-21, compute the tax payable by it for the Assessment Year 2021-22 by assuming that the company does not avail the options u/s 115BAA/115BAB :

	₹
Total income of the company computed as per the provisions of the Income Tax Act.....	30,00,000
Book Profit of the company as per Sec. 115JB of the Income Tax Act	35,00,000
Brought forward credit as per Sec. 115JAA for the Assessment Year 2021-22	2,62,000
Total turnover of the company for the Previous Year 2018-19 was ₹2 Crore.	(5 marks)

- (c) Incomes earned during a previous year are always taxable in the assessment year. Do you agree ? Explain with reasons. (5 marks)

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

- (i) Sangeeth acquired a house property for ₹2,00,000 on 10th June, 1976. He incurred the following expenses to make some additions/alterations in the property:

	₹
(a) Cost of construction of two rooms in 1983-84	6,20,000
(b) Cost of construction of first floor in 2004-05	12,70,000
(c) Cost of alteration in the property in 2012-13	9,60,000

Fair market value of the property on 1st April 2001, was ₹15,00,000 and it was sold by Sangeeth for ₹1,00,00,000 on 10th November, 2020. He spent ₹80,000 for the transfer of property. Compute the capital the capital gain for the Previous Year 2020-21.

(CII : FY 2001-02 = 100; 2004-05 = 113; 2012-13 = 200; 2020-21 = 301)

(5 marks)

(ii) A Ltd. has some plant and machinery in a block of assets whose written down value on 1st April, 2020 was ₹50,00,000. These assets carry depreciation @ 15% p.a. The company purchased another second-hand machinery belonging to the same block on 31st October, 2020 for ₹16,00,000. The asset was put to use on the same date. On 2nd January, 2021, A Ltd., amalgamated with B Ltd., and the above two assets were transferred to B Ltd., at ₹72 lakhs. Compute the depreciation allowable to A Ltd., and B Ltd., for the Assessment Year 2021-22.

(5 marks)

(iii) Explain meaning of Reverse Merger. List down the benefits available in it.

(5 marks)

Answer 2(a)

As per section 6(1) of the Income tax Act, 1961, an individual will be Resident in India during the previous year if he satisfies any of the two basic conditions as follow:

- (i) Stay in India for 182 days or more during the relevant previous year; OR
- (ii) Stay in India for 60 days or more during the relevant previous year and 365 days or more during 4 previous years immediately preceding the relevant previous year.

However, for the person of Indian origin (Person who himself or, his / her parents or his / her grandparents were born in undivided India) comes on a visit to India during the relevant previous year, the second basic condition in relation to that year as if the words '60 days', the words '182 days' shall be applied. Further, the words '182 days' shall be substituted with '120 days' in case of a person of Indian origin having total income, other than income from foreign sources, exceeding Rs. 15,00,000 during the previous year.

In this situation, Assuming Mr. Sesha, as a person of Indian origin, visited India & stayed for 98 days (8+31+28+31) in the F.Y. 2020-21 which is less than 182 days. So, Mr. Sesha is a non-resident during the previous year 2020-21.

Total Income of Mr. Sesha for the A.Y. 2021-22

Particulars	Amount (Rs.)
(i) Interest of Non-Resident external Bank A/c	-
(ii) Profits from a business in India which is managed by his friend Ramesh. Mr. Ramesh concludes all the contracts on behalf of Mr. Sesha	3,00,000
(iii) Income earned from collecting news/information about India for publishing in foreign magazines	Nil
Total Income	3,00,000

Answer 2(b)**Computation of Tax Payable by Duke Ltd for AY 2021-22**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Tax on Total Income on Rs.30,00,000 @ 25% (Turnover is less than Rs. 400 crores during the PY 2018-19)	7,50,000
Add: Surcharge	-
Add: Health and Education Cess @ 4%	30,000
Tax payable on Total Income	7,80,000
Minimum Alternate Tax on Book Profit of Rs.35,00,000 @ 15%	5,25,000
Add: Surcharge	-
Add: Health and Education Cess @ 4%	21,000
Tax payable as per MAT	5,46,000
Tax payable on total income is more than MAT and hence the company has to pay tax on total income. Further, it can claim MAT credit u/s 115JAA.	
Actual Tax Payable (higher of the above two)	7,80,000
Less: Eligible MAT Credit	
Difference (7,80,000 - 5,46,000) = 2,34,000	(2,34,000)
Or B/F Credit = 2,62,000	
Whichever is less	
Net Tax Liability	5,46,000

Assumption : Company is assumed as domestic company and does not availed the option u/s 115BAA / 115BAB.

Answer 2(c)

No, incomes of a previous year are not always taxable in the assessment year. In the following cases, incomes of a previous year are taxed in the previous year itself:

- Non-resident shipping business (Section 172).
- Assessment of persons leaving India (Section 174).
- Associations/ bodies formed for short duration (Section 174A).
- Assessment of person trying to alienate his assets with a view to avoid tax (Section 175).
- Discontinued business (Section 176).

Answer 2A(i)**Computation of Capital Gain for the PY 2020-21**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Gross Consideration	1,00,00,000
Less: Expenses on transfer	(80,000)
Net Consideration	99,20,000
Less : Indexed cost of acquisition Rs. 15,00,000 x 301/100	(45,15,000)
Less : Indexed cost of construction of first floor Rs. 12,70,000 x301/113	(33,82,920)
Less : Indexed cost of alteration Rs. 9,60,000 x 301 / 200	(14,44,800)
Long Term Capital Gain	5,77,280

Answer 2A(ii)

Computation of Total Depreciation	<i>Amount (Rs.)</i>
On Rs.50 lakhs @ 15%	7,50,000
On Rs.16 lakhs @7.5% (used less than 180 days)	1,20,000
Total Depreciation	8,70,000

Apportionment of Depreciation

A Ltd.	
7,50,000 x 276 / 365	5,67,123
1,20,000 x 63/ 152	49,737
Total	6,16,860
B Ltd	
7,50,000 x 89/365	1,82,877
1,20,000 x 89/152	70,263
Total	2,53,140

Answer 2A(iii)

Reverse Merger : 'Reverse merger' is a commercial term that is not found in any statute. Traditionally the phrase reverse merger has been used to describe a merger of a healthy unit into a sick unit. It means that the profit making company merges into the sick company thereby becoming eligible to carry forward of losses etc. without the aid of Section 72A of the Income-tax Act, 1961.

The profit making or healthy company extincts and loses its name and the surviving sick company retains its name.

It is actually a device to bypass merger under Section 72A of the Income-tax Act, 1961.

Benefits of Reverse Merger:

In Reverse Merger

- Losses are carried forward, which would otherwise have not been available.
- Goodwill, which consists, in the name of profit making amalgamating company, is also retained.

PART B

Question 3

(a) PQR, an importer, furnished the under-mentioned data relating to a machinery imported in December, 2020 :

- (i) Assessable value of the imported machinery US \$ 40,000.
- (ii) Date of bill of entry is 8th December 2019. Basic customs duty on this date is 15% and exchange rate notified by the Central Board of Indirect taxes and Customs is US \$ 1 = ₹74. Rate notified by Reserve Bank of India (RBI) is US \$ 1 = ₹74.50.
- (iii) Date of entry inwards is 6th December 2019. Basic customs duty on this date is 18% and exchange rate notified by the Central Board of Indirect taxes and Customs is US \$ 1 = ₹70. Rate notified by Reserve Bank of India (RBI) is US \$ 1 = ₹70.50.
- (iv) Social Welfare surcharge 10%.
- (v) Integrated tax : 12%

You are required to compute the total customs duty payable, including integrated tax. If required, round off your answer to the nearest rupee at each stage. Ignore GST Compensation Cess. (5 marks)

(b) Bring out the minimum amount and the maximum amount for compounding of offences u/s 138 of the Central Goods and Services Act, 2017 (CGST). State what will be the outcome of compounding of offences ? (5 marks)

(c) Mr. Humpty, a supplier in Kerala, dealing with Intra-State supply of goods and services, has furnished the following information in the financial year 2020-21 :

1. Sale of taxable goods by Head Office located in Ernakulam, Kerala for ₹1,80,000
2. Supply of taxable services by Branch office at Pune for ₹90,000
3. Supply of goods exempted from GST ₹65,000

4. Export of goods and services for ₹2,45,000, for which consideration was received in convertible foreign exchange
5. Sale of taxable goods, acting as agent on behalf of principal of ₹16,50,000
6. Inward supplies from unregistered dealers, for which he is required to pay under RCM is ₹3,60,000.

Compute aggregate turnover of Humpty for the Assessment Year 2021-22 and comment on whether Humpty is required to register under GST Law. (5 marks)

- (d) What should be the minimum amount of refund to make a claim for refund in GST Law ? Enumerate the cases for which a registered person can claim refund of any unutilized input tax credit. When refund of unutilized input tax credit shall be denied ? (5 marks)
- (e) Ganesh opted for composition scheme under GST at the time of his registration. He purchased a plant for ₹ 42 lakhs on 29th September, 2019 and paid GST @ 18%. The invoice was prepared by the supplier on 4th October, 2019 and no input tax credit was allowed as he was under composition scheme. From 7th July, 2020 he shifted his option to pay GST under normal scheme. Is Ganesh eligible for ITC ? If so, calculate the amount of tax credit allowable to him. (5 marks)

Answer 3(a)

Computation of Customs Duty and Integrated Tax Payable by PQR

<i>Particulars</i>	<i>Amount (Rs.)</i>
Assessable value (\$ 40,000 x 74) [Note-1]	29,60,000
(A) Add: Basic Custom Duty @ 15% [Note-2]	4,44,000
(B) Add: Social Welfare Surcharge @ 10% on Rs. 4,44,000	44,400
Total value to be taken for levy of Integrated Tax	34,48,400
(C) Add: Integrated tax @ 12% [Note-3]	4,13,808
Total Customs Duty and Integrated Tax Payable (A+B+C)	9,02,208

Notes:

1. Rate of exchange notified by CBIC as prevalent on the date of filing of bill of entry would be the applicable rate. [Section 14(1) of Customs Act, 1962]
2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Section 15 of the Customs Act, 1962]
3. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.
4. Question has not specified whether Import has taken place by Aircraft, vessel or vehicle. It is assumed that Import has taken place by Vessel because in case of vessel duty is seen on date of Entry Inwards or Date of filing of bill of entry, whichever is later.

Answer 3(b)

The amount for compounding of offences under Section 138(2) of the Central Goods and Services Tax Act, 2017 shall be such as may be prescribed, subject to:

- the minimum amount not being less than ten thousand rupees (Rs. 10,000) or fifty percent (50%) of the tax involved, whichever is higher.
- the maximum amount not being less than thirty thousand rupees (Rs. 30,000) or one hundred and fifty percent (150%) of the tax whichever is higher.

Outcome of compounding of offences:

Section 138 (3) of Central Goods and Services Tax Act, 2017 states that on payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Answer 3(c)

**Computation of Aggregate Turnover of Mr. Humpty
for the Assessment Year 2021-22**

<i>Particulars</i>	<i>Value in Rs.</i>
Sale of taxable goods by Head Office located in Ernakulam, Kerala	1,80,000
Supply of taxable services by Branch office at Pune	90,000
Supply of goods exempted from Goods and Services Tax	65,000
Export of goods and services	2,45,000
Sale of goods acting as agent on behalf of principal	16,50,000
Inward supplied from unregistered dealers	NIL
Aggregate turnover	22,30,000

In the present case, Mr. Humpty is compulsorily required to register under GST Law without recourse to the minimum threshold as it falls within the following situations listed in Section 24 of Central Goods and Services Tax Act, 2017 -

- He is engaged in the supply of inter-state supply of goods and services. [section 24(i)]
- He is engaged in supply of goods as agent on behalf of principal. [section 24(vii)]
- He is liable to pay tax under reverse charge. [section 24(iii)]

Answer 3(d)

To claim a refund under GST, the minimum amount to be claimed should be Rs.1000. [Section 54 (14) of the Central Goods and Services Tax Act, 2017]

A registered person can claim refund of any unutilized input tax credit at the end of a tax period in the following cases:

- Zero Rated Supplies made without payment of tax;
- Where the credit has accumulated on account of rate of tax on input being higher than the rate of tax on output supplies, except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council. [Section 54(3) of Central Goods and Services Tax Act, 2017]

The refund of unutilized Input Tax Credit shall not be allowed if:

- The goods exported out of India are subjected to export duty;
- The supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the Integrated Goods and Services Tax paid on such supplies. [Section 54(3) of Central Goods and Services Tax Act, 2017]

Answer 3(e)

Yes, Ganesh is eligible to avail Input Tax Credit (ITC) on Plant. The total Input Tax Credit (ITC) on the plant shall be (Rs. 42,00,000 x 18%) = Rs.7,56,000 after deducting an amount equal to 5% per quarter of a year or part thereof from the date of invoice to the date of change of option.

Accordingly, the period to be considered is from 04.10.2019 to 07.07.2020. That is (2+2) = 4 quarters.

Computation of tax credit allowable

	<i>Amount (Rs.)</i>
Total ITC on the plant (Rs. 42,00,000 x 18/100)	7,56,000
Less : ITC to be adjusted (4 x 5%= 20%)	1,51,200
Tax Credit Allowed	6,04,800

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

Question 4

- (a) *What are Zero Rated Supplies under the Intergrated Goods and Services Act, 2017 (IGST) ? Explain the options available to a registered person to claim refund against zero rated supplies. (5 marks)*
- (b) *Kabrina Ltd. supplied inputs to job worker Shabrina Ltd. for further processing on 6th September, 2019. The inputs were received back on 7th October, 2020 after necessary processing.*
- (i) *When can the supplier claim ITC on goods sent for Job Work ? (2 marks)*
- (ii) *What are the tax implications on Kabrina Ltd. in the above case. (3 marks)*
- (c) *Ganesh booked a marriage hall for a total rent of ₹70,000 by paying an advance*

of ₹20,000 on 7th June, 2020. The marriage was held on 16th October, 2020. The owner of the hall issued an invoice on 28th November, 2020 for the total rent of ₹70,000 by mentioning that ₹50,000 is due from Ganesh after adjusting the advance. The balance ₹50,000 was received from Ganesh on 4th December, 2020. Determine the time of supply. (5 marks)

OR (Alternate question to Q. No. 4)

Question 4A

- (i) When safeguard duty is imposed ? What are the circumstances in which safeguard duty shall not be imposed ?
- (ii) Determine the place of supply in the following cases :
- (a) Deva of Chennai enters into an agreement with John of Hyderabad to install a lift at a building in Jaipur.
- (b) X, who is having his registered place of business at Mumbai, placed an order to Y in Noida for delivering an air conditioner to Z in Pune.
- (c) Ramanathan, a Company Secretary registered in Ahmedabad travels to Kochin in connection with his professional work and stays there in a hotel.
- (d) Sudhir is relocating from Agra to Kolkata and avail the services of packers and movers in Agra.
- (e) R. P. Singh a consultant, whose registered office is in Bhopal provides training to his client's employees at Varanasi. The client is an unregistered firm in Udaipur.
- (iii) What are the circumstances under which goods can be confiscated and penalty can be levied under CGST Act 2017 ? (5 marks each)

Answer 4(a)

Zero Rated Supply

Section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) provides that Zero Rated Supply shall be any of the following supplies of goods or services or both, namely;

- Export of goods or services or both; or
- Supply of goods or services or both to a Special Economic Zone Developer or to a Special Economic Zone Unit.

Options available to claim refund against Zero Rated Supplies:

- The registered person may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized Input Tax Credit; or
- The registered person may supply goods or services or both, subject to such condition, safeguards and procedure as may be prescribed, on payment of

integrated tax and claim refund of such tax paid on goods or services or both supplied.

Answer 4(b)

- (i) A registered person (Principal) can send inputs /capital goods under intimation and subject to certain conditions without payment of tax to a job-worker and from there to another job-worker and after completion of job-work bring back such goods without payment of tax. The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to job-worker.

However, inputs and / or capital goods sent to a job worker are required to be returned to the principal / sold from the job worker's premises on behalf of the principal within 1 year and 3 years, respectively, from the date of sending such goods to the job-worker. Subject to this condition only ITC on goods sent for job work can be claimed.

- (ii) If the goods are not sold / brought back within the stipulated time, the supply between the Principal and the job worker is treated as "Deemed Supply" and tax is payable thereon by the Principal.

In this case, the supply between the principal and job worker would be deemed as a supply on the date of transfer and hence tax should be paid along with applicable interest from that date.

Answer 4(c)

- According to Section 31(2) of the Central Goods and Services Tax Act, 2017 the tax invoice should be issued within 30 days from the date of supply of service.
- In this case, tax invoice is not issued within 30 days (i.e., 16th November, 2020) from the date of supply of service (i.e., 16th October, 2020).
- The time of supply of service shall be the date of provision of service or receipt of payment whichever is earlier.
- Accordingly, in the present case, the time of supply for the advance received Rs.20,000 is 7th June, 2020 as the date of receipt is earlier than the date of provision of service.
- The time of supply for the balance Rs. 50,000 is 16th of October, 2020, the date of provision of service, since the supplier fails to issue invoice within 30 days from the date of completion of service.

Answer 4A(i)

Safeguard Duty (Section 8 of Custom Tariff Act, 1975)

The Central Government may impose safeguard duty on specified imported goods, if it is satisfied that the goods are being imported in large quantities and they are causing serious injury to domestic industry. The safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

The safeguard duty shall not be imposed in the following cases:

- Articles originating from developing country, so long as the share of import of that article from that country does not exceed 3% of the total imports of that article into India.
- Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India.
- Unless specifically made applicable in the notification, the articles imported by a 100% Export Oriented Units (EOU) or units in a Free Trade Zone or Special Economic Zone.

Answer 4A(ii)

Place of Supply

- (a) In this case, the place of supply would be considered as Jaipur, Rajasthan, being the place where goods actually installed, as the lift has been installed in Jaipur, Rajasthan.
- (b) In this case, the place of supply would be considered as Mumbai, Maharashtra being the principal place of business as X is having his registered place of business at Mumbai, Maharashtra.
- (c) In this case, the place of supply would be considered as Kochin, Kerala being the place where the service is actually performed as Ramanathan travels to Kochin, Kerala and stays there in a hotel.
- (d) In this case, since Sudhir being an individual not registered under GST, the place of supply would be considered as Agra, Uttar Pradesh, being the location at which goods are handed over for transportation as Sudhir availed the services of packers and movers in Agra, Uttar Pradesh.
- (e) In this case, the place of supply would be considered as Varanasi, Uttar Pradesh as R.P. Singh provides training to his unregistered client's employees at Varanasi, Uttar Pradesh, being the place where the service is actually performed.

Answer 4A(iii)

Circumstances under which Goods can be confiscated and penalty can be levied:

As per section 130 of the Central Goods and Services Tax Act, 2017, the goods are liable for confiscation and any person shall be liable to penalty in the following cases:

- (1) On supply or receipt of goods in contravention of provisions of the Act or rules leading to evasion of tax.
- (2) On not accounting for any goods which are liable to pay tax under the Act.
- (3) On supply of goods liable for taxation under the Act, without having applied for registration.
- (4) Contravention of any of the provisions of the Act or rules with an intention to evade payment of tax.

- (5) Uses any conveyance or means of transport for carriage of goods in contravention of provisions of this Act or rules made thereunder, unless the owner proves that it was used without his knowledge or connivance. All such goods or conveyances shall be liable for confiscation and person shall be liable for penalty under section 122 of the Act.

Question 5

- (a) *State with reasons whether the following suppliers are eligible to avail composition levy when their turnover in the preceding financial year does not exceed ₹1.5 crore :*
- (i) *Joint Products, whose registered office is located in Chennai and supplies goods to dealers in Andhra Pradesh and Pondicherry.*
 - (ii) *Kumar Traders who are engaged in trading of ice-creams in Karnataka and having registration in Karnataka.*
 - (iii) *Shankar Bhavan providing restaurant services in Jaipur a notified tourist centre. (3 marks)*
- (b) *Royal Services Ltd. is engaged in supply of taxable services only in Tamil Nadu. Its turnover crosses ₹20 lakhs on 1st June, 2020. It applies for registration under GST on 25th June, 2020 and gets registration certificate on 2nd July, 2020.*
- (i) *What is the effective date of registration for the company ?*
 - (ii) *If it applies for registration on 10th July, 2020 and is given with registration certificate on 16th July, 2020, find the effective date of registration ?*
 - (iii) *Instead of Tamil Nadu, if it is carrying on its business in Assam, is it liable to get its business registered under GST ? (3 marks)*
- (c) *What is the validity period of e-way bill ? When its countdown starts ? (3 marks)*
- (d) *Discuss the provisions of the Customs Act 1962 with regard to duty on Pilfered Goods. (3 marks)*
- (e) *A duty drawback of ₹60 lakh was given to Supreme Exporters. Subsequently the Commissioner of Customs issued a show cause notice for the recovery of the duty drawback stating that it was given erroneously. However, the exporter filed an application for settlement against the order before the Settlement Commission. The Commissioner of Customs argued that the Settlement Commission has no jurisdiction on this issue as it involves a recovery of duty drawback not concerned with levy, assessment and collection of duty.*
- Discuss, with the help of a decided case law, if any, whether the stand taken by the Commissioner of Customs is correct. (3 marks)*

Answer 5(a)

- (i) Joint Products shall not be eligible for composition scheme because it is engaged in inter-state outward supplies of goods i.e. from Tamil Nadu to Andhra Pradesh and Pondicherry.
- (ii) Kumar Traders shall be eligible for composition as it is engaged in the intra-state trading of goods and it is not engaged in the manufacture of notified goods (ice-cream).

- (iii) Shankar Bhavan shall be eligible for composition scheme as the supply of restaurant services.

Answer 5(b)

- (i) The effective date of registration is 1st June, 2020, i.e., the date of crossing the threshold limit turnover as Royal Services Ltd. applies for registration within 30 days from the date of crossing the threshold turnover limit.
- (ii) The effective date of registration is 16th July, 2020, i.e., the date of granting the certificate of registration as Royal Services Ltd. applies for registration after 30 days from the date of crossing the threshold turnover limit.
- (iii) Yes, It is liable to get its business registered under Central Goods and Services Tax Act, as the State Assam is in the list of special category States, the assessee shall be liable to take registration once the turnover exceeds Rs. 10 lakhs as per Section 22 of Central Goods and Services Tax Act, 2017.

Answer 5(c)

The validity period of E-way bill is prescribed in the Central Goods and Services Tax Act, 2017 as given below:

In case of over dimensional cargo:

- Upto 20 kms within the Country - One day
- Thereafter, for every additional 20 kms or part thereof - One additional day

In case of other than over dimensional cargo:

- Upto 100 kms within the Country - One day
- Thereafter, for every additional 100 kms or part thereof - One additional day

In terms of Explanation 1 to Rule 138 CGST Rules, 2017, the validity an E-way bill starts from the time at which the E-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Answer 5(d)**Section 13 of the Customs Act, 1962**

The importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

If any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person approved by the Commissioner, that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or an import report to the proper officer for the arrival of the conveyance in which the said goods were carried.

Answer 5(e)

No, the stand taken by the Commissioner of Customs is not correct.

The Bombay High Court in the matter of *Union of India vs. Customs and Central Excise Settlement Commission* held that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty. It is as per the statutory scheme framed by the Government in accordance with the provisions of the Act.

Therefore, the Settlement Commission has jurisdiction to deal with duty drawback and hence the argument of the Commissioner of Customs is not as per law.

Question 6

- (a) *What are the circumstances in which goods are considered to be removed improperly from a warehouse under the Customs Act, 1962 ? What will be the reaction of the proper officer in such circumstances ?* (5 marks)
- (b) *Mr. Musafir of Jharkhand, engaged in supply of medical drugs has an aggregate turnover of ₹7 Crore in the financial year 2020-2021. He issues invoices to customers without mentioning the HSN Code for goods to customers till date.*
- (i) *State whether he is liable to mention such HSN Codes. If so, state the digit of HSN code to be mentioned in tax invoices issued to customers.*
- (ii) *Would your answer be different if his aggregate turnover in Financial Year 2020-21 is ₹4.5 Crore and tax invoice being issued to the unregistered persons.* (3 marks)
- (c) *What is E-invoicing and who are mandatorily required to upload such E-invoices.* (2 marks)
- (d) *The Public Works Department of Tamil Nadu makes a net payment of ₹3,70,000 to a supplier of cement in Andhra Pradesh on 22nd of February, 2021. This supply is subject to 18% GST.*
- (i) *Calculate the amount to be deducted as TDS.*
- (ii) *When and where the TDS should be deposited ?*
- (iii) *What is the time limit to issue TDS certificate.*
- (iv) *If the total value of the supply under the contract is ₹2,10,000, what should be the amount of TDS? Why?* (5 marks)

Answer 6(a)

Section 72 of the Customs Act, 1962 provides that the goods removed from a warehouse in the following circumstances shall be considered to be removed improperly:

- Where any warehoused goods are removed from a warehouse in contravention of Section 71;
- Where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under Section 61 to remain in a warehouse;
- Where any goods in respect of which a bond has been executed under section 59 of the Customs Act, 1962 and which have not been cleared for home

consumption or export or are not duly accounted for to the satisfaction of the proper officer.

When goods are removed from a warehouse improperly, the proper officer may demand from the owner of such goods to pay full amount of duty on such goods together with interest, fine and penalties immediately.

If any owner fails to pay any amount demanded for such improper removal, the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit, to recover the duty, interest, fine and penalties, etc.

Answer 6(b)

- (i) Mr. Musafir is liable to mention the HSN (Harmonized System of Nomenclature) Code in tax invoice.

In terms of Notification No. 12/2017- Central Tax 28.6.2017, where the turnover of assessee exceeds Rs. 5 Crores, the number of HSN codes required to be reported on a tax invoice is 4 digits. Thus, Mr. Musafir is liable to mention 4 digits of HSN on the tax invoice as his turnover is Rs. 7 Crores.

- (ii) If the turnover of Mr. Musafir is Rs. 4.5 Crores i.e. not exceeding Rs. 5 Crores, the number of digits of HSN to be mentioned on the tax invoice shall be 2.

The above said answer is based on Notification No. 12/2017- C.T 28.6.2017 which had its operation until 31.3.2021.

Alternate Answer 6(b)

- (i) Mr. Musafir is liable to mention the HSN (Harmonized System of Nomenclature) Code in tax invoice. With effect from the April 01, 2021 the number of HSN codes required to be reported on a tax invoice is 4 digits for taxpayers with aggregate turnover up to Rs. 5 crores in the preceding Financial Year, and 6 digits for taxpayers with aggregate turnover exceeding Rs. 5 crores in the preceding Financial Year. (Notification No. 78/2020 – Central Tax, dated October 15, 2020)
- (ii) A registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.

Answer 6(c)

- Electronic Invoicing is the introduction of the digital invoice for goods and services provided by the business firms generated at the government portal. It is a system in which all Business-to-Business invoices or for export are electronically uploaded and authenticated by the designated portal and the assessee gets QR Code embedded with Invoice Reference Number which is mandatorily required to be printed on the tax invoice.
- With effect from 1.10.2020, the Central Government has made E-invoicing

mandatory for every taxpayer (other than SEZ unit and those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the said rules,) whose aggregate turnover exceeds Rs. 500 Crores in any of the financial year from 2017 – 18.

Alternate Answer 6(c)

- Electronic Invoicing is the introduction of the digital invoice for goods and services provided by the business firms generated at the government portal. It is a system in which all Business-to-Business invoices are electronically uploaded and authenticated by the designated portal.
- Central Government has made E-invoicing mandatory from 01st January, 2021 for every taxpayer (other than SEZ unit) whose aggregate turnover exceeds Rs. 100 Crores in any of the financial year from 2017 – 18 onwards as per Notification No. 88 – Central Tax, dated November 10, 2020.

Answer 6(d)

Section 51 of CGST Act, 2017

- (i) Rate of TDS is 1% of the net payment. Similarly 1% under the State GST laws. However if it is Interstate supply than @ 2%, Therefore, it is Rs. 3,70,000 x 2/100= Rs. 7,400/- as in the present case, it is an inter state supply.
- (ii) The TDS should be deposited by 10th of the succeeding month i.e., 10th March, 2021. The TDS amount should be deposited in the Government account.
- (iii) The time limit to issue TDS certificate is within 5 days from the date of remittance to Government.
- (iv) If the total value of the supply under the contract is Rs. 2,10,000 i.e., less than Rs.2,50,000, there is no need for TDS.

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

Write notes on the following:

- (a) *Engrossment and stamping of a deed.*
- (b) *Writ of Quo-Warranto.*
- (c) *Attestation of a Will.*
- (d) *Licence when deemed to be revoked.* *(5 marks each)*

Answer 1(a)

The draft of the document is required to be approved by the parties. After approval the document is engrossed, i.e., copied fair on the non-judicial stamp paper of appropriate value as per Stamp Act.

In case, the document is drafted on plain paper but approved without any changes, it can be lodged with the Collector of Stamps for adjudication of stamp duty, who will endorse the certificate recording the payment of stamp duty on the face of document and it will become ready for execution.

If a document is not properly stamped, it is rendered inadmissible in evidence under section 35 of Indian Stamp Act, 1899 nor will it be registered with Registrar of Assurances for the purpose of registration.

Answer 1(b)

Quo-warranto means “by what authority or warrant”. It is issued by the Supreme Court and High Court in exercise of power respectively under Article 32 and 226 of the Constitution of India to enquire into the legality of claim of person to a public office. The holder of the office has to show to the court under what authority he holds the office. This writ is issued when;

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

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

Answer 1(c)

The Will must be attested by two or more witnesses by complying with the following requirements:

- (i) Each of them must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or
- (ii) Each witness has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and
- (iii) Each witness must sign the Will in the presence of the testator.

However it is not necessary that more than one witness must be present at the same time, and no particular form of attestation is necessary.

The witness as required for the purpose of attestation should be competent to sign a Will.

Answer 1(d)

Section 62 of the Indian Easements Act, 1882 provides that a license is deemed to be revoked:

- (a) when, for a cause proceeding the grant of it, the grantor ceases to have an interest in the property affected by the license;
- (b) the licensee releases it, expressly or impliedly, to the grantor or his representative;
- (c) where it has been granted for a limited period or acquired on condition that it shall become void on performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;
- (d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right;
- (e) where the licensee becomes entitled to the absolute ownership of the property affected by the license;
- (f) where the license is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;
- (g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;
- (h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between grantor and the licensee;
- (i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist

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

Attempt the following :

- (a) *Difference between a Counter Guarantee and a Bank Guarantee.* (4 marks)
- (b) *Mesne profits and its essence.* (4 marks)
- (c) *In the light of judicial pronouncements, discuss the following:*
- (i) *Signatures on the pleadings.* (4 marks)
- (ii) *Surety's Liability.* (4 marks)

Or (Alternative to Q. No. 2)

Question 2A

Write short notes on the following:

- (i) *Assignment of copyright.*
- (ii) *Onerous gifts.*
- (iii) *Language, stamp duty and registration of a Will.*
- (iv) *Essentials of a Promissory Note.* (4 marks each)

Answer 2(a)

A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called "counter guarantee".

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

A Bank Guarantee is issued by the guarantor bank in favour of beneficiary. Whereas a Counter Guarantee is issued by the instructing bank in favour of the guarantor bank to facilitate the issuance of the bank guarantee.

Answer 2(b)

Section 2(12) of the Code of Civil Procedure 1908 defines Mesne Profit of property as those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom together with interest on such points, but shall not include profit due to improvements made by the person in wrongful possession.

The Mesne profit is a compensation which is penal in nature. The object of awarding a decree for Mesne Profit is to compensate the person who has been kept out of possession and deprived of enjoyment of his property. Thus, "wrongful possession" by the defendant is the essence of a claim for mesne profit.

A decree of Mesne Profit can be claimed with regards to immovable property only.

Answer 2(c)(i)

Rule 14 of Order VI of the Code on Civil Procedure states that every pleading shall be signed by the party and his pleader (if any). Where a party pleading is by reason of absence or for other good cause, unable to sign in the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

The object of signature is to show that the pleading was filed with party's knowledge and approval, where there are many parties, they should all sign the pleadings, if the parties are unable to sign due to absence or other good cause, their agent may sign on their behalf.

In the case of *All India Reporter Ltd. And Anr. vs. Ramchandra Dhondo Datar*, AIR 1961 Bom 292, it was held that the expression "signed by any person duly authorized by him to sign the same" in rule 14 need not be restricted to written authorizations. If the authorization is proved, even an oral authorization should be taken as sufficient.

Answer 2(c)(ii)

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

The surety's liability is not deferred until the creditor exhausts his remedies against the principal debtor. In the absence of some special equity the surety has no right to restrain an action against him by the creditor on the ground that the principal debtor is solvent or that the creditor may have relief against the principal debtor in some other proceedings.

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

In the case of *V. Somanath Raju and Anr. vs Konchada Ramamurty Subudhi And Anr.* AIR 1957 Ori 106, it was held that though the liability of the principal debtor and his surety arises under the same transaction, still they are distinct, because the liability of the surety does not in all cases arise simultaneously. The question depends upon the terms of the guarantee by which the surety binds himself.

Answer 2(A)(i)

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

- (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof;

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

- (2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated as the owner of copyright.

The copy right shall be assigned in writing signed by the assignor or by his duly authorised agent.

Answer 2A(ii)

Section 127 of the Transfer of Property Act, 1882 describes onerous gift. It states that where a gift is in the form of a single transfer to the same person of several things of which one is and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully. Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Besides, a donee not competent to contract and accepting the property burdened by any obligation is not bound by his acceptance but if after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound, subject to these provision of Section 127 of the Act. Where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of property comprised therein.

Answer 2A(iii)

A will does not require any specific legal language. Any form of writing, printing or type may be employed. However, the language should be as simple as possible and free from technical words and easily understandable by a layman.

There is no stamp duty payable on a will. It is not necessary that a will has to be made on stamp paper. However, if one wants to register a will, stamping is necessary.

Registration of a Will is not mandatory. However a registered will has certain advantages. Any testator may, either personally or by duly authorised 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. The testator, or after his death any person claiming as executor of a Will, may present it to any Registrar or Sub-Registrar for registration under section 40 of the Registration Act, 1908.

Answer 2A(iv)

A Promissory Note, must possess the following essentials

- (i) It must be in writing.
- (ii) It must contain an express promise or clear undertaking to pay.
- (iii) The promise or undertaking to pay must be unconditional.
- (iv) The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.
- (v) The maker must be a certain person, i.e., the note must show clearly who is the person engaging himself to pay.

- (vi) The payee must be certain. The promissory note must contain a promise to pay to some person or persons ascertained by name.
- (vii) The sum payable must be certain and the amount must not be capable of contingent additions or subtraction.
- (viii) Payment must be in legal money of the country.
- (ix) It must be properly stamped in accordance with the provisions of the Indian Stamp Act.
- (x) It must contain the name of place, number and the date on which it is made

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

Question 3

- (a) Draft a writ under Article 226 of The Constitution of India against the termination of service of an employee working as a clerk grade-1 in XYZ Company Ltd. (A company wholly owned and controlled by Government of India). Assume data wherever necessary. (8 marks)
- (b) Distinguish between the following :
 - (i) Lease and Licence. (4 marks)
 - (ii) Probate and Letter of Administration. (4 marks)

Or (Alternative to Q. No. 3)

Question 3A

- (i) Draft a deed of family arrangement pertaining to property. Assume data wherever necessary. (8 marks)
- (ii) Distinguish between the following :
 - (a) Usufructuary mortgage and English mortgage. (4 marks)
 - (b) Writ of prohibition and Writ of certiorari. (4 marks)

Answer 3(a)

IN THE HIGH COURT OF

Writ Petition No. of 20

AB s/oAged about..... Occupation Former Employee Grade-I

R/O

Petitioner

VERSUS

1. XYZ Company Ltd. wholly owned and controlled by Govt. of India at through its chairman.
2. Managing Director of XYZ Company Ltd. wholly owned and controlled by Govt. of India at.....

Respondents

Writ petition Under Article 226 of the Constitution of India for Issuance of Writ of Mandamus and /or any other suitable writ, order or Direction for doing Justice in the matter.

The petitioner most respectfully submits as under:

1. Particulars of the order against which the petition is made
 - (a) Date of order.....
 - (b) Passed by: the Managing Director of the XYZ Company Ltd.
 - (c) Subject matter in Brief: the service of the petitioner was terminated by the respondents without giving opportunity of being heard and the petitioner came to be relieved of his duties on the same date

A copy of the impugned order annexed herewith and marked as Annexure-1
2. A declaration that no proceedings on the same subject matter have been previously instituted in any court, authority or tribunal.
3. Details of the Remedies exhausted: The petitioner declares that he has availed all statutory or other remedies.
4. Delay, if any: There is no delay in filing the petition
5. Facts of the case:
 - (i) That the petitioner was employed in the respondent company as a clerk Grade-1 on 2021 and become permanent on.....
 - (ii) That, on reading of the impugned order it become clear that the order has been issued on the basis of some alleged misconduct on the part of the petitioner, but no inquiry has been conducted under the relevant rules before passing the impugned order.
 - (iii) That, the petitioner has not committed any act that could be termed to be an act constituting misconduct.
6. Grounds
 - 6.1 That the petitioner being a permanent employee of the company, his services could not be terminated without holding an inquiry under the rules applicable to the employee of the company.
 - 6.2 That, the principles of natural justice have been contravened by the respondents in not giving to the petitioner any opportunity of being heard.
 - 6.3 That the impugned order to termination of service of an employee having permanent status is otherwise erroneous and unsustainable as it does not contain any reason.
 - 6.4 That the impugned order is arbitrary, illegal and discriminatory an in violation of Article 14 of the Constitution of India.
 - 6.5 That the other grounds shall be urged at the time of hearing.

Relief Prayed for:

In view of the facts and circumstances, it is humbly prayed that this Hon'ble Court may be pleased to allow the petition by issuing Writ of Mandamus or any other appropriate writ, order or direction for awarding following reliefs:

- (a) That, the impugned order dated..... may kindly be quashed.
- (b) That, the respondent be directed to reinstate the petitioner in service with all the consequential benefits including back wages.
- (c) It is further prayed that the respondent may be burdened with costs of the petition.

Place	Petitioner
Date	Through Advocate
	Mr.

The writ petition must be supported by an affidavit of the petitioner.

Answers 3(b)(i)

Lease and License

The cardinal distinction between a lease and a license is that in a lease there is a transfer of interest in the premises, whereas in the case of a license there is no transfer of interest, although the licensee acquires a right to occupy the premises.

In a number of cases the Apex Court has distinguished lease and license. In *Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala, 1988 SCC 155*, the Supreme Court has held:

"In order to determine whether a document created a license or a lease the real test is to ascertain the intention of the parties, i.e., whether they intended to create a license or a lease. If the document creates an interest in the property entitling the transferee to enjoyment, then it is a lease; but if it only permits another to make use of the property without exclusive possession, then it is a license.

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

Answers 3(b)(ii)

Probate and Letters of Admiration

Probate is a certificate granted under the seal of Competent Court, certifying the Will (a copy whereof is annexed thereto) 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.

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(i)

The DEED OF FAMILY ARRANGEMENT of properties owned and possessed by the Hindu Undivided Family and its members by free consent and without force or compulsion made and executed on this day of 20..... Betweenand his elder (major) son s/o..... r/o..... and his only daughter.....w/o.....r/o.....witnesses as follows:

1. That the aforesaid parties constitute joint Hindu Family owing and possessing a number of movable and immovable properties situated at various parts of the country, detailed in Schedule A, Schedule B, Schedule C, Schedule D and Schedule E to this document.
2. That in order to avoid any future property dispute between parties inter se, the aforementioned parties have entered into this agreement of the Family Agreement voluntarily of their own will whereby,
 - a) The property detailed in Schedule E to this document shall go to the share of
 - b) The property share on Schedule B to this document shall go to the share of
 - c) The property stated in Schedule C
 - d) The property stated in Schedule D.....
 - e) The property stated in Schedule A
3. That each of aforesaid parties shall be entitled to all the benefit, rents and other incomes arising out of the properties falling into such parties share and each such party shall be liable to pay all taxes, rates etc. in respect of the shares of the properties.
4. That each of the parties shall be an absolute owner of the properties falling into the shares of such party with power to sell, transfer and each such party shall have no right, title or interest in any of the properties falling into the shares of the other members of the family.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day month and year, above written.

Witnesses:

1.
2.

Sign.....

Answer 3A(ii)(a)**Usufructuary Mortgage and English Mortgage**

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

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

Answer 3A(ii)(b)**Writ of prohibition and Writ of certiorari**

The writ of prohibition is issued by the Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. It compels Courts and Tribunal to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of rules or law. The writ of prohibition is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions. If abuse of power is apparent this writ may be prayed for as a matter of right and not a matter of discretion. The Supreme Court may issue this writ only in case of Fundamental Rights being affected by reason of the jurisdictional defect in the proceedings. This writ is available during the pendency of the proceedings and before the order is made.

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

Question 4

Distinguish between the following :

- (a) *Indenture and Cyrographum.*
- (b) *Redendum and Covenants.*
- (c) *Gift and Donatio Mortis-Causa.*
- (d) *Oral application and Written application.*

(4 marks each)

Answer 4(a)**Indenture and Cyrographum**

Indenture are those deeds in which there are two or more parties. It was written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult.

Indentures were so called as at one time they are indented or cut with uneven edge at the top.

The word "Cyrographum" was written between two or more copies of the document and the parchment was cut in a jugged line through this word.

The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the original.

Answers 4(b)

Redendum and Covenants

Reddendum and covenants both are taken into consideration in case of drafting of a leased agreement.

Reddendum is peculiar to a deed of lease. Here is mentioned the mode and time fixed for payment. It begins with the word rendering or paying with reference to the reserved rent.

Rent is payable during the term of the lease. Place where payable and instalments are mentioned. If there is apportionment of rent that is also mentioned.

Covenants are also required in case of drafting the lease agreement. The terms and conditions are mentioned in several paragraphs. The usual covenants are to be found in Section 108 of the Transfer of Property Act, 1882.

Other important covenants generally refer to payment of taxes, repairs, insurance, subletting purpose of the lease, e.g., residential purpose, renewal, forfeiture etc.

Answer4(c)

Gift and Donation Mortis-Causa

- a) A "Donato Mortis-causa" is a gift made in expectation of death during illness. An ordinary "Gift" made at any time.
- b) A "Donato Mortis-causa" condition is implied that the gift shall not take effect if the donor recovers from the illness. In a "Gift", this condition is not implied.
- c) A "Donato Mortis-causa" relates to any movable property but an ordinary "Gift" may relate even to immovable property.
- d) Donato Mortis-causa is resumable at the will of the donors. Ordinary "Gift" resumable at the will of the donor is void.
- e) Donato Mortis-causa takes effect only upon the death of the donor and ordinary "gift" takes effect immediately.

Answer 4(d)

Oral Application and Written Application

Oral Application : Where a decree is for payment of money the court may on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgement debtor, prior to the preparation of a warrant if he is within precincts of the court.

Written Application : Every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the prescribed particulars.

Question 5

- (a) Draft a notice to determine a continuing guarantee under section 130 of the Indian Contract Act, 1872 with assumed data.
- (b) Draft a petition for anticipatory bail under section 438 of Code of Criminal Procedure, 1973 with assumed data. (8 marks each)

Answer 5(a)

To,

ABC (Creditor)

Dear Sir,

I hereby give you notice w.r.t the continuing guarantee dated the day of which I executed in your favour for payment of all moneys which were then or at any time thereafter may be due to you from EF of etc..... on the balance of his account, is hereby revoked and determined for the reasons stated herein under: I give you further notice that if you make any further advances or payments or give further credit to the said EF, you would do so at your own risk and the same shall have nothing to do whatsoever with the guarantee which stands hereby revoked.

Your faithfully,

XY(Surety)

Date:

Answer 5(b)

The Hon'ble Chief Justice and His / Her Companies Justice of the said Hon'ble Court.

A	-----	Petitioner
	<i>Versus</i>	
State	-----	Respondent

The humble petition on behalf of the petitioners above named

Most Respectfully showeth:

1. That this is the first application under section 438 of the Code of Criminal Procedure, 1973, before this Hon'ble Court by the petitioners in connection with the above noted case and no such petition is either earlier rejected or pending before this Hon'ble Court or any other Court of concurrent Jurisdiction.
2. That the petitioners has been falsely implicated in the present case and the present case has been filed only to malign the reputation of the petitioner in the society.

- 3.
- 4.
- 5.
- 6. That the petition is made bonfide and for the ends of Justice.

In the circumstances aforesaid it is most humbly and respectfully prayed that your lordships would graciously be pleased to grant anticipatory bail.

And for this act of kindness your petitioner as in duty bound shall ever pray.

Petitioner

AFFIDAVIT

I,son/daughter ofaged about.....years by faith.....by occupation.....residing at..... do hereby solemnly affirm as follows:

- 1. That I am the petitioner in the foregoing matter.
- 2. That I am well conversant with the facts of the case.
- 3. That the statements made in paragraph no.....are true to my knowledge and those in paragraph no..... are my humble and respectful submission before the Hon'ble Court.

.....

Verified by Advocate

Deponent

Question 6

(a) Draft a plaint in a suit for demolition of construction made by the defendant on the plaintiff's vacant land. The plaintiff seeks to obtain possession as well as temporary injunction restraining the defendant. Assume names, dates and other things as per your requirements.

(b) Draft a deed of assignment of the business debts with assumed data.

(8 marks each)

Answer 6(a)

In the court of Civil Judge at.....

Suit No. of.....

XY, s/o.....resident of.....

.....Plaintiff

Versus

YZ, s/o.....resident of.....

.....Defendant

Most respectfully sayeth:

1. That the plaintiff is the owner in possession of land comprising in khata, khatauni No.....situated at.....
2. That plot No.given at the foot of the plaint lies in possession.
3. That the said plot had been lying vacant for a very long time and the plaintiff used it occasionally.
4. That the cause of action accrued to the plaintiff on.....
5. That the defendant has built a house comprising two rooms without any permission or consent of the plaintiff.
6. That the defendant has absolutely no title to the said plot of land and his act is wholly unauthorised and illegal.
7. That the defendant has refused to vacate the said land and to demolish the house when asked by the plaintiff.
8. That the value of the suit for the purposes of jurisdiction has been fixed at Rs..... And for the purposes of declaration and correct and authorised court fee stamp Rs.....have been affixed on the plaintiff.
9. That no suit has been instituted against the defendant on the same or similar cause of action in any other court including High Court and Supreme Court of India.

It is therefore, most respectfully prayed that the possession of the land in the suit be given to the plaintiff through decree of the court with directions to the defendant to pull down and remove the house and restore the land to its formal condition within a period specified by the court and other relief as the court thinks fit and suitable.

And for this act of kindness, the humble plaintiff as in duty bound and shall ever pray.

.....

Plaintiff

Through Advocate

Boundaries of the Plot No.....

East.....

West.....

North.....

South.....

Verification

I,, declare that the contents of paraS 1-9 of the plaint are true to my knowledge and belief.

Verified at..... on.....

XY

AB

Advocate

Answer 6(b)

This dated of Assignment is made this.....day ofBetween CD s/o..... residing at(hereinafter referred to as the ASSSIGNOR or which term shall include his heirs legal representative) of one part and AB s/o ofresiding at(hereinafter referred to as the ASSIGNEE(S) of other part.

WHEREAS THE ASSIGNOR has for some time past carried on the trade or business of, etc, in the course whereof the several persons whose names, address and occupation are mentioned in the schedule hereunder written, have become lawfully debtors to him and so for the several sums of money set opposite to their respective names, and whereas the ASSIGNOR has contracted with the ASSIGNEE for the absolute sale to him of the said business debts at and for the sum of Rs.....NOW THIS DEED WITNESSES that is consideration of the sum of Rs.....now paid to the ASSIGNOR by the ASSIGNEE (the receipt of the sum ASSIGNOR hereby acknowledges), the said CD sells, transfers and assigns unto the said AB all the several said dates and sum of money specified in the said schedule which are now due and owing to the ASSIGNOR TO HAVE AND TO RECEIVE them for his absolute use and benefit with absolute power to enforce payment thereof by suit AND that the ASSIGNOR does hereby covenant with the assignee that all the several debts are lawfully due to him and the parties by whom they are payable are alive and further that he has not entered into any arrangement with any of them AND that the ASSIGNOR shall at all times hereafter do execute, and perform all such and other acts, deeds etc. As may be reasonably required for further and better transferring and /or assuring them or any of them.

Schedule above referred to

Signed, sealed, sealed and delivered etc.

CD

AB

BANKING LAW AND PRACTICE (Elective Paper 9.1)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Case Study :

RISK MANAGEMENT IN BANKS

John Kenneth Galbraith, famous Harvard Economist and the US Ambassador to India during J.F. Kennedy's Administration wrote.

'All Financial Crises are the result of Debt that, in one fashion or another, has become Dangerously out of Scale'.

This was clearly demonstrated in the Financial Crisis which took place in the US in 2008.

Aggressive lending characterized by Sub-prime Housing Loans and excessive leverage in major Banks and Financial Institutions led to the most serious financial challenge since the Great Depression of 1930s. The Sub Prime Crisis had reportedly led to a total write off of 1.18 trillion Dollars. One has to understand the causes of the Financial Crisis and take appropriate measures to avoid its recurrence. In order to withstand such a shock in future, the Basel Committee on Banking Supervision (BCBS) has announced on 13th September, 2010, New Capital Rules as agreed by the global regulators. The new requirement, known as Basel-III, demands a substantial strengthening of existing capital requirements. This involves higher global Minimum Capital Standards for Banks.

As cited above, Basel-III reforms are the response of BCBS to improve the Banking Sector's ability to absorb shocks arising from financial and economic stress, whatever the source, thus reducing the Risk of Spill over from the financial sector to the real economy. During the Pittsburgh Summit in September 2009, the G-20 leaders committed to strengthen the regulatory system for Banks and other Financial Firms and also act together to raise Capital Standards, to implement strong International Compensation Standards aimed at ending practices that lead to excessive risk-taking, to improve the Over-The-Counter Derivatives Market and to create more powerful tools to hold large global firms to account for the risks they take. For all these reforms, the leaders set for themselves strict and precise timetables. Consequently, the BCBS released comprehensive reform package entitled "Basel-III : A global regulatory framework for more resilient Banks and Banking Systems" (known as Basel III capital regulations) in December 2010.

Basel-III reforms strengthen the Bank-level i.e. Micro prudential regulation, with the intention to raise the resilience of individual Banking Institutions in periods of stress. Besides, the reforms have a Macro prudential focus also, addressing system wide

risks, which can build up across, the Banking Sector, as well as the pro-cyclical amplification of these risks over time. These new Global Regulatory and Supervisory Standards mainly seek to raise the Quality and level of Capital to ensure Banks are better able to absorb losses on both a going concern and a gone concern basis, increase the Risk coverage of the Capital framework, introduce Leverage Ratio to serve as a backdrop to the Risk-based Capital measure, raise the Standards for the Supervisory Review Process (Pillar-2) and Public Disclosures (Pillar-3) etc. The Macro prudential aspects of Basel-III are largely enshrined in the Capital Buffers. Both the Buffers i.e. the Capital Conservation Buffer and the Countercyclical Buffer are intended to protect the Banking Sector from periods of excess Credit Growth.

Reserve Bank of India (RBI) issued Guidelines based on the Basel-III reforms on Capital Regulation on 2nd May, 2012, to the extent applicable to Banks Operating in India. Banks have started implementing the Guidelines from 1st April, 2013 in India in a phased manner. Banks are advised by RBI to report the CRAR as per Basel-II and Basel-III simultaneously in all their disclosures to the stakeholders.

In this backdrop, you are required to give answers in the context of prevailing Banking Practices and various RBI Compliances to the following :

- (a) How is Basel-III an improvement over Basel-II ? (10 marks)*
- (b) What is the Additional Capital that Indian Banks have to mobilize to conform to Basel-III ? (8 marks)*
- (c) How will Basel-III affect the Profitability of Banks ? (8 marks)*
- (d) Does India really need Basel-III ? (8 marks)*
- (e) What are the potential challenges in implementing the Countercyclical Capital Buffer ? (8 marks)*
- (f) What sort of Capacity Building is required in the Implementation of Basel-III, especially in the area of Risk Management ? (8 marks)*

Answer 1(a)

Basel-III represents an effort to fix the gaps and lacunae in Basel-II that came to light during the crisis as also to reflect other lessons of the crisis. What is important though is that Basel-III does not jettison Basel-II on the contrary, it builds on the essence of Basel-II, the link between the risk profiles and capital requirements of individual banks. In that sense, Basel-III is not a negation, but an enhancement of Basel-II.

The enhancements of Basel-III over Basel-II come primarily in four areas:

- (i) Augmentation in the level and quality of capital;
- (ii) Introduction of liquidity standards;
- (iii) Modifications in provisioning norms; and
- (iv) Better and more comprehensive disclosures.

Capital Requirement under Basel-II and Basel-III

Calculation Particulars	As a percentage of risk weighted Assets	
	Basel-II	Basel-III (as on January 01, 2019)
A = (B+D) Minimum Total Capital	8.0	8.0
B Minimum Tier-1 Capital	4.0	6.0
C Minimum Common Equity Tier-1 Capital	2.0	4.5
D Maximum Tier-2 Capital (within Total Capital)	4.0	2.0
E Capital Conservation Buffer (CCB)	-	2.5
F = C+E Minimum Common Equity Tier-1 Capital + CCB	2.0	7.0
G = A+E Minimum Total Capital + CCB	8.0	10.5

As can be seen from the comparative data in Table above, Basel-III requires higher and better quality capital. The minimum total capital remains unchanged at 8 per cent of Risk Weighted Assets (RWA). However, Basel-III introduces a Capital Conservation Buffer (CCB) of 2.5 per cent of RWA over and above the minimum capital requirement, raising the total capital requirement to 10.5 per cent against 8 per cent under Basel-II. This Buffer is intended to ensure that banks are able to absorb losses without breaching the minimum capital requirement, and are able to carry on business even in a downturn without deleveraging. This buffer is not part of the regulatory minimum. However, the level of the buffer will determine the dividend distributed to shareholders and the bonus paid to staff.

There are also other prescriptions regarding the quality of capital within the minimum total so that capital is able to absorb losses, and calling upon taxpayers to bear the burden of bail out becomes absolutely the last resort.

In addition to the Capital Conservation Buffer, Basel-III introduces another capital buffer the Countercyclical Capital Buffer in the range of 0 - 2.5 per cent of RWA which could be imposed on Banks during periods of excess credit growth. Also, there is a provision for a higher capital surcharge on systemically important banks.

To mitigate the Risk of Banks building up excess leverage as happened under Basel-II, Basel-III institutes a Leverage Ratio as a backstop to the risk based capital requirement. The Basel Committee is contemplating a Minimum Tier-1 Leverage Ratio of 3 per cent which will eventually become a Pillar- I requirement as of January 01, 2018.

Basel-II failed to demand adequate loss absorbing capital to cover market risk. To remedy this, Basel-III strengthens the counterparty Credit Risk framework in market risk instruments. This includes the use of stressed input parameters to determine the capital requirement for counterparty Credit Default risk. Besides, there is a new capital

requirement known as Credit Valuation Adjustment (CVA) risk capital charge for Over-The-Counter (OTC) derivatives to protect Banks against the risk of decline in the credit quality of the counterparty.

To mitigate Liquidity Risk, Basel-III addresses both potential short-term liquidity stress and longer-term structural liquidity mismatches in Banks' Balance Sheets. To cover short-term liquidity stress, Banks will be required to maintain sufficient high-quality unencumbered liquid assets to withstand any stressed funding scenario over a 30-days horizon as measured by the Liquidity Coverage Ratio (LCR). To mitigate liquidity mismatches in the longer term, banks will be mandated to maintain a Net Stable Funding Ratio (NSFR). The NSFR mandates a minimum amount of stable sources of funding relative to the liquidity profile of the assets, as well as the potential for Contingent liquidity needs arising from off-balance sheet commitments over a one-year horizon. In essence, the NSFR is aimed at encouraging Banks to exploit stable sources of funding.

Provisioning Norms

The Basel Committee is supporting the proposal for adoption of an "expected loss" based measure of provisioning which captures actual losses more transparently and is also less pro cyclical than the current "incurred loss" approach. The expected loss approach for provisioning will make financial reporting more useful for all stakeholders, including regulators and supervisors.

Disclosure Requirements

The disclosures made by banks are important for market participants to make informed decisions. One of the lessons of the crisis is that the disclosures made by Banks on their risky exposures and on regulatory capital were neither appropriate nor sufficiently transparent to afford any comparative analysis. To remedy this, Basel-III requires banks to disclose all relevant details, including any regulatory adjustments, as regards the composition of the regulatory capital of the bank.

Answer 1(b)

Indian banks already meet the minimum capital requirements of Basel-III at an aggregate level, even though some individual banks may have to top up. The size of the additional capital required to be raised by Indian banks is depends on the assumption made, and there are various estimates floating around.

Whether the Market will be able to provide equity capital of this size. The amount the market will have to provide will depend on how much of the recapitalization burden of Public Sector Banks (PSBs) the Government will meet. The extended period of full Basel-III implementation spread over five years gives sufficient time to Banks to plan the time-table of their capital rising over this period.

Clearly, providing equity capital of this size in the face of fiscal constraints poses significant challenges. A tempting option for the Government would be to issue recapitalization bonds against Common Equity Infusion. But this will militate against fiscal transparency. In the alternative, would the Government be open to reducing its shareholding in PSBs to below 51 per cent. If the Government decides to pursue this option, an additional consideration is whether it will amend the statute to protect its majority voting rights.

Answer 1(c)

Basel-III require higher and better-quality capital. Admittedly, the cost of equity capital is high. It is also likely that the loss absorbency requirements on the non-equity regulatory capital will increase its Cost.

The Average Return on Equity (RoE) of the Indian banking system for the last three years has been approximately 15 per cent. Implementation of Basel-III is expected to result in a decline in Indian banks' RoE in the short-term. However, the expected benefits arising out of a more stable and stronger banking system will largely offset the negative impact of a lower RoE in the medium to long term. It is also fair to assume that investors will perceive the benefits of having less risky and more stable banks, and will therefore be willing to trade in higher returns for lower risks.

Whether Banks will bear the increased cost of capital themselves or pass it to their Depositors and Borrowers. This tradeoff has to be assessed in the context of the relatively higher level of Net Interest Margins (NIMs) of Indian banks, of approximately 3 per cent. This higher NIM suggests that there is scope for banks to improve their efficiency, bring down the cost of intermediation and ensure that returns are not overly compromised even as the cost of capital may increase.

The Liquidity Standards under Basel-III, will mandate to maintain a higher quantum of liquid assets encourage banks to resort to the passive option of lending to the Government, thereby crowding out credit to the private sector.

Banks' holding of Government securities that should be taken into account for assessing compliance with liquidity standards. One view is that since the Statutory Liquidity Ratio (SLR) securities are required to be held on an ongoing basis, they should not be reckoned for calculating liquidity requirements under Basel-III. An alternate view is that since the Reserve Bank is expected to provide liquidity against these securities under stressed conditions as part of its Lender of Last Resort (LoLR) obligation, at least a pre-specified portion of these securities should be taken into account for assessing compliance with Basel-III's Liquidity Standards.

Basel-III will affect the profitability of banks and alter their incentive structure is that the competitive dimension of banking sector should ensure that banks are able to deliver efficient financial intermediation without compromising the interests of depositors and borrowers.

Answer 1(d)

Basel-III - The burden of raising additional capital and the costs of complying with the new liquidity standards, their impact on banks' profitability, and on the overall growth prospects of the economy.

Basel-III is designed as a corrective for advanced economy banks which had gone astray, often times taking advantage of regulatory gaps and regulatory looseness, and that Indian banks which remained sound through the crisis should not be burdened with the 'onerous' obligations of Basel-III.

The 'perception' of a lower standard regulatory regime will put Indian banks at a disadvantage in global competition, especially because the implementation of Basel-III is subject to a 'peer group' review whose findings will be in the public domain.

Deviation from Basel-III will also hurt us in actual practice. It is important that Indian banks have the cushion afforded by these risk management systems to withstand shocks from external systems, especially as they deepen their links with the global financial system going forward.

Some of the prescriptions of Basel-III have already been in existence in India, and the net additional burden will be lower than we tend to imagine.

Answer 1(e)

A critical component of the Basel-III package is a countercyclical capital buffer which mandates banks to build up a higher level of capital in good times that could be run down in times of economic contraction, consistent with safety and soundness considerations. This is conceptually neat, but is challenging in operational terms, as indeed evidenced by Spain's recent experience. The foremost challenge is identifying the inflexion point in an economic cycle which should trigger the release of the buffer. It is quite evident that both tightening too early or too late can be costly in macroeconomic terms. The identification of the inflexion point therefore needs to be based on objective and observable criteria. It also needs long series data on economic cycles.

The countercyclical capital buffer as prescribed in Basel-III was initially based on the credit / GDP metric. A study undertaken by the Reserve Bank shows that the Credit to GDP ratio has not historically been a Good indicator of buildup of systemic risk in our Banking system.

Furthermore, some economic sectors such as Real Estate, Housing, Micro Finance and Consumer Credit are relatively new in India, and Banks have only recently begun financing them in a big way. The risk builds up in such sectors cannot accurately be captured by the aggregate credit to GDP Ratio. The Reserve Bank has so far calibrated countercyclical policies at the sectoral level. The Basel Committee also has now recognized that no single variable can fully capture the dynamics of the economic cycle. Appropriate calibration of the buffer requires country specific judgement backed by a broad range of other simple indicators used in financial stability assessments.

Answer 1(f)

There are no two views about the need for building capacity within the banks, and also in the Reserve Bank which is the regulator, to efficiently implement Basel-III.

By far the most important reform is that there should be a radical change in Banks' Approach to Risk Management. Banks in India are currently operating on the standardized approaches of Basel-II. The Larger Banks need to migrate to the Advanced Approaches, especially as they expand their overseas presence. The adoption of Advanced Approaches to Risk Management will enable Banks to manage their capital more efficiently and improve their Profitability.

This graduation to Advanced Approaches requires three things which are as under:

- First and most importantly, a change in perception from looking upon the capital framework as a compliance function to seeing it as a necessary pre-requisite for keeping the Bank sound, stable, and therefore profitable;
- Second, deeper and more broad based capacity in risk management; and
- Third, Adequate and good quality data.

Question 2

- (a) *Mr. Swamy is maintaining a Savings Bank Account at XYZ Branch of ABC Bank. A cheque dated 31st March, 2020 for ₹ 8,500 drawn by him, has been paid by the branch on 5th April, 2020. After one month when he got updated his passbook, he raised objection regarding the said debit of ₹ 8,500. He pointed out that he had issued the said cheque for ₹500 only. When the cheque was subsequently examined under Ultraviolet Ray Lamp, it was transpired that the name of the Payee, Amount and Date of cheque were chemically altered. Mr. Swamy alleged negligence on the part of the XYZ Branch of ABC Bank. Whether the Bank action is correct ? (5 marks)*
- (b) *State whether the following statements are True or False with reasons :*
- (1) *Lok Adalats are organised under the SARFAISI Act.*
 - (2) *When DRT has jurisdiction, the Civil Courts are debarred from handling any case ?*
 - (3) *Where prescribed limitation period expires on 15th August, the suit may be instituted on the next date when Court reopens.*
 - (4) *A banker allows his customer, funds before clearance of cheque. This will not amount to creation of debt.*
 - (5) *An advocate of a Bank Customer can file a complaint to Banking Ombudsman. (1 mark each – 5 marks)*
- (c) *M/s. XYZ Ltd. is maintaining a Current Account for few years with ABC Bank, maintaining an average balance of ₹20 Lakh. The company never asked for a credit facility. Now, the company needs a Performance Guarantee of ₹ 4 crore to execute an order of Government Department. Discuss how the Bank will handle the request of the company. (5 marks)*
- (d) *ABC Ltd. failed to register the charge on their property/Assets for the term loan of ₹10 crore taken from XYZ Bank. What is the remedy available to the Bank to secure its loan ? (5 marks)*
- (e) *In a Current Account of a partnership firm consisting of two partners, one partner died. The son of the deceased partner claims the balance in the account as legal heir. How the Bank will deal in such a situation ? (5 marks)*
- (f) *X maintains a balance of ₹10,000 in his Savings Account with a Bank and owes ₹5,000 to the Bank as overdraft in another account. X also maintains a Joint Savings Bank Account with his wife Y in the same Bank and maintain a balance of ₹15,000 in this Joint account. Bank receives a Garnishee order of ₹11,000 issued by a Competent Court for attaching Accounts of X. How does the Bank Act upon such Garnishee order ? (5 marks)*

Answer 2(a)

Bank is not liable where a Cheque has been materially altered, but does not appear to have been altered. The banker liable to pay the same get a valid discharge when the bank pays the same according to apparent tenor.

Under Section-10 of the Negotiable Instruments Act, 1881, 'Payment in due course' means a payment made in accordance with the apparent tenor of the instrument in good

faith and without negligence to any person in possession thereof under circumstance, which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Under Section 89 of the Negotiable Instruments Act, 1881, where a cheque has been materially altered but does not appear to have been so altered, a banker liable to pay the same, get a discharge when he pays the same according to apparent tenor. Therefore the action of the Bank is correct.

Answer 2(b)

- (1) **False** - Lok Adalat is organised by State Authority, District Authority, Supreme Court Legal Service Committee, High Court Legal Service Committee, Taluk Legal Service Committee and Debt Recovery Tribunals whereas SARFAESI is a method of recovering NPAs.
- (2) **True** - As per Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act.
- (3) **True** - As per Section 4 of the Limitation Act, 1963, where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.
- (4) **False** - When a customer deposit a cheque in his/her bank account, Banker will credit customer's account in the same day and the customer after looking into funds in his/her account withdrew money and if the cheque become dishonored it will amount to creation of debt.
- (5) **False** - As per Banking Ombudsman Scheme, 2002, a complaint can be filed by an aggrieved person or through an authorised representative other than Advocate.

Answer 2(c)

Issue of Bank Guarantee is a credit decision and involves the study of viability of the unit on whose behalf the Bank Guarantee is issued. As such, the firm may be asked to submit the proposal and the same be appraised as done in case of fund-based credit facilities. Even in the Bank Guarantee limit, the Bank has to assess the viability of the unit / activity. Since the past experience of the borrower is satisfactory, the same to be done on priority basis.

- i. The viability study, in case of Bank Guarantee, would involve the study of capacity and ability of the unit to execute and complete their contract as per the terms of the Bank Guarantee. This will minimize the risk of invoking of the Bank Guarantee by the beneficiary.
- ii. The Contract obtained is of high value and it is important to examine whether the firm has competence and capacity to successfully execute the contract. The post track record has to be examined. As the non-fund bank guarantee can become fund based and the Bank will have to part with fund in case of invocation.

- iii. The Bank has also to take into view other aspects like Margin, Collateral Security, Third Party Guarantee, etc. If appraisal be found viable, Bank Guarantee be sanctioned.

Answer 2(d)

Under Section 77 of the Companies Act, 2013, it shall be the duty of every company creating a charge on its property or assets to register the particulars of charge signed by the company and the charge holders with the Registrar of Companies within 30 days of its creation. Since ABC Ltd. has failed to register the charge for the term loan of Rs. 10 crore against its property /assets, taken loan from XYZ Bank. The Bank in whose favour charge is created may apply to the registrar for Registration of the charge within a period of 14 days after giving notice to the company. XYZ Bank shall be entitled to recover from ABC Ltd., the amount of any fees, paid by it to the Registrar for the purpose of registration of charge.

Answer 2(e)

After obtaining the documentary evidence that one partner has died, bank will mark caution in the account and all cheque issues by the firm will be returned. As the surviving partner is only one, firm stands compulsorily dissolved. The legal representatives of the deceased partner will be advised to contact the surviving partners and approach the Banks for settlement of claim. The claim will be settled after taking the joint discharge from all the legal heirs along with the surviving partner after obtaining an indemnity.

Partnership is created orally or in writing, death instantly or insolvency of a partner dissolves the firm unless there is a provision to the contrary in the partnership deed. In the present case, as remaining partner is only one, firm cannot continue because for partnership minimum two partners are required.

Banks will get the valid discharge after making the payment and thereafter Legal Heirs claimants can settle their intra claims as per succession rights.

Answer 2(f)

Garnishee Order : The obligation of a banker to honour his customer's cheques is extinguished on receipt of an order of the Court, known as the Garnishee order.

In the given case, the Banks will enforce the garnishee order for Rs. 5,000/- only after appropriately setting off its debts of Rs. 5,000/- from savings account of X having a balance of Rs. 10,000/-. The joint account of two or more persons in which only one of them is a judgement debtor cannot be attached.

Question 3

“Leverage Ratio, Loan to Value Ratio and Debt Service Coverage Ratio are the three important Ratios in analysing “Term Loan Proposals” of Business firms by the Banks. Explain the importance of these three Ratios from the Bankers Point of View.
(2+1+2 marks)

Answer 3

The Banks rely on Leverage Ratio, Loan to Value Ratio and Debt Service Ratio, while sanction Term Loans to know viability of Business Firm. These three ratios are

very important for banks to know the viability of the project for which the business firm required term loan. Bench mark level of these ratios help to assess the feasibility of projects.

Leverage Ratio : Leverage ratio is calculated by dividing Total Business Liabilities by Total Business Equity. Leverage Ratio over 4 to 1 would significantly reduce the chances of securing a Bank Term Loan. The basic idea is that lender doesn't want to simply borrow in order to grow the business.

Loan to Value Ratio : Loan to Value Ratio is calculated by the Total amount of the loan divided by the appraised value of collateral. Most Banks will require the appraised value of collateral to be higher than the loan amount. The lender is looking at this Ratio to see how much breathing room they have. If the business is to default on the loan and the bank ends up with the collateral, the bank wants to make sure they can sell the collateral for a value high enough to recover the entire balance of the loan.

Debt Service Coverage Ratio : This Ratio is calculated by dividing Annual Net Income by Annual Debt Service. Debt Service is a way of saying Term Loan Installment Payments. This Ratio tells the lender how many times could make the loan payment with Net Income. If the firm could make the loan payment 10 times with firm Net Income each year, firm have plenty of Leverage. If only make the loan payments 1.25 times per year, the bank is going to be nervous that if there is any negative downtrend with firm business, firm won't be able to make firm's loan installment payments.

Question 4

Small Finance Banks (SFB) and Payment Banks (PB) are called Differentiated Banks. Briefly explain the functions of SFBs and PBs. (5 marks)

Answer 4

Small Finance Banks (SFBs) : Small Finance Banks are the financial institutions which provide financial services to the unserved and unbanked regions of the country. They are registered as a Public Limited Company under the Companies Act, 2013.

Functions of Small Finance Banks

- i. *Access to Financial Services* : The main function of small finance banks is to expand access to financial services in rural and semi-urban areas. These banks can do almost everything that a normal commercial bank can do but at a much smaller scale.
- ii. *Basic Banking Services* : They offer basic banking services, accept Deposits and lend to underserved sections of customers, including Small Business units, Small and Marginal Farmers, Micro and Small Industries, and even entities in the unorganized sector.
- iii. *Alternative Institution* : Small Finance Banks provide an alternative to some of the existing institutions with their mandated focus on small and medium businesses, the informal sector, small and marginal farmers and thus on increasing financial inclusion and serving a variety of unserved clients in the hinterland and tier three and four cities and towns.

- iv. *Non Risk Sharing*: They also undertake other Non-risk sharing simple financial services activities, not requiring any commitment of own funds, such as the distribution of Mutual Fund Units, Insurance Products, Pension Products, etc.

Payment Banks (PBs) : The objectives of setting up of a payments bank is to further financial inclusion by providing Small Savings Accounts and payments / remittance services to Migrant Labour Workforce, low-income households, Small Businesses other unorganised sector entities and other users.

Scope of Activities of Payment Banks

- (i) Acceptance of demand deposits, initially restricted to holding a maximum balance of Rs. 1,00,000 per individual customer.
- (ii) Issuance of ATM / Debit Cards.
- (iii) They cannot issue Credit Cards.
- (iv) They are not allowed to give Loans.
- (v) Payments and Remittance services through various channels.
- (vi) Distribution of Non-risk sharing simple financial products like Mutual Fund units and Insurance Products, etc.
- (vii) They are only allowed to invest the money received from customers.
- (viii) Deposits into Government Securities.
- (ix) They cannot accept NRI deposits.
- (x) A Payments Bank Account holder would be able to deposit.
- (xi) Withdraw money through any ATM or other Service Providers.
- (xii) Payments Licensees would be granted to Mobile Firms, Supermarket chains and others to cater to Individuals and Small Businesses.

Question 5

Society for Worldwide Inter-bank Financial Telecommunication (SWIFT) is a Cooperative Non-profit making organization established under Belgian law and with its Headquarter at Brussels. How this Financial Telecommunication system is useful for Indian Banks and for what purpose ? (5 marks)

Answer 5

Society for Worldwide Interbank Financial Telecommunication (SWIFT): SWIFT is an Acronym for Society for Worldwide Interbank Financial Telecommunication. It is a co-operative society formed by the member banks, with its headquarters at La Hulpe, Belgium. The SWIFT financial messages are trusted as the most authentic and universal financial messages world over. The messages are authenticated communication channel between two parties on prior agreement. The messages largely financial are mailed through computer based medium. The advantage in transfer of messages in SWIFT medium is that it does not require separate authentication like test cipher. The various types of messages are in a prescribed format which has to be properly filled up to transmit the message. The fields of SWIFT messages are so structured that the messages are authenticated and are universal.

Important features of SWIFT are as under:

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

The uses of Financial Telecommunication system for Indian Banks are as under:

- (i) SWIFT transmit authenticated financial and non-financial messages.
- (ii) SWIFT with its well-standardized and structured message formats offer a reliable system of message transmission.
- (iii) SWIFT platform is used for transmission of financial and non-financial messages covering international boundaries.
- (iv) Finance (settlement of forex deals), international trade (advising of Letter of Credits, amendments to Letter of Credits etc.)

Question 6

What are the unethical practices noticed in the area of Financial Management?

(5 marks)

Answer 6

A sound financial policy and management control is extremely important for good corporate governance. As it assists in noticing of several unethical practices in the area of financial management that exert pressure on the Government and Regulators. Some of the common unethical issues in the financial activities and market are as under:

- (i) *Misappropriation and Diversion of funds* : Many business enterprises and corporates avail of loans and do not use the funds for the purpose the loan was availed of but divert the funds for other activities. Though the repayment of the loan is on schedule these activities of the enterprises/ corporates are unethical on account of misappropriation of funds.
- (ii) *Concealment of facts* : For years the real financial positions are concealed but unrealistic financial position is reflected in a systematic manner to appear as realistic figures until brought to notice.
- (iii) *Non-compliance of regulatory and legal framework* : Banks face many compliance issues due to non-adherence of prescribed rules and regulations. These non-compliances have created avenues for conversion of black money to legal money through banking channels, due to which Banks are facing embarrassment and reputational risks.
- (iv) *Money Laundering Activities*: This is not only unethical but also criminal and illegal. These activities help conversion of illegal money the legal money, using banks as channels to effect such activities.

- (v) *Lack of internal control* : Due to weak internal controls at various levels, sometimes loans become non-performing assets. Unethical practices such as corruption, diversion and misappropriation of funds, loans granted against inferior or under value collateral not only affects the performance of the banks but also increases the levels of the non-performing assets.

CAPITAL, COMMODITY AND MONEY MARKET
(Elective Paper 9.2)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

(a) A team of young technocrats formed a startup named iNova Softech. The startup has developed an ERP software for leading Cargo firm, with estimated project cost is ₹10 Crore. The team is able to invest only a sum of ₹5 Crore as equity at a face value of ₹100 each, the balance is proposed to be financed through Venture Capital. The company offers two alternate investment packages to the Venture Capital (VC) firm:

- (i) Straight Equity Investment.
- (ii) Fully Convertible Debentures (FCDs) with a coupon of 20%. At the end of 4 years, which would be converted into Equity Shares. This conversion would be at a P/E ratio of 10 on the weighted average EPS of the preceding three years with weights of 1, 2 and 3 for the EPS of 2nd, 3rd and 4th year respectively.

The startup is planning to launch an IPO at the beginning of 6th year, which is expected to be priced at P/E multiple of 12 on the EPS of the 5th year. The VC firm intends to divest its holding at the time of the IPO.

It has proposed to maintain a Dividend Pay-out Ratio of 10% for all 5 years.

The expected EBIT for the 5 years is as under :

(₹ in crore)

Probability	0.2	0.5	0.3
Year 1	4.0	8.0	10.0
Year 2	8.0	10.0	12.0
Year 3	10.0	12.0	14.0
Year 4	12.0	16.0	18.0
Year 5	16.0	20.0	24.0

Ignore Taxes.

As a financial advisor you are required to choose the alternative investment to be made by VC firm if its required rate of return is 14%.

Present Value Factor @ 14%

Year	1	2	3	4	5
PV Factor	0.877	0.769	0.675	0.592	0.519

(15 marks)

- (b) XYZ Company is planning an IPO of ₹100 crore (10 crore shares @ ₹10 each face value at a book-built price of ₹10 to ₹11). On expectation of huge response from the investors the company has provided for Green Shoe Option.

What role shall be played by the Stabilising Agent under below mentioned situations while going for Green Shoe Option :

- (i) Situation #1 - Where the Stabilising Agent manages to buy-back all of the Green Shoe Shares, i.e., 1,50,00,000 shares;
- (ii) Situation #2 - Where the Stabilising Agent manages to buy-back none of the Green Shoe Shares;
- (iii) Situation #3 - Where the Stabilising Agent manages to buy-back some of the Green Shoe Shares, say 90,00,000 shares.

Narrate the process of Green Shoe Option as per the SEBI (ICDR) Regulations, 2009, with regard to the above. (15 marks)

- (c) Disha Exports Ltd., engaged in garment exports, has proposed to expand its operations for which it requires funds of \$5 million, net of issue expenses amounts to 2% of the issue size. It has planning to raise the funds through a GDR issue. While considering this, the important factors in pricing the issue may be as under :

The expected domestic market price of the share is ₹300

- i. 4 shares underlie each GDR.
- ii. Underlying shares are priced at 10% discount to the market price.
- iii. Expected exchange rate to be Rs. 45/\$.
- iv. You are required to compute :
 - (a) The number of GDRs to be issued.
 - (b) Cost of GDR to the company if the dividend expected to be paid is 20% with a growth rate of 10% p.a. (10 marks)

- (d) ABC Bearings, a leading bearings manufacturer and exporter, is engaged in the business of flexible engineering solutions. The company enjoys almost monopolistic position (for its innovative products) throughout the country.

Presently the company is operating at 50% capacity however, it has surplus capacity which could be utilised later, if needed.

The financial results for 2019-20 are as under :

Particulars	Amount (₹ crore)
Sales	740
Operating Exp.	494
Operating Profit	246
Interest	36
Depreciation	60
Profit Before Tax	150

<i>Taxes</i>	<i>30</i>
<i>Profit After Tax</i>	<i>120</i>
<i>Share Capital</i>	<i>80</i>
<i>Reserves & Surplus</i>	<i>400</i>
<i>12% Non-Convertible Debentures</i>	<i>300</i>

The company has earned cash profit of ₹ 180 crore for 2019-20. The company is proposing to declare 100% dividends which would result in a cash outflow of ₹ 80 crores.

The Board of directors are exploring the possibility of buy-back of equity as the company does not have any scope to ploughing back its cash surplus. The shares of the company are quoted at a P/E multiple of 6.67.

Company seeks your advice in decision making. As a Company Secretary submit your report on the basis of the following points :

(1) What impact will buy-back have over the capital structure with respect to :

- (a) Equity shares,*
- (b) EPS,*
- (c) NAV and*
- (d) Dividend.*

(2) Compare and contrast buy-back option with :

- (a) Early redemption of its Non-Convertible Debentures (NCDs).*
- (b) Deploying the cash surplus in the Inter-Corporate Deposit (ICD) Market at 20%.*

(No computations are required).

(10 marks)

Answer 1(a)

Calculations for iNova Softech

The EBIT for the 5 years

(Rs. in Crore)

Year 1	0.8 + 4.0 + 3.0	7.8
Year 2	1.6 + 5.0 + 3.6	10.2
Year 3	2.0 + 6.0 + 4.2	12.2
Year 4	2.4 + 8.0 + 5.4	15.8
Year 5	3.2 + 10.0 + 7.2	20.4

(i) In case of Equity Investment of Rs. 50 lakh by the VCF -

The dividend for the 5 years

(Rs. in lakh)

	<i>EBIT (Rs. in lakh)</i>	<i>Dividend Pay-out (Rs. in lakh)</i>	<i>Dividend inflow to VCF</i>
Year 1	780	78	39
Year 2	1,020	102	51
Year 3	1,220	122	61
Year 4	1,580	158	79
Year 5	2,040	204	102

$$\begin{aligned} \text{The EPS for the 5th year is} &= \frac{\text{PAT}}{\text{No. of Shares}} \\ &= \frac{\text{Rs. 2040 lakh}}{10 \text{ lakh}} = \text{Rs. 204} \end{aligned}$$

Hence the divestment price = Rs. 204 x 12 = Rs. 2448

Cash inflow from divestment = 2448 x 5 = Rs. 12,240 lakh

The NPV for the investment will be:

	<i>Cash Flow (Rs)</i>	<i>Present Value Factor @ 14%</i>	<i>Present Value (Rs.)</i>
Year 0	(5,00,00,000)	1.000	-5,00,00,000
Year 1	39,00,000	0.877	+34,20,300
Year 2	51,00,000	0.769	+39,21,900
Year 3	61,00,000	0.675	+41,17,500
Year 4	79,00,000	0.592	+46,76,800
Year 5	1,23,42,00,000	0.519	64,05,49,800
Net Present Value			60,66,86,300

Cash Flow (Rs.) for Year 5 = 12,240 lakh + 102 lakh = Rs.1,23,42,00,000

(ii) Investment in FCDs:

Year	EBIT (Rs. in lakh)	Interest	EBT	EPS (Coupon: 20%)
1	780	100	680	136
2	1,020	100	920	184
3	1,220	100	1120	224
4	1,580	100	1,480	296

Conversion Price

EPS	Weights	Weighted EPS
184	1	184
224	2	448
296	3	888
		1520

$$\text{Weighted EPS} = \frac{1520}{6} = \text{Rs. } 253.3$$

The P/E multiple for conversion is 10

Conversion Price = Rs. 253.33 x 10 = Rs. 2,533.3

Assumption - rounded off to Rs. 2,500

Hence, the FCDs of Rs. 5 crore would be converted into 20,000 shares.

EPS during the 5th year = $(2040 - 0) / (5 + 0.2) = \text{Rs. } 392.31$

The divestment price is $392.31 \times 12 = \text{Rs. } 4707.72$ per share

The NPV of the investment is:

Year	Cash Flow	PV Factor@ 14%	PV Factor Present Value ei; 14%
0	(5,00,00,000)	1.000	-5,00,00,000
1	1,00,00,000	0.877	+87,70,000
2	1,00,00,000	0.769	+76,90,000
3	1,00,00,000	0.675	+67,50,000
4	1,00,00,000	0.592	+59,20,000
5	9,49,38,600	0.519	+4,92,73,133
		NPV	2,84,03,133

$$\begin{aligned} \text{*Dividend+ Divestment return} &= (20,000 \times 10 \times 3.923) + (4707.7 \times 20,000) \\ &= \text{Rs. } 7,84,600 + 9,41,54,000 = \text{Rs. } 9,49,38,600 \end{aligned}$$

Advice : Option 2 is better

Answer 1(b)

IPO Size= Rs.100 Crore (10 crore shares, at a book-built price of Rs.10 to 11).

Role of Stabilising Agent:

i) *Situation #1 - Where all Green Shoe Shares are bought back:*

In this situation, funds in the Green Shoe Escrow Account (Rs.15 Crore in this case) would be deployed by the stabilising agent towards buying up shares from the open market. Given that the prices prevalent in the market would be less than the issue price of Rs.10, the stabilising agent would have sufficient funds lying at his disposal to complete this operation. Having bought back all of the 1,50,00,000 shares, these shares would be temporarily held in a special depository account with the depository participant (Green Shoe Demat Account), and would then be returned back to the lender shareholders, within a maximum period of two days after the stabilisation period.

ii) *Situation #2 - Where none of the Green Shoe Shares are bought back :*

This situation would arise in the (very unlikely) event that the share prices have fallen below the Issue Price, but the stabilising agent is unable to find any sellers in the open market, or in an event where the share prices continue to trade above the listing price, and therefore there is no need for the stabilising agent to indulge in price stabilisation activities. In either of the above-said situations, the stabilising agent is under a contractual obligation to return the 1,50,00,000 shares that had initially been borrowed from the lending shareholder(s). Towards meeting this obligation, the issuer company would allot 1,50,00,000 shares to the stabilising agent into the Green Shoe Demat Account (the consideration being the funds lying the Green Shoe Escrow Account), and these shares would then be returned by the stabilising agent to the lending shareholder(s), thereby squaring off his responsibilities.

iii) *Situation #3 - Where some of the Green Shoe Shares are bought back, say 90,00,000 shares:*

This situation could arise in an event where the share prices witness a drop in the initial stages of the price stabilisation period, but recover towards the latter stages. In this situation, the stabilising agent has a responsibility to return 1,50,00,000 shares to the lending shareholder(s), whereas the stabilising activities have yielded only 90,00,000 shares.

Similar to the instance mentioned in Situation #2 above, the issuer company would allot the differential 60,00,000 shares (1,50,00,000 shares - 90,00,000 shares) into the Green Shoe Demat Account to cover up the shortfall, and the Stabilising Agent would discharge his obligation to the lending shareholder(s) by returning the 1,50,00,000 shares that had been borrowed from them.

Both in Situation #2 and #3, the issuer company would need to apply to the exchanges for obtaining listing/trading permissions for the incremental shares allotted by them, pursuant to the Green Shoe mechanism.

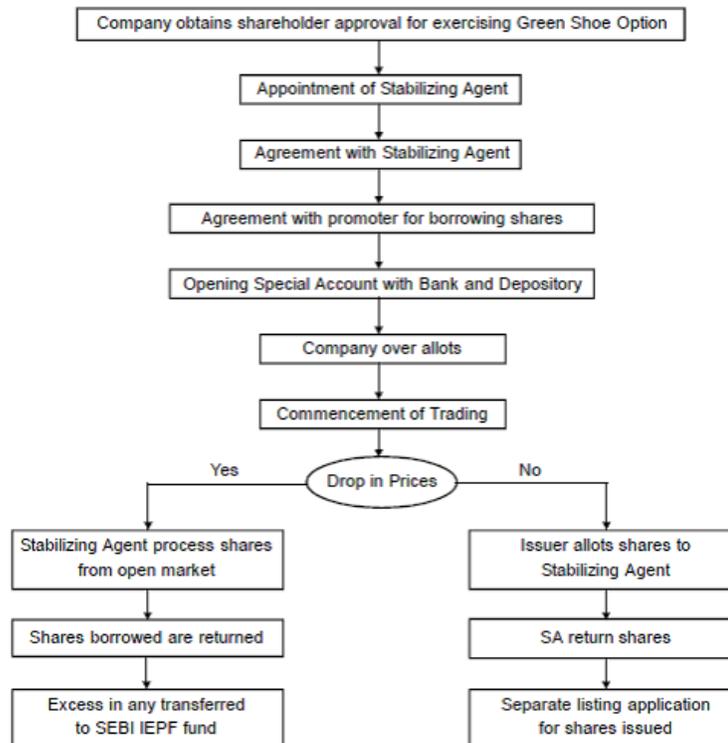
Any surplus lying in the Green Shoe Escrow Account would then be transferred

to the Investor Protection and Education Fund established by SEBI, as required under Regulation 45(9) of the ICDR Regulations and the account shall be closed thereafter.

Process of Green Shoe Option

As per the ICDR Regulations, the over-allotment component under the Green Shoe mechanism could be up to 15% of the IPO, i.e., up to 1,50,00,000 shares, i.e., Green Shoe shares.

Prior to the IPO, the stabilising agent would borrow such number of shares to the extent of the proposed Green Shoe shares from the pre-issue shareholders. These shares are then allotted to investors along with the IPO shares. The total shares issued in the IPO therefore stands at 1, 15,00,000 shares. IPO proceeds received from the investors for the IPO shares, i.e., Rs. 100 Crore (i.e., 10,00,00,000 shares at the rate of Rs. 10 each) are remitted to the Issuer Company, while the proceeds from the Green Shoe Shares (Rs. 15 Crore, being 1,50,00,000 shares x Rs. 10/-) are parked in a special escrow bank account, i.e., Green Shoe Escrow Account. During the price stabilisation period, if the share price drops below Rs. 100, the stabilising agent would utilise the funds lying in the Green Shoe Escrow Account to buy back these shares from the open market.



Answer 1(c)**Calculations for Disha Exports Ltd.**

Expected domestic price per share	=	Rs. 300
10% Discount on Market Price	=	Rs. 300 x 10% = Rs. 30
Discounted Market Price	=	Rs. 300 - Rs. 30 = Rs. 270
Price of each GDR	=	Rs.270 x 4 = Rs. 1080

$$\text{Expected domestic price per GDR} = \text{Rs. } \frac{1080}{45} = \$24$$

(a) Computation of the number of GDR to be issued:

$$\text{Amount to be raised} = \frac{\$ 5 \text{ Million}}{(1 - 0.02)} = \$5.10204 \text{ million}$$

$$\text{Number of GDRs to be issued} = \frac{\$ 5.10204}{\$ 24} = 2,12,585$$

(b) Computation of the cost of GDR to the company:

$$\text{Cost of GDR} = \frac{D_1}{P_0 (1 - f)} + g$$

Where

D_1 = Expected dividend

P_0 = Price of GDR

f = Flotation cost of issuing GDR

g = Growth rate

Expected Dividend = Rs. 45 x 0.20 = Rs. 9

Price of GDR = Rs. 1080

Flotation cost of issuing GDR = 2%

Growth rate = g = 10%

Cost of GDR

$$= \frac{9}{1080(1 - 0.02)} + 0.1 = \frac{9}{1058.4} + 0.1 = .0085 + 0.10 = 10.85\%$$

Answer 1(d)**Advice to ABC Bearings as a Company Secretary****(1) The Impact of buy-back of shares on the capital structure will be:**

- (a) *Equity Shares* : As the equity capital is reduced, the debt-equity ratio is improved and the company is more leveraged and its financial risk is increased.
- (b) *EPS* : As number of shares are reduced, the EPS will increase.
- (c) *NAV* : The book value of the share may reduce or remain unchanged depending upon the price paid for the buy-back of shares and existing NAV.
- (d) *Dividend* : Dividend payments would decrease and cash flows or reserves may increase in the future.

(2) Early redemption of Non-Convertible Debentures (NCDs)**(a) Buy-back of NCDs**

- i) If NCDs are purchased instead of shares, then there would be a steep decline in the debt-equity ratio reducing the leverage and financial risk of the company.
- ii) As cost of equity is more than cost of debt, purchase of NCDs may be preferred but in case of further need, it may have to raise funds at a higher interest rate.

(b) Deploying cash surplus in the ICDs (Inter-Corporate Deposits)

There would be an increase in earnings thereby increasing the EPS. However, the increase in EPS by purchase of ICDs versus buy-back depends on the interest income on ICDs and reduction in number of shares due to buy-back. Moreover, there would be reinvestment risk of interest inflows and security in repayment.

(c) Buy-back for Treasury Operations

This is purely an investment option. This operation should be undertaken only if the equity shares are currently under-priced. The shares can be purchased and held by the company. The shares can be resold when the prices move up. However, the company saves on the dividend outflows on these shares in the holding period.

Question 2

- (a) *Rakesh Ltd., has just paid a dividend of ₹32 per share. On account of modernisation (heavy investment in automated technologies) of plant, the directors intend not to pay any dividend for the next two years' period. However, in three years' time the company will resume paying dividend at ₹24 per share. The directors are optimistic to achieve dividend growth at 14% p.a. thereafter.*

In the event of modernisation not taking place, dividend will be paid in the next two years and the expected dividend growth will remain at present level of 8% p.a. The cost of equity is 18% and will not get affected even if the modernisation processes take place.

As a financial advisor you are required to:

- (a) Calculate the value of firm's shares in both the situations.
(10 marks)
- (b) Advise the Board of directors to which process they should resort to?
(10 marks)
- (c) Discuss the guiding code of conduct that shall be followed by Credit Rating Agencies as per SEBI (Credit Rating Agencies) Regulations, 1999. (10 marks)
- (d) Discuss delisting offer as per SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2015. (10 marks)

Answer 2(a)

Situation I (Present Situation):

The share price is P_0

$$= \frac{D_0 (1 + g)}{K_e - g} = \frac{\text{Rs. } 32 (1.08)}{0.18 - 0.08} = \frac{\text{Rs. } 34.56}{0.10} = \text{Rs. } 345.60$$

Situation II (Proposed Situation):

The share price after announcing the modernisation (assuming that the market believes the director's forecast of growth in dividend) is:

The share price at the end of year 2:

The share price is P_2

$$= \frac{D_3}{K_e - g} = \frac{\text{Rs. } 24}{0.18 - 0.14}$$

The present value of this price is = $\text{Rs. } 600 \times (1 / 1.18)^2 = \text{Rs. } 430.90$

Advice : Looking into the above, the price in the proposed situation is higher and so the directors may adopt the modernisation processes.

Answer 2(b)

Code of Conduct -To be followed by Credit Rating Agencies as per SEBI (Credit Rating Agencies) Regulations, 1999.

Every credit rating agency is required to abide by the following terms of the Code of Conduct as per SEBI Regulations:

- (1) A credit rating agency in the conduct of its business should observe high standards of integrity, dignity and fairness in all its dealings with its clients.
- (2) A credit rating agency should fulfil its obligations in an ethical manner.
- (3) A credit rating agency should render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgement. It shall wherever necessary, disclose to the clients, possible sources of conflict of duties and interests, while providing unbiased services.

- (4) The credit rating agency should avoid any conflict of interest of any member of its rating committee participating in the rating analysis. Any potential conflict of interest shall be disclosed to the client.
- (5) A credit rating agency should not indulge in unfair competition nor they wear away client of any other rating agency on assurance of higher rating.
- (6) A credit rating agency should not make any exaggerated statement, whether oral or written, to the client either about its qualification or its capability to render certain services or its achievements in regard to services rendered to other clients.
- (7) A credit rating agency should always endeavour to ensure that all professional dealings are affected in a prompt and efficient manner.
- (8) A credit rating agency should not divulge to other clients, press or any other party any confidential information about its client, which has come to its knowledge, without making disclosure to the concerned person of the rated company/client.
- (9) A credit rating agency should not make untrue statement or suppress any material fact in any documents, reports, papers or information furnished to SEBI or to public or to stock exchange.
- (10) A credit rating agency should not generally and particularly in respect of issue of securities rated by it be a party -
 - (a) to creation of false market.
 - (b) passing of price sensitive information to brokers, members of the stock exchanges, other players in the capital market or to any other person or take any other action which is unethical or unfair to the investors.
- (11) A credit rating agency should maintain an arm's length relationship between its credit rating activity and any other activity. A credit rating agency or any of his employees should not render directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or non-real time, unless a disclosure of his interest including long or short position in the said security has been made, while rendering such advice. In case an employee of the credit rating agency is rendering such advice, he should also disclose the interest of his dependent family members and the employer including their long or short in the said security, while rendering such advice.
- (12) A credit rating agency is required to abide by the provisions of the Act, regulations and circulars which may be applicable and relevant to the activities carried on by the credit rating agency.

Answer 2(c)

Delisting Offer under SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2015

This new regulation of Delisting Offer has been introduced under the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2015, w.e.f. 24-03-2015.

The Regulation 5A (1) clearly states that notwithstanding anything contained in

these regulations, in the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009:

Provided that the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement.

When the Delisting Offer is Unsuccessful

Further, the regulation 5A (2) clarifies that where an offer made under sub-regulation (1) is not successful,-

- (i) on account of non-receipt of prior approval of shareholders in terms of clause (b) of sub-regulation (1) of regulation 8 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or
- (ii) in terms of regulation 17 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or
- (iii) on account of the acquirer rejecting the discovered price determined by the book building process in terms of sub-regulation (1) of regulation 16 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009,

The acquirer shall make an announcement within two working days in respect of such failure in all the newspapers in which the detailed public statement was made and shall comply with all applicable provisions of these regulations.

Regulation 5A (3) specifies that in the event of the failure of the delisting offer made under sub-regulation (1), the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement under sub-regulation (2), file with the Board, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16 and shall comply with all other applicable provisions of these regulations:

Provided that the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders .

Explanation: For the purpose of this sub-regulation, scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations.

Question 3

- (a) *State the penalty levied for failure to redress investors' grievances as per The Depositories Act, 1996.* (2 mark)
- (b) *On February 15, Priya bought a January Nifty futures contract that cost her ₹ 5,00,000, An initial margin of ₹40,000 was paid by her to the broker. Each Nifty futures contract is for the delivery of 200 Nifty. On February 25, the index closed at 2,820. How much amount of profit/loss did she make ?* (3 mark)

Answer 3(a)**Penalty for failure to redress investors' grievances**

Section 19C of the Depositories Act, 1996, lays down that if any depository or participant or any issuer or its agent or any person, who is a registered as an intermediary with SEBI, after having been called upon by the SEBI in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified, such depository or participant or issuer or its agents or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.'

Answer 3(b)

Futures bought by Priya

Futures Contract Cost= Rs. 5,00,000

"Each Nifty futures contract is for the delivery = 200

Amount paid per Nifty futures = $\frac{\text{Rs.5,00,000}}{200}$ = Rs. 2,500

On the future expiration day, the future price coverage to the spot price. If the index closed at 2,820 this must be the futures close price as well.

Hence, profit made by Priya = (Rs. 2,820 - Rs. 2,500) x 200 = Rs. 64,000

Question 4

(a) *Face Value of a Commercial Paper is ₹ 20,00,000, Maturity period to be 90 days, Net Amount realised = ₹ 19,20,000 (excludes discount and other charges associated with issue = 1.5 per cent). Calculate pre-tax effective cost of Commercial Paper. (2 mark)*

(b) *What are the restrictions on communication and trading by insiders ? (3 mark)*

Answer 4(a)

Face Value of Commercial Paper = Rs. 20,00,000

Maturity period = 90 days

Discount and other charges = 1.5%

Net amount realised = 19,20,000

(Excludes Discount and other charges)

Pre-tax effective cost of Commercial Paper:

$$= \frac{\text{Face Value} - \text{Net Amount realised}}{(\text{Net amount realised} - \text{Discount and other charges})} \times \frac{360}{\text{Maturity Period}}$$

$$= \frac{\text{Rs.20,00,000} - (\text{Rs. 19,20,000} - \text{Rs. 30,000})}{(\text{Rs. 19,20,000} - \text{Rs. 30,000})} \times \frac{360}{90} = 23.3\%$$

Answer 4(b)**RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS**

Chapter II of the SEBI (Prohibition of Insider Trading) Regulation, 2015 imposes restrictions on Communication and Trading by Insiders Communication or procurement of Unpublished Price Sensitive Information except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

Multiple restrictions have been placed, i.e.

- (i) Prohibition on communication of unpublished price sensitive information
- (ii) Procurement of unpublished price sensitive information and
- (iii) Trading in securities when in possession of unpublished price sensitive information. The 1992 Regulations prohibited 'dealing' in securities when in possession of unpublished price sensitive information, amongst others; the expression 'dealing' has been replaced with 'trading' in securities. Under the Regulations, the definition of 'trading' has been kept wide. It must be noted that the 1992 Regulations placed no restrictions on the 'procurement' of unpublished price sensitive information by other persons.

Sub-section (1) of Section 3 prohibits any insider from communicating, providing or allowing any access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders.

Sub-section (2) of Section 3 prohibits from procurement or communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed

Question 5

(a) *State in brief about the types of financial intermediaries which facilitate a proper channel of investment.* (2 mark)

(b) *The financial information of Beta Ltd. is as under:*

	<i>Amount (₹)</i>
<i>Equity Share Capital</i>	<i>56,00,000</i>
<i>Retained Earnings</i>	<i>84,00,000</i>
<i>Face value of Shares</i>	<i>10/-</i>
<i>Current Market Price</i>	<i>20/-</i>
<i>15% Preference Share Capital</i>	<i>40,00,000</i>
<i>Profit after Tax 60,00,000</i>	
<i>Equity Dividends paid</i>	<i>22,40,000</i>

Calculate :

i. Dividend Yield

ii. Return on Equity.

(3 marks)

Answer 5(a)

Type of Financial Intermediaries

(i) **Capital Market Intermediaries** : These intermediaries mainly provide long term funds to individuals and corporate customers. They consist of Term Lending Institutions like Financial Corporations and Investment Institutions like Life Insurance Corporation of India (LIC).

(ii) **Money Market Intermediaries** : Money market intermediaries supply only short term funds to individuals and corporate customers. They consist of commercial banks, cooperative bank, etc.

Answer 5(b)

No. of Equity Shares held by the Company

$$= \frac{\text{Rs.}56,00,000}{\text{Rs.}10} = \text{Rs.}5,60,000$$

$$\text{Preference dividend paid} = \frac{15}{100} \times \text{Rs.}40,00,000 = \text{Rs.}6,00,000$$

I) Dividend Yield

$$= \frac{\text{Dividend per share (DPS)}}{\text{Market Price per share (MPS)}}$$

$$\text{Where, DPS} = \frac{\text{Rs.}22,40,000}{\text{Rs.}5,60,000} = \text{Rs.}4$$

$$\text{Hence Dividend Yield} = \frac{\text{Rs.}4}{\text{Rs.}20} = 20\%$$

II) Return on Equity : $\frac{\text{Net Profit after Pref. Dividend}}{\text{Net worth}}$

$$= \frac{(\text{Rs.}60,00,000 - \text{Rs.}6,00,000)}{(\text{Rs.}56,00,000 + \text{Rs.}84,00,000)} = \frac{\text{Rs.}54,00,000}{\text{Rs.}1,40,00,000} = 0.386 = 38.6\%$$

Question 6

On 3rd March 2020, Anuj, a Delhi based gold jeweller buys 12 kgs. of gold in the cash market as a raw material to make jewellery from it. Anuj wants to protect himself from a decline in the prices of gold till the jewellery is ready for sale in 45 days. He decides to hedge by selling futures contract of gold. The standard deviations of the change in the cash price of gold and change in futures price of gold over the last 45 day period is 0.88 and 0.60 respectively. The coefficient of correlation between the change in cash price and the futures price of gold for 45 days is 0.87. Standardised futures contract size of gold is 1 kg.

(i) Calculate Optimal Hedge Ratio

(ii) How much gold futures contracts should be sold by Anuj ? (5 marks)

Answer 6

Optimal Hedge Ratio (h) = $p \cdot (\sigma_{\Delta CP} / \sigma_{\Delta FP})$ Where:

h = Optimal Hedge Ratio

p = Coefficient of correlation between ΔCP & ΔFP

ΔCP = Change in cash price

ΔFP = Change in futures price

$\sigma_{\Delta CP}$ = Standard deviation of ΔCP

$\sigma_{\Delta FP}$ = Standard deviation of ΔFP

i) Optimal hedge ratio

$$= \frac{0.87 \times 0.88}{0.60} = 1.276$$

ii) Gold futures contracts to be sold

$$= \frac{1.276 \times 12}{1} = 15.312 \text{ Kg. OR } 15 \text{ Kg.}$$

(Anuj should sell 15 (rounded off) gold futures contracts to hedge the physical exposure of 12 kg. of gold.)

INSURANCE LAW AND PRACTICE
(Elective Paper 9.3)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

M/s. XX is a registered partnership firm. Their line of activity is trading in cotton. For the purpose of their business, they had taken M/s JJ Traders Cotton Ginning Mill on lease. The claim of M/s XX firm is that, an accidental fire took place in the godown of M/s JJ Traders, leased by them where its cotton stocks were stored and insured, at about 2.10 a.m. in the morning hours of 24.08.1999 and according to the Firm, the estimated loss was of ₹1.90 crore. The cotton stocks in question were covered by seven insurance policies issued by M/s. OPQ Insurance Company Ltd. for a total sum of ₹1.98 Crore during the period when the fire accident took place. The firm made a claim of ₹1.90 crore towards loss of stock due to accidental fire in its business premises, with the insurer. Pursuant to the claim so made, the insurance company appointed Mr. K a licensed surveyor for preliminary investigation and for submitting a preliminary report, about the cause of fire and the probable loss said to have been suffered by the insured.

The surveyor having examined the place of fire accident gave preliminary report dated 09.09.1999 to the insurance company estimating the loss of stock at ₹ 1,73,92,310/- however, had noticed in his report that the number of bales and borahs lying in the Godown and the actual quantity of lint damaged by fire has to be got confirmed from the accounts of the insured and also by physical verification of bale hoops. The insurer after receipt of the preliminary report of Mr. K, had appointed Joint Surveyors M/s. M & K in terms of Section 64 UM (2) of the Insurance Act to give a joint report.

Section "64- UM(2) specifically states that - No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessors) : Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor. Sub-section (2) mandates that no claim in respect of a loss which has occurred in India and requiring to be paid in India equal to or exceeding twenty thousand rupees in value on any policy of insurance be admitted for payment, unless insurer obtains a report on the loss that has occurred from a person who holds a license issued under sub-section (1) of Section 64 UM of the Act as a Surveyor or

loss assessor. As entrusted, the Joint Surveyors conducted a joint survey and in that, had estimated the loss of stock insured at ₹1,67,80,925/- and gave a report to that effect to the insurer. The insurer being of the view that the report is perfunctory had appointed yet another Surveyor viz. M/s. DG & Co. who, in turn appointed one Mr. P, former DIG (Fire) to investigate and submit a report, who in turn after investigation and survey submitted his report dated 07.05 2000, confirming the quantification made by the Joint Surveyor.

Since the insurer was not satisfied with the aforesaid report also, again appointed M/s. RS & Co., Chartered Accountant to give a fresh report by estimating the loss of stock insured due to accidental fire incident. After inspection of the godown and verifying the books of accounts, he estimated the loss of stock at ₹1,05,00,817/-. The insurance company had placed the aforesaid report before the Joint Surveyor viz. M/s. M & K for their opinion. The joint surveyors in their clarificatory report dated 06.01.2000 did not agree with the findings of the Chartered Accountant, on the ground that the chartered accountant had based his report only after verifying the books of accounts for the period 01.10.1998 to 31.03.1999 and not till the date of fire accident.

Since there was inordinate delay in settling the lawful claim under the fire insurance policy, the appellant Firm preferred original complaint before the National Consumer Forum against the insurer, inter-alia, alleging that there was deficiency in service and, therefore, they are entitled for a sum of ₹1,67,80,925/- being the value of loss assessed by the Joint Surveyors and, therefore, sought a direction to the insurer for payment of the aforesaid amount with interest at 18% from the date of fire accident till its realization and for payment of a sum of ₹6,91,155/- being the value of the salvage as assessed by the Surveyors and also to award damages in causing unnecessary and unwarranted delay in settling the claim under the insurance policy. The National Consumer Disputes Redressal Commission, on the concession made by the insurance company based on the report of Chartered Accountant has passed the impugned order, directing the insurer to pay a sum of ₹1,05,00,817/- with interest at 6% per annum from 01.03.2001 till the date of payment within two months from the date of receipt of the order. As regards the quantum of loss, it was observed that due weightage is to be given to the estimates made by various Investigators appointed by the Insurance Co.

The first three Investigators assessed the loss at about the same figures i.e. the loss is of 1350 fully pressed bales of cotton and 88 boras of lint valued that about ₹1.73 to ₹1.74 crores. However, the Insurance Co. having noticed that these Investigators had not gone into the details of transactions and stocks in a thorough manner, asked another Chartered Accountant, M/s R & Co. to specially ascertain the quantum of loss caused by the fire. M/s R & Co. submitted a "Accounts Verification Report" on 22.11.2000 and assessed the loss at ₹1,05,00,817/-. They also furnished subsequent clarification on 22.12.2000, 22.01.2001 and 09.09.2002 pointing out the lacunae in the reports of the previous Investigators". Finally, the opposite party themselves, while disputing their liability to pay, have however agreed that the loss is only ₹1,05,00,817/- and not ₹1.90 crore, as claimed by the appellant. It was also observed by the Senior counsel for the appellant that, despite the surveyors having consistently given a specific finding that the claim was bonafide and the fire was accidental had assessed the loss at ₹1.70 crore, the insurance company has

repudiated the claim on frivolous ground, that too after a period of three years from the date of fire incident. It is further contended that the company had appointed several surveyors, which they could not have done in terms of Section 64-UM of the Insurance Act, 1938. To justify the rejection of the claim, the insurance company in their letter to the Joint Surveyors made the following observations :

- The cause of the accident is mentioned as electrical short circuit because of voltage fluctuations. When the stocks were kept in a locked godown and when there was no kind of activity for months together, we wonder as to why the lights in the godown were kept switched on round the clock. Had the lights been switched off the short circuit causing the fire accident could not have occurred. Please let us have your comments.
- From the balance sheet of insured as on 31st March, 1999 nearly 50% of the purchases i.e. ₹1.07 crore out of ₹2.27 crore were from individual village ryots on credit basis. We felt in a claim of such a magnitude some random investigation is required on the credit purchases to confirm their genuinity.
- As per the preliminary survey report there were two varieties of bales/borahs viz. MCU-5 @ ₹7,140/- per quintal in bales and ₹7,040/- per quintal in borahs and LK variety @ ₹5,650/- per quintal in bales and ₹5,550/- in borahs. But in your assessment you have taken the entire quantity as a single variety i.e. MCU-5 @ ₹7,193/- per quintal in FP bales and ₹7,084-19 per quintal in borahs and assessed the loss @ ₹1,74,82,080/-. Whereas, when we have applied the different rating the assessment is ₹1,72,57,305/-. Please clarify.

Finally, the Supreme Court, in view of the above discussion, directed the Insurance Company, to pay ₹1,05,00,817/- with interest at the rate of 9% as compensation from the date of assessment done by the Chartered Accountant, within two months from the date of this order i.e. from 01.03.2001 as against the claim of the appellant at 18% from the date of the fire accident, viz. 24.08.1999.

Questions :

- (i) As cited in the facts of the case, justify whether the insurance company can repeatedly appoint Surveyors after Surveyors for getting the loss/damage assessed before settling the claim of the insured ? Cite the provisions of Section-64 UM of the Insurance Act, 1938, to justify your answer. (10 marks)
- (ii) Discuss the coverage of Fire insurance policy and the various types of fire insurance policies. In the given case which type of fire insurance policy is suitable and why ? (10 marks)
- (iii) Fire Insurance is the mother of all insurance policies, but then it inherently excludes some of the losses/exposures. Elucidate. (10 marks)
- (iv) Was there a "deficiency in service" as alleged by the appellant and is his claim for interest at 18% justified ? Enumerate the procedure to be followed in a fire claim. (10 marks)
- (v) Discuss the options available to the Firm under the COPA Act, 1986 for claim, and also substantiate whether the National Consumer Commission was justified in awarding 6% interest per annum. (10 marks)

Answer 1(i)

As rightly observed by the learned senior counsel appearing for the appellant Firm that the action of the insurance company in appointing several surveyors till it got a favourable report to suit its estimation of loss of stock in the fire incident is illegal and shatters the confidence and trust of the people on the very purpose of insurance. From the facts of the case, it is further observed that the National Commission despite upholding the report of the Joint Surveyors which assessed the loss at Rs. 1,64,70,407.00 should not have accepted the concession made by the insurer and directed the insurance company to pay only the amount as quantified by the chartered accountant. It can be also seen that the National Commission despite giving a finding that there is gross deficiency in service has only granted interest at 6% per annum from 01.03.2001 and not from the date of fire accident, which, according to learned counsel is improper and illegal.

However, in response to the submission made by learned senior counsel for the appellant, the learned counsel of the insurer in the counter affidavit filed by them before this Court in justification of the order passed by National Consumer Commission and then submits that the provisions of Section 64-UM of Insurance Act, 1938 does authorize the insurer to appoint surveyor or surveyors, may be for the second time for the purpose of getting a fair report of the actual loss suffered by the insured. The learned counsel also submitted several reasons for not accepting the report of Joint Surveyors in view of the lacuna pointed out by the Chartered Accountant, who was asked to verify the Books of Accounts maintained by the insured to ascertain the actual loss incurred due to the fire accident by the insured in its place of business and therefore, there is no illegality committed by the National Consumer Commission in accepting the report of Chartered Accountant and directing the insurance company to pay as assessed and quantified by an independent agency. The learned counsel also submits that keeping in view the facts and circumstances of the case.

The National Consumer Commission was justified in awarding interest at the rate of 6% per annum from 01.03.2001, though a claim was made for awarding interest at the rate of 18% from the date of fire incident till the date of payment.

As per section 64 UM (2) of the Insurance Act, 1938, no claim in respect of a loss to which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor "approved surveyor or loss assessors". Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor.

Sub-section (2) mandates that no claim in respect of a loss which has occurred in India and requiring to be paid in India equal to or exceeding twenty thousand rupees in value on any policy of insurance be admitted for payment, unless insurer obtains a report on the loss that has occurred from a person who holds a license issued under

sub-section (1) of Section 64 UM of the Act as a Surveyor or loss assessor. The proviso to sub-section (2) however, retains the right of the insurer to settle a claim for an amount different from that assessed by the surveyor. Therefore, this provision impliedly permits an insurer to obtain a second or further report where considered appropriate or expedient in the circumstances of a case based upon which the claim could be settled for a different amount than as assessed earlier.

The Supreme Court however, very clearly observed that the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. Scheme of Section 64-UM particularly, or sub-section (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent defects if it is found to be arbitrary, excessive, exaggerated etc., it must specify cogent reasons without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/Surveyors. There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.

In our considered view, the Insurance Act only mandates that while settling a claim, assistance of surveyor should be taken but it does not go further and say that the insurer would be bound whatever the surveyor has assessed or quantified, if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured.

Answer 1(ii)

A fire insurance plays an imperative role by shielding individuals and business establishments against various types of losses or damages which may arise due to fire. Moreover, a fire insurance policy can be purchased by both households and business owners. The scope of a fire insurance policy includes both moveable and immoveable properties. It should be noted that a fire policy includes all those properties which are on land and do not cover those which are in transit. The scope of fire insurance policy includes coverage against:

- **Building** - Both completed or under construction;
 - Electricals, partitions, interiors.
- **Plant & Machinery, Equipment & Accessories**
 - New machinery;
 - Second-hand machinery;
 - Obsolete machinery.

- **Stocks**

- Raw materials;
- Finished goods;
- In process;
- In trade which belongs to manufacturer, retailer, wholesaler.
- Other items, like cables, piping;
- Furniture & fixtures;
- Tools, spares;
- Household items etc.
- In addition to the above, there are other specific items like work of art, manuscripts which are covered on agreed value basis as add-on coverage with additional premiums.

However, the policy excludes items like Precious stones, coins, stamps, account books, cheques, explosives, etc.

Additionally, the fire insurance covers the above mentioned assets against the following perils:

- Fire;
- Lightning;
- Explosion /implosion;
- Aircraft damage;
- Riot, Strike, Malicious and Terrorism Damage (RSMTD);
- Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation (STFI) Impact damage by rail/ road/ vehicle or animal;
- Subsidence and landslide (including rockslide);
- Bursting and /or overflowing of water tanks, apparatus and pipes;
- Missile testing operations;
- Leakage from automatic sprinkler installations;
- Bush fire - forest fire excluded;
- The liability of the insurance company shall in no case exceed the sum insured for each item stated in the schedule or Total Sum Insured;
- With additional premiums another 14 add on covers may be provided;
- Architects, Surveyors, and Consulting Engineers fees (in excess of 3% of adjusted loss) Cost of removal of debris (in excess of 1% of claim amount);

- Deterioration of stocks in cold storage premises due to Power failure / Change in temperature;
- Forest fire;
- Impact damage due to insured's own vehicle, forklifts etc.;
- Spontaneous combustion including own fermentation and natural heating;
- Omission to insure addition / alteration / extensions;
- Earthquake (fire and shock) - India has four zones for rating purposes Leakage and contamination cover- applicable to oils and chemicals only Temporary removal of stocks - not exceeding 10% of S.I under the policy Loss of rent - caused by operation of insured perils.
- Additional rent for alternative accommodation - caused due to operation of insured perils Start-up expenses.

Answer 1(iii)

The scope of fire insurance is quite extensive. The policy covers almost all types of damages which are caused due to fire and other allied perils. However, there are some exclusions too in the policy. These exclusions specify when the coverage under the fire insurance policy would not apply. The list of exclusions is common under most fire insurance policies though they might be offered by other insurance companies. This list is as under:

- Any type of loss or damage which is caused due to war and related perils like invasion, civil commotion, military revolution, civil war, rebellion, etc.
- Any type of loss or damage which is caused due to nuclear contamination, radiation or related perils.
- Any type of loss or damage which is caused by contamination or pollution. However, if there is contamination or pollution which happens due to an insured peril, such pollution or contamination would be covered. However, if the peril which is insured under the policy, happens due to pollution, the damages suffered would not be covered.
- Aircraft damages which happen due to pressure waves.
- Any type of loss or damage which is caused due to earthquakes, volcanic eruptions, etc.
- However, fire insurance policies provide extension coverage for these instances. The policyholder can get coverage for them by opting for the extension cover.
- Things like artwork, money, important documents, precious stones, etc. would not be covered under a standard fire insurance policy. To avail coverage for them, their particulars should be clearly detailed when buying the policy.
- Any type of loss or damage in cold storage if there is a change in temperature.
- Any type of loss or damage caused to the electrical equipment, apparatus,

furniture and fixtures, etc. which happens due to short circuit over usage, extreme pressure, etc.

- Any type of loss of valuables belonging to the policyholder from theft, burglary or housebreaking either before the peril happens or after there has been damage.
- Costs of surveyors, engineers, architects, etc. would not be covered under the plan.
- However, there is an extension available for covering these costs. The policyholder can buy the extension and get these costs covered.
- The costs incurred in removal of debris after the damage has been done are not covered.
- This coverage can also be availed by choosing the debris removal extension under the policy.
- Any type of consequential losses are not covered under the plan.
- Loss of earning or loss due to delay in production after damage has occurred is not covered.
- Besides these exclusions, fire insurance policies also have an excess clause. Under this clause, in every instance of claim, the limit of excess would have to be borne by the policyholder. The insurance company would then pay the remaining claim. For instance, if the excess limit is Rs. 10,000 and the claim is Rs.25,000, the insurance company would pay Rs. 15,000 and the remaining Rs. 10,000 would have to be borne by the policyholder. So, these are the common exclusions under fire insurance policies. The policyholder should know these exclusions so that he/she might know when to make a claim under the policy.
- To summarize, the Standard fire and special perils excludes:
 - 5% of each and every claim - Subject to a minimum of Rs. 10,000/ in AOG Perils;
 - Rs.10,000/ for each and every loss out of other perils;
 - Losses due to War/ ionizing/ radiation/ nuclear fuel or material pollution;
 - Loss, destruction or damage caused to bullion, precious stones, works of art exceeding <10000, books of accounts, paper money, explosives etc.;
 - Stocks in cold storage;
 - Any electrical /electronic machinery;
 - Loss of earnings, loss by delay, consequential loss etc.;
 - Loss /damage by spoilage, interruption/ cessation of any process;
 - Loss by theft during or after the peril;
 - Loss by natural calamity;

- Loss due to temporary shifting of machinery for repairs, cleaning, renovation for a period not exceeding 60 days; and
- Expenses in excess of 3% of Architects, surveyors, engineer's fees, & 1% of claim amount for debris removal.

Answer 1(iv)

As observed from the facts of the case, although the appellant firm had argued that there is deficiency of service on the part of the Insurance Company with regards to delay in settlement of the claims, and interest payments, we can clearly understand from the following observations that there is no deficiency in service. The Insurance company gave the following reasons and justifications:

In view of certain discrepancies in the joint report of the Joint Surveyors, the insurer was constrained to appoint a Chartered Accountant for verification of the books of accounts of the insured to ascertain the actual quantum of loss caused by fire accident in the business place of the appellant.

The Chartered Accountant, after detailed verification of the books of accounts and other relevant material had assessed the loss at Rs. 1,05,00,817.00. In his report, he has stated that the Joint Surveyors without verifying the books of account and other relevant records of the appellant firm had assessed the loss which does not reflect the loss sustained by the insured. They had also pointed out various other omissions in the joint report of the Joint Surveyors.

The insurer for the purpose of ascertaining the actual loss sustained by the insured had sought clarifications from the Joint Surveyors in view of the findings by the Chartered Accountant.

The Parties have not given any evidence in support of their claim. In fact, National Consumer Commission has proceeded to decide the dispute between the parties based on certain documents filed by the parties along with their pleadings.

The Court in the current stage, carefully perused the joint survey report submitted by the surveyors who were appointed by the insurer and the report of the Chartered Accountant. The perusal of the joint survey report reveals that the Joint Surveyors without going into the records of the appellant firm had assessed the loss said to have been sustained by the insured in the fire accident. The Joint Surveyors had arrived at the cost of own Ginned lint at Rs.7084.00 as against the records of the insured which itself shows the cost of Ginned lint at Rs. 6,229.35 and Rs. 6,181.57 per quintal. Secondly, the Joint Surveyors had taken into account 88 borahs while assessing the loss, whereas as per the records of the insured submitted to the bank, there were 551 borahs as on 31.07.1999. Out of which 548 borahs were sold from 01.08.1999 to 24.08.1999, (the date of the fire incident) thus leaving only 3 borahs in the stock.

The Supreme Court also observed that the Insurance Act only mandates that while settling a claim, assistance of surveyor should be taken but it does not go further and say that the insurer would be bound whatever the surveyor has assessed or quantified, if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh

survey to estimate the loss suffered by the insured. In the present case, the insurer has stated in the counter affidavit filed before the National Commission and even before us, why the appointment of second Surveyor was necessitated and also has given valid reasons for appointing second Surveyor and also has assigned valid reason for not accepting the report of Joint Surveyor. The correspondence between the insurer and the Surveyors would indicate the particulars differed by the insurer for differing with the assessment of loss made by the Surveyors. The option to accept or not to accept the report is with the insurer. However, if the rejection of the report is arbitrary and based on no acceptable reasons, the courts or other forums can definitely step in and correct the error committed by the insurer while repudiating the claim of the insured. The Court also mentioned that if the reports are prepared in good faith, due application of mind and in the absence of any error or ill motive, the insurance company is not expected to reject the report of the Surveyors.

Answer 1(v)

The Consumer Protection Act is an act of Parliament enacted in 1986 to protect interests of consumers in India. It makes provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. Consumer Protection Councils are established at the national state and district level to increase consumer awareness. The Central Consumer Protection Council is established by the Central Government which consists of the Minister of Consumer Affairs as the chairman and such number of other official or non-official members representing such interests as may be prescribed. The State Consumer Protection Council consists of the Minister in charge of consumer affairs in the State Government as the Chairman and such other officials appointed by the Central and State Government.

As regards the options available to consumers for their redressal and complaints, the following avenues are available:

- District Consumer Disputes Redressal Forum established by the State Government in each district of the State. The State Government may establish more than one District Forum in a district. It is a district level court that deals with cases valuing up to Rs. 20 lakhs.
- State Consumer Disputes Redressal Forum established by the State Government takes up cases valuing up to Rs. 1 crore .
- National Consumer Disputes Redressal Commission established by the Central Government, which works as a national level Court and deals with more than Rs. 1 crore.
- The New COPA Act, 2019 has revised the limits and has widened its scope of operations to include e-commerce, online consumers.

None of the above option can entertain a complaint unless it is filed within two years from the date on which the cause of action had arisen. Notwithstanding the above, a complaint may be entertained after the period of two years, if the complainant satisfies the concerned forum that he had sufficient cause for not filing the complaint within such period and the reason for condonation of the delay is recorded by the concerned forum.

With regard to the question of awarding rate or interest as compensation in cases where loss is caused due to deficiency/delay in services, this court in various judgments has held that the award of compensation must depend on facts and circumstances of each case and has to be worked out after determining the amount of loss suffered by the consumer. The Court opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. Therefore, in this case it has been made clear that if the insurer is not satisfied with the assessment of the surveyor, he retains the right to settle the claim for a different amount. The insurer after rejecting the assessments of the surveyor and the joint surveyor has accepted the assessment made by the Chartered Accountant. Therefore, it would not be correct to say that insurer while settling the claim has caused an unnecessary delay of three years. But once the insurer has reached a settlement he should make the payment at the earliest. And if further delay is caused by the insurer in making the payment then he should be made liable to pay the interest on the amount settled, as compensation at the current rate of interest till the payment is made, as it has deprived the appellant from using his money for which he is legitimately entitled. Thus, in view of the above discussion, we direct the respondent Insurance Company to pay Rs.1,05,00,817.00 with interest at the rate of 9% as compensation from the date of assessment done by the Chartered Accountant, within two months from the date of this order is justified.

Question 2

Mr. J who governed by the Hindu Succession Act, 1956, died intestate on June 15, 1967 leaving behind his son. Mr. A (plaintiff No. 2), his widow, Mrs U (defendant) and his mother Mrs S (plaintiff No. 1) as his heirs. He had during his lifetime taken out two insurance policies for ₹10,000 each and had nominated under section 39 of the Act his wife as the person to whom the amount was payable after his death. On the basis of the said nomination, she claimed absolute right to the amounts payable under the two policies to the exclusion of her son and her mother-in-law. Thereupon his mother and son (minor) represented by his next friend Mr. A who was the father of J filed a suit in Civil Suit, for a declaration to the effect that they were together entitled to 2/3rd share of the amount due and payable under the insurance policies referred to above. Mrs U, the defendant and wife resisted the suit. Her contention was that on the death of the assured, she as his nominee became absolutely entitled to the amounts due under the insurance policies by virtue of section 39 of the Act.

Section 39 of the Act reads as :

- (1) *The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death :*

Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

- (2) *Any such nomination in order to be effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any*

such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

Questions :

- (a) *From the facts of the case, explain whether a nominee under section 39 of the Act gets an absolute right to the amount due under a life insurance policy on the death of the assured. (10 marks)*
- (b) *Differentiate between nomination u/s 39 Vs. Assignment u/s 38 and the implications of these sections on the given facts of the case. (10 marks)*
- (c) *Identify and explain the fundamental governing principle applicable in the given case, and explain finally the validity of the plaintiffs' mother and son for the compensation. (10 marks)*

Answer 2(a)

A mere nomination made under Section 39 of the Insurance Act, 1938 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them. An analysis of the provisions of Section 39 of the Act clearly established that the policy holder continues to hold interest in the policy during his life time and the nominee acquires no sort of interest in the policy during the life time of the holder. If that is so, on the death of the policyholder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. The tenuous character of the right of a nominee becomes more pronounced when one contrasts the provisions of Section 39 with that of section 38. Section 39 of the Act was not intended to act as a third mode of succession provided by the statute and incorrectly styled as "statutory testament". The language of section 39 of the Act is neither capable of altering the course of succession under law nor can be said to have equated a nominee to an heir or legatee. Thus, it is clear that a nominee under section 39 of the Act does not get an absolute right to the amount due under a life insurance policy on the death of the assured.

Answer 2(b)

Assignment under section 38 of Insurance Act, 1938, 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, e.g.

Endowment Policy, Money-back Policy, Unit Linked Insurance Policy etc. 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. In practice, a 'space for endorsements' is provided in the insurance policy contract where the Policyholder (Assignor) affixes the statement of assignment along with reasons therefor. This endorsement is required to be signed by the Policyholder and the signature should be witnessed by any person competent to contract. An assignment can be only for valid reasons. 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. A majority of insurance policy assignments are carried out towards providing the insurance policy as a collateral security towards loans taken from financial institutions. In these cases a condition is added to the endorsement which states that on the repayment of the loan, the policy shall stand automatically re-assigned to the policyholder and the future benefits shall become payable to the policyholder. Assignment of an insurance policy to an unrelated person without a valid consideration is also viewed as a possible route for money laundering, thereby attracting enhanced scrutiny. Under the current laws, the Insurer has the limited authority of ensuring that the assignment documents are in order and has the obligation to register the assignment. The Insurer cannot deny an assignment. An assignment is effective on the date when the assignment documents in proper order are received by the Insurer. Upon registration of the assignment with the Insurer, the Assignee becomes the absolute owner of the benefits under the policy. Any nominations made by the Assignor (Policyholder) stands cancelled. However, some insurance policies enable granting of a loan by the Insurer, in which case the Policy gets assigned to the Insurer. Under such assignments, if the policy is reassigned or if the assignment is cancelled, the nomination made earlier by the policyholder survives and the policyholder is not required to make a fresh nomination after reassignment.

Nomination is a facility that enables a Policyholder to nominate an individual, who can claim the proceeds of the Policy, upon the demise of the Policyholder. Nomination is dealt with under Section 39 of the Insurance Act, 1938. It lays down that the Policyholder who holds a policy of life insurance on his own life may nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. Where any nominee is a minor, a major should be appointed to receive the money secured by the policy in the event of death of the policyholder during the minority of the nominee. A nomination can be made either at the time of buying the policy or at any time before the policy matures for payment. Any nomination made earlier can be replaced by a new nomination during the term of the policy. Any such nomination in order to be effectual is required to be incorporated within the policy either by way of a text in the policy itself or by way of an endorsement to the policy. While it is the right of the Policyholder to effect the endorsement, in order to be effective, such nomination should be communicated by the policyholder to the Insurer and registered by the Insurer in the records relating to the policy. Where a nomination is cancelled or changed by an endorsement or a will and a notice or such change in nomination is given by the policyholder to the Insurer, the Insurer is not liable for any payment made under the

policy to a nominee mentioned in the text of the policy or registered in records of the insurer. Where the policy matures for payment during the lifetime of the Policyholder or where the nominee(s) die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder or a succession certificate, as the case may be. Where the policy matures for payment during the lifetime or the person whose life is insured or where the nominee or, if there are more nominees than one all the nominees die before the policy-holder or his heirs or legal representatives or the holder of a succession certificate as the case may be.

The legal position of a nominee in an insurance policy, has been well laid down by the Supreme Court in the *Smt. Sarabati Devi & Anr v/s Smt. Usha Devi* case where it held that a mere nomination made under Section 39 of the Insurance Act, 1938 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

Answer 2(c)

The fundamental principle applicable in a life insurance policy is insurable Interest and secondly, Utmost good faith. While Insurable interest refers to the legal right of the insured to take a policy, utmost good faith refers to the materiality in the disclosures made by the policyholder in the application. This principle mandates the policyholder to make complete disclosure of all material facts affecting the insurance policy. With reference to the case, as cited before, the nominee under section 39 of the Act is nothing more than an agent to receive the money due under a life insurance policy. In such circumstances, the money remains the property of the assured during his lifetime and on his death forms part of his estate subject to the law or succession applicable to him. There are vital differences between the nomination contemplated under Section 39 of the Act and the nomination contemplated under the proviso to Section 44(2) of the Act.

In the first place, the sum assured, with which alone Section 39 was concerned was to be paid in the event of the death of the assured under the terms of the contract entered into between the insurer and the assured and consequently it was the contractual right which remained vested in the insured with reference to which the nomination happened to be made. It should be pointed out that the nomination as well as the liability on the part of the insurer to pay the sum assured become effective simultaneously namely at the moment of the death of the assured. So long as he was alive the money was not payable to him, in the case of a whole life policy and equally, having regard to the language of Section 39(l) of the Act the nominee's right to receive the money arose only on the death of the assured. It was in this context that the Court took the view that the title remained with the estate of the deceased, and therefore with the heirs of the deceased that the nomination did not in any way affect the title and that it merely clothed the nominee with the right to receive the amount from the insurer.

On the other hand the provisions and purport of Section 44 of the Act are different. In the first place under Section 44 it was a statutory right conferred on the agent to

receive the commission on the renewal premium notwithstanding the termination of the agreement between the agent and the insurer, which provided for the payment of such commission on the renewal premium. Section 44 provides for the payment of the commission to the agent during his lifetime only and does not contemplate the contingency of his death and the commission being paid to anybody even after his death. Thus it was not the general law of inheritance which conferred title on the heirs of the deceased insurance agent to receive the commission on the renewal premium, but it was only the particular statutory provision under the Insurance Act. Therefore, the Court held the opinion that the meaning of section 39 of the Act and hold that a mere nomination made under section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount on the payment or which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

In the present case, it is not disputed that the plaintiffs are under the law of succession governing them each entitled to 1/3rd share in the estate of the deceased. Therefore, it was decided by the Court that each of the plaintiffs (Mother and Son) is entitled to 1/3rd share in the amount received under the insurance policies in question and the interest which may have been earned by its investment.

Question 3

"If there is no insurable interest, the insurance contract becomes wagering contract, and therefore illegal, null and void". Elucidate the statement with reference to the principle on the life of other relations. (5 marks)

Answer 3

The Insurance Act 1938 does not define the insurable interest but it has been defined by Mac-Gillivray as follows:

"Where the assured is so situated that the happening of the event on which the Insurance money is to become payable would as a proximity cause involve the assured in the loss or diminution or any right recognised by law or in any legal liability there is an insurable interest in the happening of that event to the extent of the possible loss or liability. The object of Insurance should be lawful for this purpose; the person proposing for Insurance must have interest in the continued title of the insured & would suffer pecuniary loss if the insured dies. If there is no insurable interest, the contract becomes wagering (gambling) contract. All wagering contracts are illegal & therefore null & void. An individual has unlimited insurable interest in own life policy. So long as the Insurance is on one's own life, the "Insurance interest" presents no difficulty. A person has insurable interest in his own life to an unlimited extent. Hence no limit may be fixed in respect of life Insurance he may effect. Where, however, insurer rejects a proposal for an amount of assurance, which is disproportionate to the means or the proposer. it is not normally for lack of Insurable interest but on considerations or "moral hazard", Indeed it may also be presumed in a case where a person proposes for a policy for a large amount, which he may not be able to maintain having regard to his income, that it will be financed by some other person and that there is no insurable interest. On the other hand, insurance on the Life of Spouse is also valid. As a wife is normally supported by

her husband, she can validly affect insurance on her life for adequate amount. Insurable Interest is also said to exist on the Insurance taken on the Life of Parent and Child. Insurable Interest on the life of Other Relations must be justified. In the case of other relations, insurable interest cannot be presumed from the mere existence of their relationship. Moral obligations or duties are not sufficient to sustain an insurable interest. In every other case, the insurable interest must be a pecuniary interest and must be founded on a right or obligation capable of being enforced by Courts of law. The following are illustrations of such cases of insurable interest:

- (a) Employer - Employee
- (b) Creditor - Debtor
- (c) Partner
- (d) Surety and principal debtor-Co-surety

Effect on Contract when Insurable interest is not present is also important to understand. Where, therefore, the proposal is on the life of another, unless the proposer has insurable interest in the life to be assured, the contract shall be void. Lack of insurable interest is a defence, which the insurer may plead in resisting a claim. There may be also cases where Insurance on ones own life is surreptitiously financed and held by another for his benefit which if detected by the insurer, may be declared void. As a life Insurance contract is not one of indemnity, the existence of insurable interest and the amount thereof will have to be considered at the time or effecting the contract since lack of such interest would render the contract void. If insurable interest existed at the inception or the policy the contract would be enforceable though such interest might cease later.

Question 4

Write short notes on the following :

- (i) *Total loss and partial loss in marine insurance* *(2 marks)*
- (ii) *Ceiling on Investments u/s 27.* *(3 marks)*

Answer 4(i)

Total loss and partial loss in marine insurance

A total loss implies that the subject matter insured is fully destroyed and is totally lost to its owner. It can be:

- (a) Actual total loss; (or)
- (b) Constructive total loss.

In actual total loss, the subject matter is completely destroyed or so damaged that it ceases to be a thing of the kind insured. For example, sinking of ship, completely destruction of cargo by fire etc.

In the case of constructive total loss, the ship or cargo insured is not completely destroyed but is so badly damaged that the cost of repair or recovery would be greater than the value of the property saved. For example when a vessel sinks in the deep

ocean and the act of retrieving the ship back from the water is so costlier than the cost of ship itself. Then the ship is left to rest and is taken as constructive total loss. A Partial Loss occurs when the subject matter is partially destroyed or damaged. Partial loss can be:

- (a) General average; or
- (b) Particular average.

General Average refers to the sacrifice made during extreme circumstances for the safety of the ship and the cargo. The loss has to be borne by all the parties who have an interest in the marine adventure. For example, a loss caused by throwing overboard of goods in order to prevent the ship from sinking, is a general average and must be shared by various parties.

Particular Average may be defined as a loss arising from damage accidentally caused by the perils insured against. Such a loss is borne by the underwriter who insured the object damaged. For example, if a ship is damaged due to bad weather, the loss incurred is a particular average loss.

Answer 4(ii)

Ceiling on Investments under section 27 of Insurance Act, 1938

Any investment in other than Approved Investments is allowed up to 15% of the sum specified in Section 27, provided such investments are made with the consent of all the directors present at a Board meeting and eligible to vote, in respect of which a special notice has been given to all the Directors in India. The ceilings on investments rules are as follows:

a. In one Banking Company or Investment Company [Section 27 A(3)]

An insurance company cannot out of the Controlled fund invest or keep invested in the shares of any one banking company or investment company, an amount exceeding two and a quarter percent of the amount specified in Section 27 (or) 2% of the subscribed share capital and debentures of the Banking company or investment company concerned, whichever is less.

b. In any Company other than Banking Company or Investment Company [Section 27A(4)]

An insurance company cannot out of the controlled fund invest or keep invested in the shares of any one company other than banking or investment company, an amount exceeding two and a quarter percent of the amount specified in Section 27 (or) 10% of the subscribed share capital and debentures of the Company.

c. In Fixed Deposits or Current deposits of Banks or Co-operative Societies

Not more than 3% of the Controlled funds is allowed to be deposited in the Fixed or Current deposits with any one Banking company or any one Co-operative Society registered under the Co-operative Societies Act, 1912.

Question 5

“Claims settlement in general insurance is a multitasking activity”. Discuss.
(5 marks)

Answer 5

General insurance is basically an insurance policy that protects you against losses and damages other than those covered by life insurance. For more comprehensive coverage, it is vital to know about the risks covered to ensure that family members are protected from unforeseen losses. The coverage period for most general insurance policies and plans is usually one year, whereby premiums are normally paid on a one-time basis. The risks that are covered by general insurance are: Property loss, for example, stolen car or burnt house, Liability arising from damage caused by oneself to a third party, Accidental death or injury. The main products of general insurance includes Motor insurance, Fire/ House owners/Householders insurance, Personal accident insurance, Medical and health insurance, and Travel insurance. The general procedure for seeking claim settlement is same in most forms of General Insurance. The various steps in the process are follows:

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 or the loss assess the actual loss suffered in money terms and that which can be indemnified in terms of the contract, advise the insurer regarding compliance of the various terms conditions and warranties under the contract etc. The loss assessor has also to advise the client on various aspects of loss mitigation, limitation, 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 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 (Turnaround 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.

Question 6

Discuss the role of insurance and reinsurance in risk management. (5 marks)

Answer 6

Insurance is a valuable risk-financing tool. Few organizations have the reserves or funds necessary to take on the risk themselves and pay the total costs following a loss. Purchasing insurance, however, is not risk management. A thorough and thoughtful risk management plan is the commitment to prevent harm. Risk management also addresses many risks that are not insurable including brand integrity, potential loss of tax exempt status for volunteer groups, public goodwill and continuing donor support.

Risk Management Comprises of mainly five steps which are as under:

- (a) Risk Analysis,
- (b) Risk Identification,
- (c) Risk Assessment,
- (d) Risk Planning,
- (e) Risk Controlling.

Risk Analysis is the process of identifying, analysing and communicating the major risks. Once risks have been identified, they must then be assessed as to their potential severity of impact (generally a negative impact, such as damage or loss) and to the probability of occurrence. These quantities can be either simple to measure, in the case of the value of a lost building, or impossible to know for sure in the case of the probability of an unlikely event occurring. This process is known as risk analysis. In the assessment process it is critical to make the best educated decisions in order to properly prioritize the implementation of the risk management plan. Once risks are identified and analysed, it is important to plan and adopt a suitable strategy for controlling the risk. Risk planning and controlling is the stage which comes after the risk analysis process is over.

There are five major methods of handling and controlling risk, which are as under:

- (a) Risk avoidance;
- (b) Risk retention;
- (c) Risk transfer;
- (d) Loss control; and
- (e) Insurance. Risk avoidance is one method of handling risk.

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

Reinsurance is a contract under which insurance companies can pass on the risk they assume under the policies issued by them, to yet another insurance company (called reinsurer). Therefore, the insurance company which issues the policy becomes the Policyholder under the reinsurance contract entered into with a reinsurer. A broker can be an intermediary who can arrange reinsurance contracts with reinsurance companies. Except for GIC, the National Reinsurer, all the other reinsurance companies doing business in India are located abroad. Therefore the role of reinsurance brokers in getting a best deal for insurance companies cannot be undermined.

Reinsurance is a mechanism through which insurance companies transfer the risks they assume on insurance policies to another insurer, called Reinsurer. Accordingly a Reinsurance contract is entered into with the Reinsurer by the primary insurer. 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 or reinsurance business when supervising reinsurers based in its jurisdiction. The supervisory focus should be on expectations of the Board and Senior Management of the cedant (insurer which is ceding the risks with the reinsurer), discussions with them about their approach and an assessment of that approach and how it is executed. This focus does not preclude other activities which supervisors should undertake, both as part of the initial licensing process (where applicable) and as part of ongoing supervision.

The supervisor requires that cedants have reinsurance and risk transfer strategies appropriate to the nature, scale and complexity of their business, and which are part of their wider underwriting and risk and capital management strategies. The supervisor also requires that cedants have systems and procedures for ensuring that such strategies are implemented and complied with, and that cedants have in place appropriate systems and controls over their risk transfer transactions.

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

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

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

On a 2009 visit to her ancestral village in Madhubani District in India. Ishitashri Shandilya found that the 'sanctity of traditional Mithila art" (Madhubani paintings) was no longer a criterion artists considered worthwhile. In the name of contemporary art, disturbing and sad incidents that reflected sorrow, helplessness and despair were also being painted. Shandilya was taken aback to learn that this tweaking was intentional; someone would narrate an unfortunate incident and the artist would paint it. Artists were willing to switch back to traditional techniques of creating art as long as their livelihood needs were met. On December 28, 2010. Mithilasmita was set up as a folk art gallery from where artists' works could be marketed so that they could earn decent money. In May 2012 the organization registered as a private limited firm. This was a start, but a question remained: How could Mithilasmita capitalize on the proartisan initiative of the All India Handicrafts Board and geographical indication rights of Madhubani paintings in building up a sustainable business, preserving traditional art and achieving social objectives ?

Art from the Mithila region had remained one of the most globally recognized art forms of India. These paintings were positive and devotional in nature and created with a free hand and natural colours. The paintings took the observer into times immemorial through beautiful representations of legendary stories, Shandilya, who was born and raised in the Mithila region, was immensely proud and aware of the beauty of the art. In 2009, after understanding the current situation Mithila region, was immensely proud and aware of the beauty of the art. In 2009, after understanding the current situation of the art, she realized there was a need to find a way to prevent its drift into a different form.

Discussions and meetings with various artists sparked a ray of hope. Shandilya understood that a sustainable livelihood for artists would be the source of motivation in order to ensure that they reverted to the traditional style of the art. Locals and artists told Shandilya that the All India Handicrafts Board had been encouraging them to create paintings on hand paper, cloth and canvas to sell in the market since 1966. The board's intention was to create extra income for the families. Inspired by this, Mithilasmita was registered as a folk art gallery on December 28, 2010.

MADHUBANI DISTRICT

Madhubani become a district when it split from Darbhanga District in 1972.

The district consisted of a vast, low-lying plain intersected by numerous streams and marshes.

The terrain was mostly clay with a negligible portion of sand. This facilitated paddy fields and sugarcane cultivation, as the land had the capacity to retain moisture.

The population of Madhubani was about 3.5 million and was almost entirely rural (3.4 million people lived rurally). It had about 1.2 million workers and 2.3 million unemployed people. The female-to-male ratio was 942 to 1,000 in 2001. The literacy rate in 2001 was 42 per cent compared to the state rate of 47 per cent. Furthermore, the female literacy rate in the district was only 26.25 per cent in 2001 as compared to the state rate of 33 per cent. The socioeconomic indicators did not suggest the district was in a healthy economic condition.

MADUBANI PAINTINGS

Madhubani District was in zone five on the seismic map. A devastating earthquake hit the area in 1934 with a magnitude of 8.3 on the Richter scale. It had been suggested that this was when Madhubani paintings attracted the attention of Britons, as British officers visited the region after the earthquake.

Dating the history of Mithila art was very difficult. The Puranas (Indian holy scriptures), which mention this art, could not themselves be dated. On various auspicious occasions, artists painted houses.

One of the examples of traditional art was storytelling through paintings. An illustration of this kind of painting is “Krishn Leela” “Shanti Nritya” is full of images of various gods and goddess such as Shiv, Parvati, Ganesh, Hanuman, Saraswati, Brahma, Vishnu and Lakshmi. The images contain great detail and represent long, complex stories with so much life that the observer could learn continuously from the painting. Parents could narrate stories to their children by referring to such paintings. Recognizing the cultural importance of this art, the Government of India awarded a geographical indication patent right to Madhubani paintings. As of July 26, 2012, about 178 items had been granted geographical indications under the Geographical Indications of Goods (Registration and Protection) Act, 1999.

In September 2012, Nitish Kumar, the chief minister of Bihar, announced the establishment of the Mithila Institute of Art. He also stated that it would be given the status of a university. Mithila Museum in Tokemachi-Shi, Niigata, Japan, proved how world-famous the art had become.

HOW THE SCENARIO CHANGED

A drought in 1966 brought misery to the people of Bihar. To restore the lost wealth caused by this natural disaster, the All India Handicrafts Board encouraged artists to create paintings on paper so that an ensuing commercialization of Mithila art would ensure extra income for local families, the outcome of the initiative did not bring socioeconomic prosperity to the region. It became difficult for artists to earn a living. Thus, in the absence of any incentive for them to remain “traditional artists,” which involved putting in huge efforts and not earning proportional amounts, they started moving away from the traditional methods of creating paintings. Financial needs compelled the artists to produce art in large quantities. Their purpose was no longer to create art by immersing themselves in the process, rather, it was to earn money even if they had to relinquish the traditional techniques. Some artists preferred

to switch from the position of a creator of art to a “middleman,” as they could earn more by trading art than creating it.

Shandilya delved deeper in exploring other reasons for such changes. Art experts, artists and social workers in the region highlighted the fact that tweaking the traditional art techniques to embrace contemporary art had begun to create a new market for Madhubani paintings. The market was serving customers, but the artists were still not earning much, even at the cost of the distortion of the traditional art forms. Shandilya felt this was a perfect example of “unethical commercialization.”

A visit to Madhubani, in 2009, with her mother, Sarita Mishra, was a disturbing one for Shandilya. She found that Mithila art was not as it used to be. The most significant change was the use of artificial colours instead of natural colours. Pencils and other supporting mechanical devices had become common and artists did not consider this an aberration of the traditional age-old art. Shandilya came to appreciate what her grandmother Gauri Mishra, a prominent social activist in the region who also worked for the revival of traditional women’s art, meant by the “sanctity of art.”

THE CATCH : TRADITIONAL OR CONTEMPORARY

The act of creating traditional art was similar to the gurukul system of education. In this system, women taught their daughters how to make siki (boxes with paintings on them) as wedding gifts or for other auspicious ceremonies. The paintings were also created on walls to sanctify them, and creation thereby was an integral part of the life of Mithila women. This was similar to Rangoli (colourful design patterns on floors) that were created in various parts of India. Once the tweaking of the art started, the artists saw no incentive to put as much effort into their work. They saw such little reward for their work, had no direct access to a market, and made a more reliable living by working as intermediaries; as a result, traditional art started losing out. The artists began to use artificial colours instead of natural colours and used pencils and other supporting mechanical devices to create their paintings. As Shandilya pointed out : “I cannot blame or encourage the artists to revert to traditional art forms unless and until I am able to address their sustenance needs.” The traditional paintings also carried important messages and meanings.

MITHILASMITA ART AND CRAFT PVT. LTD.

Mithilasmitta was founded by a team of social entrepreneurs under the guidance of Gauri Mishra, who was a pioneer in the promotion of Madhubani paintings. The organization changed from being registered under the Karnataka Shops and Commercial Establishments Act, 1961 (in 2010) to being a private limited firm in May 2012. The organization’s focus remained on the traditional art and artists of Mithila to ensure that the authentic folk art of Mithila regained its glory. As such, Mithilasmitta strove to preserve as well as promote the traditional themes of Madhubani paintings. A folk art gallery in Bengaluru was set up in December, 2010 and focused on traditional Madhubani paintings and other art-based items. These items included a range of dress materials and accessories for every age group and featured Mithila art.

Organizations such as Mithilasm could be categorized as social enterprises. Sometimes, delivering public good through a for-profit business model was not

workable and non-profit ventures were necessary to ensure social benefits. One such venture was the Barefoot College in India. This organization had the long-term objective of working with the marginalized, exploited and impoverished rural poor. The organization aimed to lift the poor above the poverty line so that they lived with dignity and self-respect. Barefoot College's primary goal was to establish a rural college in India built by and exclusively for the poor.

There were cases when an organization found that it could not sustain itself without generating funds. In such cases, it was possible to adopt a hybrid non-profit venture that offered services at different prices depending on socioeconomic parameters. Aravind Eye Care in south India was such an example. The organization had identified how avoidable blindness was rapidly escalating. The government alone could not meet the health needs so it had searched for an alternate healthcare model that could supplement the efforts of the government and also be self-supporting; Aravind Eye Care was the result.

Another category was a social business venture. These types of firms did not depend on funds and grants from a donor organization or government. They responded to the needs of the disadvantaged by creating for-profit ventures to drive transformational changes. Profit was utilized to enable access to sustainable livelihoods. Strong leadership skills were necessary in this type of venture. Mithilasmitha fell under this category.

Shandilya was born into an educated Maithil family in Darbhanga. Since her early childhood, she had seen her parents working with Gauri Mishra in the promotion of Madhubani paintings. Gauri Mishra founded the Self Employed Women's Association Mithila (SEWA Mithila) to promote the heritage art of Mithila. The organization was pivotal in the socioeconomic empowerment of rural women.

The SEWA Mithila campus was a second home for Shandilya. She had a cordial relationship with the artists, who were like members of her extended family. She would listen to their folk-tales and play with the children from the Abhayashram (SEWA Mithila's home for the destitute people of Mithila). Shandilya's determination to work for the people and art of Madhubani was inspired by her father's passion. Her late father, Samarendra Mishra, had worked for the promotion of art from Madhubani itself, as he believed that promotional activities should have roots in the village. To ensure that this aim was maintained, Shandilya regularly visited the village and interacted with artists to address their concerns.

Before setting up Mithilasmitha, Shandilya worked for seven years in the supply chain industry with global firms. Realizing that it was crucial for an artist to have market access, Shandilya decided to head Mithilasmitha's marketing department. To bring true value to customers, Mithilasmitha was in pursuit of ensuring the best practices of management from its quality of customer service to procuring art from artists in Madhubani or displaying them in a gallery in Bengaluru. As the organization had been established with the larger goal of preserving Madhubani paintings, it also aimed "to create awareness about Mithila art", visitors to the gallery were briefed on the history of Madhubani art and its significance. Historical perspectives were displayed on the website. The organization also used social media like Facebook and Twitter to spread the word about Mithilasmitha.

GOING FORWARD

Some questions that kept Shandilya engaged were : How could Mithilasmitta ensure that the pro-artisan initiative of the All India Handicrafts Board and geographical indication rights were capitalized on in building up a sustainable business while preserving traditional art and achieving social objectives ? Furthermore, what mechanism could be put in place to collaborate with government organizations and corporations to achieve a vision set out by Mithilasmitta ?

What options could Mithilasmitta explore to retain artists' loyalty in these times of inflation ? Realizing that checking the use of unfair means and unethical practices in the painting business would require stringent authenticity checks for ensuring buyers' trust, what options did Mithilasmitta have ?

How could Shandilya approach government officials for making amendments in the geographical indication rights awarded to Madhubani painting and include a clause on traditional methods of creating paintings ? Furthermore, how could Mithilasmitta develop a standard or categorization mechanism that could be presented to the government for consideration ?

Questions :

- (a) *Write a comprehensive note on the salient features of the case study. (10 marks)*
- (b) *What are challenges that Mithilasmitta is facing ? What recommendations would you give Shandilya for addressing the challenges faced by Mithilasmitta ?
(10 marks)*
- (c) *How would you assess the initiative of the All India Handicrafts Board ?
(10 marks)*
- (d) *Does the protect through GIs also extend to traditional knowledge and traditional cultural expression contained in the products under the Geographical Indications of Goods (Registration and Protection) Act, 1999 ?
(10 marks)*
- (e) *What do you mean by social enterprise ? Would you classify Mithilasmitta as a social enterprise and Shandilya as a social entrepreneur ? Give reasons in support of your answer.
(10 marks)*

Answer 1(a)

Mithilasmitta was founded towards the end of year 2010 by a team of social entrepreneurs in order to promote Madhubani paintings from the Mithila region in the State of Bihar, India. It focused on offering a great marketing platform to the concerned artists, sharing the art knowledge, benefiting and saving the interest of the artists and thereby contributing to the development of Madhubani area.

The All India Handicraft Board initiated a campaign in 1966 for commercialising art, aimed at generating economic gains for artisans. Recognising the cultural importance of this art, Geographical indication (GI) rights were granted to the Madhubani painting by the Government of India in 2007. The protagonist finds that this pro-artisan initiative and the GI can be better utilised for creating social good. The case discusses the story of a person who sets up a social enterprise to bring about social change and preserve traditional

art. The role and challenges of the social enterprise in meeting the objectives of a public policy related to the welfare of artisans can be discussed through this case. The role GIs play in Indian handicraft is also discussed. There can be deliberation on how pro-artisan measures and GI rights can build in sustainable growth with preservation of traditional art.

The primary focus of this case is exploring ways to build a social business while keeping traditional cultural techniques intact. The case explores aspects such as:

1. Importance of GIs/ Intellectual property rights(especially in traditional style of arts);
2. Social entrepreneurship and social business;
3. Challenges for a social entrepreneur;
4. Role of stakeholders in regional development;
5. Implementation challenges in public policy;
6. Need for appropriate policy intervention;
7. Government policies and implications for business dealing with handicrafts in India.
8. Awareness about preservation of Mithila art.

Answer 1(b)

Challenges faced by Mithilasmitta are:

1. Mithilasmitta has to find out ways in order to capitalise on the pro-artisan initiative of the All India Handicrafts Board and GIs in building a sustainable business, preserving traditional art and achieving social objectives.
2. There is a major concern in the form of absence of collaborative action plan with governmental institutions to accomplish the objectives of Mithilasmitta.
3. Retaining artists' loyalty in the times of inflation.
4. The task of checking the use of unfair means and unethical practices in the painting business would require stringent authenticity checks for ensuring the trust of buyers.

Recommendations to Shandilya for addressing the challenges faced by Mithilasmitta:

Regarding recommendations to Shandilya to address the challenges faced by Mithilasmitta, the nature of the problem is very contextual, no perfect solution exists.

1. Mithilasmitta should be asked to approach the Government to pursue a relevant policy change.
2. Shandilya should strive to generate awareness through social media.
3. Shandilya could explore and suggest necessary changes in the law related to

GI rights so that specific provision on traditional methods of developing painting could be mentioned to fulfil customer satisfaction by procuring arts from different artists.

4. Shandilya can rework further by strengthening proper code of conduct and best practice
5. Shandilya should initiate confidence building measures which could include:
 - Creating awareness about the importance of traditional art in young artists.
 - Encouraging artists who revert to traditional techniques by providing higher remuneration.
 - Call on art patrons/customers from metropolitan areas to meet artists and encourage them.
6. To convince customers about art being genuine, dimensions such as authentication, standards and government recognition at the external environment level, as well as brand-building concepts of marketing at the organisational level should be explored.

Answer 1(c)

In order to assess the initiative of the All India Handicrafts Board, we would need to refer to Madhubani's socio-economic indicators such as its female to male ratio, literacy rate, number of people employed, villages with electricity and other demographic details.

It is to be noted that the initiative has led to an increase in indices over time. When referring to pan- Bihar indices, one can notice that indices have increased all over the State in general. The growth of Madhubani indices is the result of an overall improvement in the district indices. The initiative is good but has not been able to yield the desired results even after about 40 years.

Indian handicrafts like Madhubani paintings, Kanjeevaram silk sarees, Pochampally Ikat, Chanderi fabrics and Mysore Jasmine have huge potential for boosting exports. The demand across the world and the high value associated with the products substantiates this argument. This value was enhanced after the items attained GI rights. As mentioned in the case, the potential is huge in India. There are approximately 370 GI rights. Out of these, 214 are handicrafts and eight are paintings.

The Board must be persuaded to play more active role in giving a fillip to export of handicrafts which play an important role in the growth of organisations like Mithilasmitha. The Board must appreciate that social enterprises like Mithilasmitha have certain inherent limitations. These organisations lack resources which are available to business enterprises. Since Government will not be able to address all social challenges, social enterprises must exist and grow. The Boards must thus come to the rescue of social enterprises like Mithilasmitha which are engaged in handicrafts which is a traditional art. The board plays a crucial role in making all possible management so that income status of artists' families could be improved. They drafted different practices where learners and entrepreneurs could be arranged for creating painting on hand paper, canvas for the purpose of sale.

Answer 1(d)

India enacted the Geographical Indications of Goods (Registration and Protection) Act in 1999. Unlike other IPRs, the GI is a community right; as a result traditional communities often rely on GIs to safeguard certain of their rights associated with their goods which have some quality or reputation or other characteristics linked to the geographical area in which they are produced. Under Article 1, 2, and 10 of the Paris Convention for the Protection of Industrial Property, Geographical Indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the trade related aspects of intellectual property rights (TRIPS) Agreement, which was part of the agreements concluding the Uruguay Round of GATT negotiations.

In India, there are Approximately 370 items under the GI Act, 1999. Out of the 370, 214 are handicraft products and eight are paintings. If the traditional paintings are not created in their original form, then GI rights will not be of any use. In this sense, the law definitely extends to the cultural expression.

Products like Chanderi saree, Pochampalli ikat or Madhubani painting represent cultural expressions of the communities who are engaged in their manufacturing. The Geographical Indications of Goods (Registration and Protection) Act, 1999 specifically provides for extending Geographical Indications Goods protection to handicrafts and handlooms which are inherent part of Indian culture, apart from food items like Bengali rasgulla. The authorized GI mark on the good helps create a brand image for the traditional good which embodies age old culture. Many traditional cultural expression (TCE) owners rely most on the Geographical Indications of Goods (Registration and Protection) Act to protect products of their labour, particularly in case of handlooms and handicrafts.

Geographical Indications of Goods (Registration and Protection) Act, 1999 is a law against unfair trade practices protecting interest of consumers, as well as economic interest of traditional handicraft artisans against counterfeit. It can be said that traditional knowledge (TK) and GIs share a common element in so far as they both protect accumulated knowledge which is distinctive to a specific locality.

From the viewpoint of protection of TK, one of the best features of the Geographical Indications of Goods (Registration & Protection) Act, 1999 is comprehensive definition given of GI. This is significant in the Indian context considering the wide variety of goods that is deserving of protection ranging from agricultural products like Darjeeling tea, Basmati, to manufactured goods such as Feni, Mysore sandal soap, etc.

The registration of GI is prohibited if it:

- Deceives or causes confusion
- Is contrary to any law for the time being in force;
- Comprises or contains scandalous or obscene matter;
- Comprises or contains any matter likely to hurt the time being in force, religious susceptibilities of any class or section of the citizens of India;
- Would otherwise be disentitled to protection in a court;
- Is determined to be a generic name or indication of a good and is, therefore, not or ceases to be protected in its Country of origin,

- Has fallen into disuse in that Country;
- Is although literally true as to the territory, region or locality in which the goods originate, but falsely represented to the persons that the goods originate in another territory, region or locality as the case may be.

Answer 1(e)

A social enterprise is created as social challenge or a need that exists in society. There is a lower risk potential compared to a business enterprise. It is created for the benefit of a larger community. It focusses on benefits for the receivers of service. The primary motive for employee is the satisfaction or the feeling of goodness that prevails by ensuring that the benefits are transmitted. Social enterprise is a promising approach to fulfilling unmet needs and fostering genuinely “triple-bottom-line” organizations – those simultaneously seeking profits, social impact, and environmental sustainability. It's certainly not the only solution, but it is most definitely a solution.

- For traditional non-profits, social enterprise can be a powerful complement to other activities when it advances the social mission and the financial sustainability of the organization.
- For new start-ups – non-profits and for-profits – social enterprise gives entrepreneurs the ability to bake social impact and financial sustainability into the organization's DNA from its outset.
- For traditional businesses, social enterprise initiatives enable a company to integrate social impact into business operations and prioritize social goals alongside financial returns.

Although profits are not the primary motivation behind a social enterprise, revenue still plays an essential role in the sustainability of the venture. In fact, sustainable revenue differentiates a social enterprise from a traditional charity that relies on outside funding in the form of donations or grants to achieve its social mission. This does not mean that social enterprises cannot be highly profitable, it simply means that when they are, their priority is the reinvestment of profits into their social mission rather than payouts to shareholders. A successful social enterprise is one that balances the tension between upholding the social mission of their organization and maximizing the productivity of their business venture to ensure sustainability.

The characteristics of a social enterprise are:

- The base mission of a social enterprise is the solution for the social cause.
- The enterprise aims to generate surplus to sustain.
- It is committed to the cause.
- It understands what its contribution to the society is.
- It attracts talent.
- It needs to have vision mission and values.

One can measure the success of a social enterprise by :

- Seeing its impact on society

- Its sustainability of the activities
- Satisfaction level of employees
- Adaptability to local culture and practices.

Social Entrepreneurs are those extraordinary individuals with unprecedented ideas for change in their community. Social entrepreneur is a person who identifies a social problem, and uses his entrepreneurial skills to organize, manage and an endeavor to achieve social change. The main aim of the social entrepreneurship is to further collective and environmental goals. Social entrepreneur is generally correlated with non-profit sector, but this not secludes them from not earning profit.

Mithilasmitha fully satisfies as a social enterprise. It is delivering public good through a not for profit business model. It is engaged in lifting the poor and marginalised people. It was founded by a team of social entrepreneurs.

Shandilya made Self-employed women's association Mithila her second home. She is totally committed to the cause and is making all efforts to create awareness about Mithila art.

Question 2

- (a) *Genuine Helthcare Pvt. Ltd., which had a predecessor-in-interest of the registered trade mark ANAFORTAN, used it extensively and videos for the Medicines manufactured and sold in the market. Since September, 2016 it had been doing so. Thus, Genuine Healthcare had eastablished a goodwill and reputation in the mark ANAFORTAN, it claimed to have sold pharmaceutical products under the said trade mark amounting to ₹ 8.20 Crores between September to December, 2016 and ₹ 24.47 Crores between January and December, 2017.*

Rameshwar Das carrying on business as a sole proprietor of Himani Pharmaceuticals, was selling pharmaceuticals products contains CAMYLOFIN DIHYDROCHLORIDE under the brand name AMARFORTEN. Another firm Helicon Pharmaceuticals Pvt. Ltd. was manufacturing the medical preparation for Rameshwar Das to be sold under the mark AMAFORTEN.

Genuine Healthcare Pvt. Ltd., claims and alleges that Rameshwar Das surreptitiously obtained the registration of the trade mark AMAFORTEN.

It intends to file rectification proceedings.

Will the company succeed ?

Give reasons in support of your answer and refer to case law if any.

(10 marks)

- (b) *ABC Systems contended that it has obtained design registration for its water purifiers. It added that XYZ Ltd. sells water purifiers that contained the same design as the one used by it which amount to piracy. It further added that XYZ Ltd. sells these water purifier on E-bay (an intermediary). ABS systems approaches the court to state that if E-bay (the intermediary) does not remove many of the listings that were violative of plaintiff's rights, issue an order for delisting the infringing material as well as a prohibited injunction to prevent such listings from being public in future. E-bay (intermediary) stated that it has no*

difficulty accepting plaintiff's prayer that all infringing content be removed as spoken as it is brought to its notice.

The plaintive argue that E-bay, being an intermediary, is obligated to institutionalise a system to ascertain whether or not the content that it is publishing is of an infringing character and to refrain from publishing the content if the answer to this question is in the affirmative.

The plaintive sort to draw sustenance from rule 3 of the Intermediary Guidelines which imposes an obligation on intermediaries to maintain due diligence and section 79(3) of the Information Technology Act which makes the safe harbour that intermediaries enjoy inapplicable in circumstances when they aided abet or conspire or induce the commission of an offence.

In response, E-bay relied on section 79 of Information Technology Act in support of its argument that its action would be covered with in ten four squares of the provisions which shielded from the gauntlet of legal liability the conduct of an intermediary which meagrely surveys as a conduit for the receipt of the information and does not interfere with the information in any way.

Can E-bay (an intermediary) be compelled to screen contents allegedly violative of intellectual property laws on an ex ante, in contradiction and ex-post, bases? Give reason in support of your answer. (10 marks)

- (c) *Toyota Jidosha kabushiki Kaisha. (plaintiffs) was using Toyota. Innova and Prius as its trademark. For the first two trademarks were its registered trademarks. There was a contest with respect to the trademark PRIUS which this plaintiffs claimed that the trademark PRIUS belonged exclusively to it though they had no trademark registration for this mark.*

M/s PRIUS AUTO INDUSTRY Ltd., Spain parts supplier, had a trademark registration for PRIUS, a registration dating back to 2000.

Toyota contested this registration by the defendants claiming that it was the first user of PRIUS (and began using this mark as early as 1997) and the defendants had wrongly and dishonestly registered the same in India.

Toyota claimed that PRIUS mark was well known abroad. It claimed that the year 2001 was the effective date on which a significant cross section of Indian consumers should have known of their mark. .

The defendants pleaded that although the mark may be very well known abroad, that by it self was not sufficient and that reputation in the local milieu must be proved as well. In the year 2001, Internet was not in wide spread use and therefore not many would have learnt of the mark in India.

The defendants further claimed that they were pioneers in the field of manufacture of add-on Chrome Plated Accessories. They sourced high and low for an appropriate term that would describe their first attempt. After extensive research, they finally found the words PRIUS in the dictionary (a Latin term meaning "to come first" which they picked up and used).

Can the plaintiff claimed that they have a stronger (passing off) claim to mark PRIUS being prior adopters/users of the same. Give reasons in support of your answer. (10 marks)

Answer 2(a)

The problem is based on the case *Raj Kumar Prasad & anr v. Abbott Healthcare Pvt Ltd [DEL] FAO(OS) 281/2014*. In this case, the Division Bench of the Delhi High Court (on appeal) had an opportunity to consider whether the owner of a registered trademark can sue the registered owner of a different but deceptively similar trademark. Abbott alleged that Raj Kumar Prasad was using a deceptively similar mark – AMAFORTEN – and had secured a registration for this on June 17 2009. The products bearing the marks ANAFORTAN and AMAFORTEN had the same formula, used the same compound and were intended for the same therapeutic use (relief in abdominal pain and intestinal colic). Further, the trade dress of the two products was also similar. Abbott instituted a suit for infringement and passing off before a single judge at the Delhi High Court seeking, among other things, a permanent injunction. Abbott sought an extension from the court and filed an application to challenge Prasad's registration before the IP Appellate Board (IPAB). Prasad argued that the suit was expressly barred by Section 28(3), since he was the registered owner of the mark AMAFORTEN.

It was held that a registered proprietor of trade mark is entitled to sue as a registered proprietor of a trade mark if the latter is identical with or nearly resembles the other. The trade mark used by Raj Kumar Prasad AMAFORTEN is ex-facie phonetically and visually similar to that of Abbott's ANAFORTAN. Through its predecessor, Abbott has been using the trademark ANAFORTAN extensively since the year 1988.

Ex-facie, there is a visual and phonetic similarity in the trademark AMAFORTEN in comparison with the trademark ANAFORTAN. The competing goods are pharmaceutical preparations, the class of the goods is the same, the consumer is the same and the trade channel is the same.

Abbott has inherited the goodwill and reputation in its trademark ANAFORTAN through its predecessors in interest and would be entitled to protect the same.

Abbott is in the market since 1988 whereas the defendant entered the market somewhere in 2012. The defendant applied to the Registrar of Trademarks for registration of the trademark AMAFORTEN on June 17, 2009 and was granted registration on 12 July, 2011. Tested on the legal principles laid down by the Supreme Court in the case of *Wander Ltd. & Anr. vs. Antox India P. Ltd.* reported as 1990 (Supp.) SCC 727, the High Court enjoined Raj Kumar Prasad from selling the product under trademark AMAFORTEN or any other mark deceptively similar to that of Abbott.

Applying the above principle of law, Genuine Healthcare Pvt. Ltd in the present case will succeed in the proceedings initiated by it.

Answer 2(b)

Internet intermediaries refer to entities which provide services that facilitate people to use the internet. They include network operators, network infrastructure providers, internet access providers, internet service providers, social networks, search engines and aggregators etc. These online platforms were supposed to be regulating themselves to prevent unlawful content appearing in them. Therefore, the intermediaries were given 'safe-harbour' against third party content. The intermediaries are exempted from liability under the section 79 of the Indian Information Technology Act if the offence or

contravention was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such offence. Therefore, the intermediary is protected from copyright infringement if they were not aware that the hosted content was copied material. The section 79 of the Indian Information Technology Act containing the “safe-harbour provision” was amended in 2008. The definition of intermediary was broadened to include the telecom and internet service providers, search engines, online marketplaces and cyber cafes. The safe-harbour protection was extended to all intermediaries.

In order to prevail, in the present case, the plaintiff would have to explain how the Intermediary Guidelines spell out an obligation upon Intermediary to screen content to ascertain if it is of an infringing character.

A bare perusal of the rules reveals that Intermediaries are only bound to apprise users of their privacy policy/rules and regulations and to disable infringing content on being informed of its existence.

The court reasoned that to accept the plaintiff’s prayer would result in converting the Intermediary into a body to determine whether there is any infringement of intellectual property rights or not, a role which intermediaries are ill equipped to perform. Such an obligation upon intermediaries would result in them being compelled to test all the materials sent to them for publication vis-a vis claims of infringement of intellectual property in order to avoid liability.

If the intention of the legislature was to cast such an obligation upon intermediaries, the guidelines would have imposed absolute embargo on hosting infringing content. In the light of the fact that no obligation to screen infringing content is imposed on the publishers of the newspapers or the owners of immovable property, the court ordered that it would be inappropriate to such an obligation on intermediaries who are similarly situated as the aforesaid service providers.

In fact, in the case of *Kent RO Ltd v. Amit Kotak & Ors (2017)*, Kent RO Systems filed for permanent injunction against one Amit Kotak for infringing its intellectual property rights by copying its designs and eBay India Pvt Ltd. for aiding the infringement by allowing the respondent to sell its product on their website. The court held that compelling an intermediary to screen content would amount to “an unreasonable interference with the rights of the intermediary to carry on its business. With reference to trademark infringement, the Delhi High Court prescribed a few guiding principles on intermediary liability and outlined twenty six tasks that an intermediary may carry out in *Christian Louboutin SAS v. Nakul Bajaj and Ors(2018)*. In the above case, the defendant was accused of selling counterfeit products through the website Darveys.com. Further, it was alleged that the defendant used the plaintiff’s name as “meta tags” in the said website thereby infringing the trademark rights of the plaintiff. The court held that the benefit of safe harbour provisions under Section 79 of the Information Technology Act could not be extended to an intermediary which actively participated in a transaction which amounted to infringement of intellectual property rights.

Answer 2(c)

The problem is based on the Supreme Court decision in *Toyota Jidosha Kabushiki Kaisha vs. M/S Prius Auto Industries Limited* on 14 December, 2017. It was held that a passing off action can even lie against a registered proprietor of the mark sued upon.

The Supreme Court ruled in favour of the defendants noting that the plaintiff had not supplied enough proof of its reputation in the Indian market. Although trans-border reputation was very much a part of Indian law, such reputation could not merely be asserted but must be proved with in the territory of India. There must be adequate evidence to show that the plaintiff had acquired a substantial goodwill for its car under the name Prius in the Indian market also. Reputation in the local milieu must be proved as well. The Court agreed with the ruling of the Division Bench and held that the mark "PRIUS" had not acquired the degree of goodwill, reputation or popularity in the Indian markets so as to vest in the appellant the necessary attributes of the right of a prior user so as to successfully maintain an action of passing off even against the registered owner/the respondents. The Court further held that the evidences submitted by the appellant, i.e. advertisements in international magazines, availability of information on internet portals, would not be a safe basis to prove the existence of the necessary goodwill and reputation of a product in India at the relevant point of time (in the year 2001) due to the limited online exposure at that point of time.

Thus, the Supreme Court concluded that trademark rights are territorial and not global, thus one has to prove that one has acquired its reputation and goodwill in a territory, only through actual evidence. The mere appearance of the mark in the context of news stories would not suffice and don't firmly establish that acquisition and existence of goodwill and reputation of the brand name in the Indian market.

The brand name of the car Prius had not acquired the goodwill, reputation and the market or popularity in Indian market so as to vest in the plaintiff the necessary attributes of the rights of a prior user so as to successfully maintain an action of passing off even against the registered owner.

The Supreme Court held that "likelihood of confusion" would be a better test of proving a passing off action, which can only be established from evidentiary documents, which the Appellants failed to provide. In furtherance of this, the Supreme Court also insisted on the Trinity Test as laid down by *Reckitt & Colman Products Ltd. v. Borden Inc. & Ors.* :

- The goods or services have acquired goodwill or reputation in the marketplace that distinguishes such goods or services from competitors;
- The defendant misrepresents his goods or services, either intentionally or unintentionally, so that the public may have the impression that the offered goods or services are those of the claimant; and
- The claimant may suffer damages because of the misrepresentation.

Question 3

Sane Aptech Ltd. was in business of electroplating the internal surface of cylinders of internal combustion engines with a thin layer of nickel silicon carbide. The company employed one Rakesh as a sales engineer March, 2017 to September, 2018. Rakesh after resigning started similar business under the name of Ultra Cylinders.

Sane Aptech instituted a law suit against Rakesh for breach of trade secrets and related it to the use of similar type of electroplating apparatus and list of customers. Rakesh pleaded that electroplating process and apparatus was not a novel one and

that the contract with the company was very vague about the confidentiality of information.

Will Rakesh succeed? Give reasons in support of your answer. (5 marks)

Answer 3

Trade secrets, just as other intellectual property rights, can be extremely valuable to a company's growth and sometimes even critical for its survival. Businesses must ensure that they adequately protect their business processes, technical know-how and confidential information from competitors. A trade secret may refer to a practice, process, design, instrument or a compilation of data or information relating to the business which is not generally known to the public and which the owner reasonably attempts to keep secret and confidential. Such data or information may also involve an economic interest of the owner in obtaining an economic advantage over competitors. Such data or information may also involve an economic interest of the owner in obtaining an economic advantage over competitors

Trade secrets are not protected by law in the same manner as trademarks and patents. There is no statute or legislation that governs the protection of trade secrets in India. However, rights in respect of trade secrets are enforced through contract law (Indian Contract Act, 1872), principles of equity or by way of a common law action for breach of confidence.

The test for a cause of action for breach of confidence in the common law is that:

1. The information must itself have the necessary quality of confidence about it;
2. The information must have been imparted in circumstances importing an obligation of confidence; and
3. There must be an unauthorised use of that information to the detriment of the party communicating it.

In case to prove violation of trade secret, there is the need for the following criteria:

1. *Existence* : the trade secret must be proved or exist
2. *Ownership* : it must be proved that the plaintiff had ownership rights to the trade secret information.
3. *Access* : it must be proved that the defendant had access to the trade secret information.
4. *Notice* : it must be proved that the defendant knew or should have known that the information was a trade secret of the plaintiff.
5. *Use* : it must be proved that the trade secret information was actually used by the defendant.
6. *Damages* : it must be proved that a remedy exists within the power of the court to apply

There is no specific legislation in India to protect trade secrets and confidential information. Nevertheless, Indian courts have upheld trade secret protection on basis of principles of equity, and at times, upon a common law action of breach of confidence,

which in effect amounts a breach of contractual obligation. In the present case, it was found that:

- a) Electroplating process and apparatus was not a novel one as the information is available in literature
- b) Contract did not mention clearly about the confidentiality of information about the electroplating process and the apparatus
- c) Company could not prove that Rakesh knew it to be a trade secret.
- d) Company could not prove that it was a trade secret. Rakesh would thus succeed.

Question 4

Cediff Communications registered the domain name "Cediff.com" with Net Solution on 15th February, 2017. On 31st January, 2018 Syberboot registered the domain name "Cardiff.com" with Net Solutions.

Cediff communications (plaintiffs) incited proceedings under the Trade Marks Act, 1999 alleging that the Syberboot (defendants) had adopted the word "Cardiff" as part of their trading style deliberately to pass off their business services as that of the plaintiffs.

Defendants pleaded that the word "Cardiff" is coined by taking the first three letters of the words catch, information and free. They further contended that the "look and feel" of the plaintiffs website was totally different from that of the defendants website. They added that the users of the internet can never connect to a website by mistake as users of the website are persons skilled in the use of computer and hence there could be no possibility of confusion between the two name.

Are the contamination of the defendants valid ? Can plaintiffs claim trade mark protection of domain names.

Give reasons in support of your answer.

(5 marks)

Answer 4

Domain names are the human friendly form of internet addresses. A domain name is unique name that identifies a website. Domain names are used to establish a unique identity. Organizations can choose a domain name that corresponds to their name, helping Internet users to reach them easily.

Each website has a domain name that serves as an address which is used to access the website.

It is common place for traders to have their e-mail address and use the same in respect of their goods or services as trade names. The Registrar of Trademarks will permit domain names to be registered as trademarks if otherwise registrable.

In India, domain names may be granted protection as a trademark or service mark under the provisions of Trademarks Act, 1999 provided that the domain name fulfils all requirements to be properly registered under this Act. Once registered, the registered proprietor of a domain name will have all those legitimate rights and authorities which

are commonly availed by the owners of registered trademarks or services marks in India. This also includes the right to sue for infringement or passing off.

1. *For infringement* : Any person violating a domain name which is registered as a valid and subsisting trademark under the Indian Trademark Law will be held liable for infringement of Trademark under section 29 of the Trademarks Act, 1999.
2. *For passing off* : an owner of a trademark who has not registered his mark is also entitled to protection of his mark if he is the prior user, his mark has acquired distinctiveness and there is misrepresentation by anyone else with regard to his goods which is likely to deceive the relevant public.

In the instant case, it can be said that the internet is undoubtedly one of the important features of the information revolution. It is increasingly used by commercial organisations to promote themselves and their product and in some cases to buy and sell. The domain name enables them to have an email address and website address.

In the instant case, both the plaintiff and the defendant have a common field of activity. Both operated on the net and provided information of a similar nature, both offered a chat line. Both the marks and domain names are almost similar.

There is every possibility of the internet user getting confused and deceived in believing that both domain names belong to one common source and connection although the two belong to two different enterprises. It can be said that the defendants have adopted the domain name "cadiff" with the intention to trade on the plaintiff's reputation.

The plaintiff is entitled to trademark protection of its domain name.

Question 5

Intellectual property law and competition law are two complementary instruments that promote economic efficiency and are necessary for the efficient operation of the market place. Elucidate. (5 marks)

Answer 5

Competition and Intellectual Property Law are closely linked as intellectual property law rewards innovation by granting exclusive rights, the Competition Law ensures that companies do not restrict freedom to compete or exploit market power with any competitive consequences. Intellectual Property (IP) allows consumers to make choices between competing entrepreneurs, and the goods and services they sell. Therefore, IP is inherently pro-competitive.

Intellectual Property Rights have become significant factor in both creating and using ideas that are translated into knowledge and inventions to promote innovation and economic growth. Competition law seeks to prevent companies from inappropriately creating, enhancing or maintaining market power that undermines competition without offering economic benefits.

Intellectual property laws provide incentive for innovation and technology diffusion by establishing enforceable property rights for the creation of new and useful products, technologies and original works of expressions.

Competition law may be invoked to protect these incentives from anti-competitive conduct that creates, enhances or maintains market power or otherwise harms or distorts competition in a given market.

Both Intellectual Property Law and Competition Law are necessary for the efficient operation of the market place. IP laws provide property rights comparable to those of other kinds of private property thereby providing incentives for owners to invest in creating and developing intellectual property and encouraging the efficient use and dissemination of the property within the market place.

Similarly, Competition law is intended to enhance consumer welfare by promoting competitive markets and consumer choice. IP laws are also intended to enhance consumer welfare as businesses are encouraged to innovate and invest in new technologies leading to improved products and lower prices. Brands enable consumers to choose the products they value which encourages competition among brand owners. The promotion of a competitive market place through the application of competitive law is consistent with the objectives underlying Intellectual Property Law.

Most Competition laws contain exemptions or exceptions designed to ensure that they do not negate rights explicitly granted by respective IP laws.

Question 6

In the course of conducting an intellectual property audit, the audit team discovers that few employees are subject to written agreements with the company although many have access to highly proprietary information. Moreover, the audit team has discussed with the client the purchase of another company two years ago but has not filled any documents to notify any statutory agencies that it is now the owner of various intellectual property assets.

What should the audit team advise the client with regard to these matters ?

(5 marks)

Answer 6

Notwithstanding the importance of Intellectual Property (IP), businesses have overlooked its value until fairly recently. In the earlier times, business strength was focused on tangible assets, with intangible IP being relegated to mention in footnotes. The internet business boom and government regulation changed business thinking. Now companies more typically recognize the importance of IP in business decisions and transactions, and that recognition has increased the demand for IP audits.

An intellectual property audit is a systematic review of a company's IP assets and related risks and opportunities. IP audits can help assess, preserve, and enhance IP; correct defects in IP rights; put unused IP to work; identify risks that a company's products or services infringe another's IP; and implement best practices for IP asset management. A thorough IP audit involves not only a review of a company's IP assets, but also the company's IP-related agreements, policies and procedures, and competitors' IP.

Another type IP investigation is usually conducted when a company acquires another entity. At the time, a thorough investigation is usually conducted of the intellectual

property of the target company to ensure that the acquiring company will obtain the benefits of what it is paying for and will not inherit infringement suits and other problems stemming from the target's failure to protect its intellectual property. This type of intellectual property investigation is acquiring and its counsels have an obligation to duly and diligent investigate the target's assets.

The IP Audit requires :

- Researching background information of the business
- Preparing an IP Audit plan

IP information analyses to ascertain if the company owns all the intellectual property of the concern and whether the company infringes on the intellectual property rights of other in the conduct of its business.

IP evaluation is done through different valuation technologies including replacement value, discounted cash flows and comparable sales.

Further, the client has to be told that the IP Audit requires auditing different contracts/ agreements including licensing agreements, assignment agreements, employment and independent contractors' agreements, joint venture and collaboration agreements.

In summary, an intellectual property audit can have a meaningful role in avoiding the violation of others' rights, protecting one's intellectual property rights, minimizing the risk of forfeiture of rights, clarifying ownership issues, and educating employees.

INTERNATIONAL BUSINESS – LAWS AND PRACTICES
(Elective Paper 9.5)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Analyze the case study and answer the questions given at the end :

A US \$48.3 billion corporation, the Aditya Birla Group or ABG is in the League of Fortune 500. Anchored by an extraordinary force of over 120,000 employees belonging to 42 nationalities, the Group is built on a strong foundation of stakeholder value creation. With over seven decades of responsible business practices, our businesses have grown into global powerhouses in a wide range of sectors - metals, pulp and fiber, chemicals, textiles, carbon black, telecom and cement. Today, over 50% of Group revenues flow from overseas operations that span 36 countries in North and South America, Africa and Asia. In 2014 they celebrated a decade of their values. All their businesses and all their people have adopted these Values with understanding and enthusiasm. All of them have made a consistent effort to make the values, the heartbeat of the Group's existence. In doing so, not only have the values flourished but also their people and businesses. The "Power of 5" is their unique way of saluting, celebrating and cheering the inspirational act of integrity, commitment, passion, seamlessness and speed over the last decade.

OPERATIONS (India) :

- (a) **Aditya Birla Capital Limited** (ABCL) is the holding company of all the financial services businesses of the Aditya Birla Group. Through its subsidiaries and joint ventures, it manages aggregate assets worth more than ₹3000 billion as of December 31, 2019. ABCL is among the top five private diversified NBFCs in India. It is also one of the largest private life insurance companies, asset management companies and general insurance brokers in the country
- (b) **Grasim Industries Limited** is the flagship company of the Aditya Birla Group. It started as a textiles manufacturer in India in 1947. Today, it is a leading global player in Viscose Staple Fiber or VSF and the largest chemicals (Chlor-Alkali-s) player in India. It is also the largest cement producer and Diversified Financial Services (NBFC, Asset Management and Life Insurance) player in India through its subsidiaries UltraTech Cement and Aditya Birla Capital.
- (c) **UltraTech Cement Limited** is the largest manufacturer of cement in India and ranks among the world's leading cement makers. UltraTech has a strong presence in international markets such as Bangladesh, UAE, Sri Lanka and Bahrain. UltraTech has a dealer and retailer network of over 80,000 partners across the country, with a market reach of more than 80% Indian cities and towns. UltraTech is India's largest manufacturer of grey cement, white cement and ready mix

concrete (RMC). In the white cement segment, UltraTech goes to market under the brand name of Birla White. UltraTech Building Products business is an innovation hub that offers an array of scientifically engineered products to cater to new-age constructions. Aerated autoclaved concrete (AAC) blocks are economical, light-weight blocks ideal for high-rise buildings, while dry mix products include waterproofing, grouting and plastering solutions designed for faster completion of projects. The retail format of UltraTech Building Solutions offers a wide range of construction products to the end customers under one roof. UltraTech has over 1600 Building Solutions stores across India which are one-stop shops for all primary construction needs of our individual home builders.

- (d) **Hindalco Industries Limited** is the metals flagship company of Aditya Birla Group. It is the world's largest aluminium rolling company and is also a leading producer of copper. Along with its global subsidiary Novelis Inc., Hindalco has a presence in 12 countries. The company operates across the value chain – from bauxite mining to alumina refining, aluminium smelting, rolling and extrusions. It services key industry sectors such as building & construction, automotives, packaging, electrical, consumer durables, refractories, and ceramics.
- (e) **Aditya Birla Insulators**, the largest Indian manufacturer of high voltage porcelain insulators (fourth largest in electrical insulators worldwide), is a part of Grasim Industries Ltd. World class technology and cost competitiveness produce high quality insulators at state-of-the-art manufacturing facilities. Aditya Birla Insulators is the preferred partner of a global clientele that includes leading power utilities and national and international power equipment manufacturers. Its products are exported to over 58 countries worldwide, with focused markets in Europe, America, Middle East, Africa and China.
- (f) **Aditya Birla Science and Technology Company Private Limited (ABSTCPL)** is the global corporate research and development hub for Aditya Birla Group's businesses. The company generates extensive intellectual property for the Group with 15 successful patent applications and several in various stages of processing worldwide. The company also offers contract research, analytical services, engineering, and scale-up facilities for entities outside the Group. It has the only cellulosic fiber R&D centre in the country. ABSTCPL's core service offerings include sustainability research like energy conservation studies, fresh water conservation and waste water treatment, along with others.
- (g) **Birla Carbon** is a world leader in the manufacturing and supply of carbon black additives. The company provides products across ASTM (American Standards Association) grades and specialty blacks. It caters to leading brands and companies across the tyre, rubber, plastic, ink and paint industries globally. Birla Carbon's footprint extends across 12 countries on five continents with 16 manufacturing facilities for a combined annual production capacity of over 2 million tonnes.
- (h) **Dahej Harbour and Infrastructure Limited (DHIL)** is Birla Copper's copper smelter, located at Dahej in the Bharuch district of Gujarat, India. It is one of the largest single-location copper smelters in the world with integrated port facilities. Birla copper is a unit of Hindalco Industries Limited, the metals flagship company of Aditya Birla Group. The copper unit at Dahej comprises copper smelters

backed by a captive power plant, oxygen plants, by-products plants, utilities and a captive jetty. There is also a precious metals recovery plant at Dahej, which produces gold, silver, selenium and platinum. It is India's largest private producer of gold.

- (i) **Essel Mining & Industries Limited (EMIL)**, established in 1950, is one of India's largest iron ore mining companies and producer of noble ferro alloys. Located in the mineral-rich Barbil-Barajamda belt of Odisha, the company's calibrated iron ore lump and iron ore fines are the best quality available in the country. As part of its commitment to the environment, EMIL has forayed into renewable energy. It has set up a wind power project in Dhule, Maharashtra with an installed capacity of 75MW. The power generated from the windmills is supplied to the Maharashtra State Electricity Distribution Company Limited.
- (j) **Hindalco-Almex Aerospace Limited (HAAL)** is a first-of-its-kind facility in India that manufactures high-strength aluminium alloys for applications in the aerospace, sporting goods and surface transport industries.
- (k) **Vodafone Idea Limited** is an Aditya Birla Group and Vodafone Group partnership. It is the leading telecom service provider in India and second largest globally. The company offers superior voice and broadband connectivity across India, covering 92 per cent of the population and reaching nearly 500,000 towns and villages. Over 19% of Idea-owned telecom towers were operated by hybrid power, reducing carbon dioxide emissions by 52,000 tons per annum.
- (l) **Tanfac Industries Limited** manufactures organic and inorganic fluorine-based chemicals and is a joint venture company promoted by the Aditya Birla Group and the Tamil Nadu Industrial Development Corporation (TIDCO). Incorporated in 1972, the company has grown to become one of India's largest suppliers of fluorine chemicals. The company has strategic tie-ups with Tanfac Davy Process (formerly BUSS AG), Switzerland, and CHENCO, Germany for know-how and equipment expertise, and with Grasim Industries Limited for design and erection.
- (m) **Utkal Alumina International Limited**, a 100 percent subsidiary of Aditya Birla Group company Hindalco, is engaged in alumina refining. The Utkal Alumina Refinery project in the Rayagada district of Odisha comprises of an Alumina Refinery, bauxite mines (Baphlimali) with reserves lasting for over 25 years, and a captive co-generation power plant of 90 MW. Utkal Alumina is a world-class refinery with state-of-the-art technology – from the world's acclaimed technology supplier, Rio-Tinto-Alcan. With the best quality bauxite as its input, and tightly integrated logistics between mines and the refinery, the operating cost per tonne of alumina is among the lowest in the world.

OPERATIONS (Global) :

- (a) **Aditya Birla Chemicals (Thailand) Limited (ABCTL)** is a part of the Aditya Birla Group's chemicals business. It has five manufacturing sites in Thailand. ABCTL is a pioneer manufacturer of epoxy resins in the entire ASEAN region. Its phosphates division offers enriched solutions for a variety of food segments such as cheese, seafood, meat and bakery.
- (b) **Aditya Birla Grasun Chemicals (Fangchenggang) Limited** is a joint venture between ABCTL and Fangchenggang Grasun Company Limited. The entity came

into being in 2007 to provide food grade phosphoric acid to the phosphates division in Thailand.

- (c) **AV Group NB** is a part of the pulp and fiber business of Aditya Birla Group. Located in New Brunswick, Canada, the mills produce high content dissolving pulp or specialty cellulose for the manufacturing of natural-based, VSF, used to make rayon in the apparel and home textile industry. Most of the pulp produced by AV Group is supplied to Aditya Birla Group's viscose plants in India, Indonesia and Thailand.
- (d) **Birla Jingwei Fibres Company Limited (BJFCL)** is Aditya Birla Group's VSF manufacturing company located in the Hubei Province of central China. It was established in 2006 as a joint venture company between the Aditya Birla Group and the Fujian Jingwei Group. In 2008, Aditya Birla Group acquired 100% ownership of the company.
- (e) **Domsjö Fabriker (Domsjö)** is the Aditya Birla Group's Sweden based speciality pulp and bio-refinery company. Domsjö's products are mostly sold outside Sweden, and the largest markets are in Asia.
- (f) **Indo Phil Group of Companies** is the first Indian-Filipino textile joint venture. It is the largest textile mill in the Philippines. It consists of three companies : Indo Phil Textile Mills Inc, Indo Phil Acrylic Manufacturing Corp, and Indo Phil Cotton Mills Inc. Almost 30% of its products are directly exported to customers in the US, Canada Mexico, Turkey, Europe, South America, Korea, Taiwan, Russia, Kenya, Malaysia and other global locations.
- (g) **Indo Thai Synthetics Company Limited** is Thailand's leading synthetic yarn manufacturer and exporter, commanding 50% share of the total synthetic spun yarn exported from Thailand. The company was the first overseas venture of the Aditya Birla Group, operating in Thailand since 1970. Over 75% of Indo Thai Synthetic's products are exported to customers across 25 countries including the US, Brazil, Turkey, Greece, Belgium, Israel, Italy, Spain, Portugal, Germany, Korea, Bangladesh and Taiwan. Its final knit apparels are supplied to well-known labels such as Banana Republic, H&M, JC Penny, Sears, M&S, Lindex, Kapphal and Wal-Mart.
- (h) **Novelis Inc.** is the leading producer of flat-rolled aluminum products and the world's largest recycler of aluminum. It has an integrated network of rolling and recycling facilities across North America, South America, Europe and Asia. Novelis supplies premium aluminium sheet and foil products to transportation, packaging, construction, industrial and consumer electronics markets. Its customer base includes iconic brands like Coca-Cola, AB Inbev, Ford Motor Company, Jaguar Land Rover and Samsung. Sustainability is core to Novelis' business. Novelis recycles more than 70 billion used beverage cans each year, turning them back into new beverage cans in roughly 60 days.
- (i) **Pan Century Surfactants Inc.** is Aditya Birla Group's integrated fatty alcohol manufacturing facility in Philippines. The company supplies fatty alcohol to leading multinationals that find application in detergents, cosmetics, pharmaceuticals and chemical industries.
- (j) **PT. Elegant Textile Industry (Indonesia)** is the world's largest producer of

- rayon spun yarn, contributing 10% of the global rayon spun yarn trade. PT. Elegant is the largest exporter of rayon and rayon-polyester spun yarn with a market share of 30% from Indonesia. About 80% of its products are exported to customers in the US, Turkey, Korea, Japan, Italy, Greece, Spain, Brazil, Argentina and other locations in Europe and the Asia Pacific region. Nearly half of PT. Elegant's production caters to niche segments, such as high-quality fabrics for medical applications, car seat covers, upholstery and fancy yarn production among other uses.
- (k) **PT. Indo Bharat Rayon (Indonesia)** pioneered the production of VSF in Indonesia. Situated at Purwakarta in West Jawa, it is the world's second largest manufacturer of VSF at a single location. The company also produces chemicals like anhydrous sodium sulphate and sulphuric acid, used in the detergent, glass, textile dyeing, and pulp and paper industries. Apart from the domestic market, PT. Indo Bharat Rayon also caters to customers in the US, Europe, Turkey, Japan, Korea, China, Morocco, Philippines, Malaysia and other global locations.
- (l) **PT. Indo Liberty Textiles (Indonesia)** manufactures synthetic spun yarn in 100% rayon, 100% polyester, polyester-viscose and open end (OE) rayon yarn. The company exports more than 80% of its production to customers across 24 countries including Korea, Japan, Belgium, Spain, Turkey, Brazil, the US, China and Italy. PT. Indo Liberty Textiles has won many prestigious business excellence awards and is accredited for integrated management systems related to quality, environment, and health and safety.
- (m) **PT. Indo Raya Kimia (Indonesia)** is a leading producer of carbon di-sulphide in Asia Pacific. Acquired by the Aditya Birla Group in January 2003, the plant caters to domestic demand and also exports to countries across the globe including South Korea, Australia, Japan, Thailand, India, Malaysia and South Africa.
- (n) **PT. Sunrise Bumi Textiles (Indonesia)** is a leading quality yarn manufacturer. About 35 per cent of the company's products are value-added such as siro spun yarn, lycra core spun yarn, slub yarn, rayon / cotton blended yarn, sewing thread, bamboo 100 per cent, bamboo / cotton, modal / cotton yarn, etc. Sunrise caters to the highly quality conscious market with exports of about 67 per cent spread across 30 countries in six continents.
- (o) **Swiss Singapore Overseas Enterprises Pte Ltd. (SSOE)**, an Aditya Birla Group Company, is a leading bulk commodity trading solutions provider and logistics partner to clients around the world. Incorporated in Singapore in 1978, SSOE serves over 1000 clients across the globe. It offers sourcing and marketing of physical commodities like coal, petroleum products, sulphur, iron & steel, fertilizer, agro products and tea. Along with a dedicated shipping desk, SSOE is equipped with on-ground logistics facilities such as warehousing, tankages and port stock up.
- (p) **Terrace Bay Pulp Mill** is part of Grasim Industries Ltd, an Aditya Birla Group company, and is a northern bleached softwood kraft pulp mill. The Terrace Bay Mill is the third Canadian mill to join the Aditya Birla Group's pulp and fiber business (Grasim Industries Ltd.) in July 2012.

- (q) **Thai Acrylic Fibre Co. Ltd (TAF)**, an Aditya Birla Group company, is among the world's top 5 quality acrylic fibre producers. Marketed under the brand name *Birlacril™*, the product range comprises a variety of acrylic fibres used for making sweaters, blankets, carpets, upholstery, soft toys and awnings, etc.
- (r) **Thai Peroxide Company Limited (TPL)**, a joint venture company between the Aditya Birla Group and FMC Corporation (US), is a pioneer in the manufacture of hydrogen peroxide in Thailand. The company began operations in 1989 and it is one of the best-benchmarked companies amongst FMC plants. TPL also manufactures value-added speciality products like *Peracetic Acid* for serving the disinfection market. Thai Peroxide exports its technologically advanced and environment-friendly products to many Asian countries including Malaysia, Vietnam, Indonesia, Pakistan, Philippines and Singapore.
- (s) **Thai Rayon**, promoted by Grasim Industries Limited, India, an Aditya Birla Group company, and local Thai entrepreneurs, is the pioneer as well as sole manufacturer of *Viscose Staple Fibre (VSF)* in Thailand. The company was incorporated in 1974. Almost two-third of Thai Rayon's VSF production is directly exported to more than 20 countries worldwide. The company's products under the umbrella brand of *Birla Cellulose*, meet the stringent quality requirements of customers spanning six continents from the Middle East to Europe and from USA to Asia Pacific. Thai Rayon produces a wide range of fibres that have multiple functional benefits such as soft feel, high moisture absorbency, bio degradability, comfort and fashion. These fibres have various applications in apparel, home textiles, dress material, knitwear, wipes, personal hygiene, and medical usage. Thai Rayon has diversified into a new generation fibre - *Birla Modal*, which is widely used in high-end textile fashion products. Thai Rayon also produces anhydrous sodium sulphate as its by-product, mostly used in detergent, pulp, glass, leather and textile industries.

SUSTAINABILITY AT ABG

"The Aditya Birla Group endeavours to become the leading Indian conglomerate for sustainable business practices across its global operations"

This is the Aditya Birla Group (ABG) Sustainability Vision set by Mr K M Birla in the year 2012. The priority is to follow the three steps of the ABG Sustainability model to help them adjust their performance to meet the ever tightening demands of a sustainable planet and society.

The first step "Responsible Stewardship" focusses on how they manage today and their goal is to building a framework of policies, technical and management standards aligned to international standards. The second step defined by the model is to understand the external changes that inevitably impact their companies and this step of the model is called "Strategic Stakeholder Engagement". The goal is to build strong relationships with ABG stakeholders and key technical experts on climate change, water and waste management, developments in human rights legislation, safety standards, health impacts and the like. The third step they have undertaken is, "Future Proofing", here they embed sustainability trends into strategic business plans to curtail the risks and find new opportunities that will be presented by the requirements of a sustainable planet and society by 2030 and 2050 and make ABG businesses sustainable.

Questions :

- (a) *Can the ABG be called as a multinational conglomerate ? Comment. Identify the industrial sectors into which they enlist. (10 marks)*
- (b) *How are they able to leverage out the benefits due to their existence outside the Indian soil ? (10 marks)*
- (c) *Bring out the future perspective of the Aditya Birla Group in a strategic framework. (10 marks)*
- (d) *What are their sustainability initiatives across the different Industry verticals ? (10 marks)*
- (e) *Thailand is a member of ASEAN how Aditya Birla Group operation in Thailand will be benefitted from ASEAN ? (10 marks)*

Answer 1(a)

The Aditya Birla Group or ABG can definitely be called as an Indian Multinational Conglomerate. As the case presents, the Group not only has a formidable footing in the Indian Industrial segment but also has vivid operations outside the political economy of India. According to the given information, the Group is built on a strong foundation of stakeholder value creation.

With over seventy years of responsible business practices, it has successfully nurtured a wide range of industrial sectors - metals, pulp and fiber, chemicals, textiles, carbon black, telecom and cement. Today, more than half of Group revenues flow from overseas operations built around 36 countries in North and South America, Africa and Asia. US \$48.3 billion corporation, the ABG is in the League of Fortune 500. It possesses a work force of over 1,20,000 employees belonging to 42 nationalities. The leadership as well as organizational structure is agile enough to understand and cope up the nuances of multinational business. Hence, it can be called as a multinational conglomerate.

Answer 1(b)

As far as leveraging the global operations is concerned, for instance, the AV Group NB located in Canada produces high content dissolving pulp or speciality cellulose for the manufacturing of natural-based, VSF, used to make rayon in the apparel and home textile industry. Most of the pulp produced by AV Group is supplied to Aditya Birla Group's viscose plants in India and few other nations. Similarly, AB Group realized at the early stage of its global presence with presence in international markets such as Bangladesh, UAE, Sri Lanka and Bahrain. Hindalco, the flagship company of ABG has presence in more than 12 countries of the world.

Domsjö Fabriker (Domsjö) is Sweden based specialty pulp and bio-refinery company whose products are mostly sold outside Sweden, and the largest markets are in Asia. PT. Indo Bharat Rayon also caters to customers in multiple global locations. In the insulators business, it has global presence and in fact leadership with business presence in 58 countries of the world. Further many of Group companies are based abroad with strong business interest with cost, market share and quality leadership.

AB Groups understand the need of raw material required for specific business across the globe and try to integrate all possible elements of value chain to avail cost effective inputs for their manufacturing and business operations.

Answer 1(c)

The future perspective of the ABG can be traced right from the statements made by the top brass and the Vision-Mission statements along with the values encompassing the power of five: integrity, commitment, passion, seamlessness and speed. As KM Birla puts it, devoid of values in all its operations, the ABG does not wish to grow that fast, which is a clear indicator that the group does not compromise on its values based deliverables.

Further, the focus on leadership has added robustness to its growth worldwide in almost all its operations (and businesses). Moreover, opportunism is also an untouchable word at the ABG. The Vision and Mission statements grossly endorse such commitments and believe in building a strong chain with its stakeholders. Society being the ultimate service point is yet another indicator how these parameters of functioning are integrated to provide societal upgradation. Further, the word 'future-proofing' is sufficient to understand what is in store for future, adaption to changes in the external environment and altering business plans accordingly is the key also to sustainability. Aditya Birla Group is looking at a future business portfolio that includes alternative energy, water management, and new-age, eco-friendly materials that can be used instead of plastics. Among the new businesses Aditya Birla Group is focusing on are water harvesting, waste management, and solar and wind energy.

Voluntary adoption of legal standards and possessing its blueprint for the year 2030 and later 2050 brings the operating space challenge to be solved through able leadership. In all, amidst ever changing PESTEL, the ABG through its dynamic SWOT can keep pace with world where strategic realignments would be the order of the day. Even if they foray into more Global operations, having a strategic mindset will boost their presence even in global market.

Answer 1(d)

"The Aditya Birla Group endeavours to become the leading Indian conglomerate for sustainable business practices across its global operations". This is the ABG Sustainability Vision set by Mr K M Birla in the year 2012. The main concern is to follow the **three steps of the ABG Sustainability model** to help them adjust their performance to meet the ever tightening demands of a sustainable planet and society.

The first step "Responsible Stewardship" focusses on how they manage today and their goal is to building a framework of policies (strategies), technical and management standards aligned to international standards.

The second step defined by the model is to understand the external changes that inevitably impact their companies and this step of the model is called *"Strategic Stakeholder Engagement"*. The goal is to build strong relationships with ABG stakeholders and key technical experts on climate change, water and waste management, developments in human rights legislation, safety standards, health impacts and the like.

The third step they have undertaken is, “*Future Proofing*”, here they embed sustainability trends into strategic business plans to curtail the risks and find new opportunities that will be presented by the requirements of a sustainable planet and society by 2030 and 2050 and make ABG businesses sustainable.

Answer 1(e)

ASEAN is the most prominent regional grouping in Asia. The Association of Southeast Asian Nations is a geo-political and economic organization of ten countries located in Southeast Asia, which was formed on 8 August, 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Since then, membership has expanded to include Brunei, Burma (Myanmar), Cambodia, Laos, and Vietnam.

Its aims include accelerating economic growth, social progress, and cultural development among its members, protection of regional peace and stability, and opportunities for member countries to discuss differences peacefully.

ASEAN covers a land area of 4.46 million km, which is 3% of the total land area of Earth, and has a population of approximately 600 million people, which is 8.8% of the world's population. The sea area of ASEAN is about three times larger than its land counterpart. In 2011, its combined nominal GDP had grown to more than US\$ 2 trillion. If ASEAN were a single entity, it would rank as the eighth largest economy in the world.

ASEAN has emphasized regional cooperation on the three pillars of security and socio-cultural and economic integration. It has made most progress in economic integration and aims to create an ASEAN Economic Community (AEC) by 2015.

The foundation of the AEC is the ASEAN Free Trade Area (AFTA), a common external preferential tariff scheme to promote the free flow of goods within ASEAN. Other elements of economic integration, such as the free flow of investment and services and the elimination of non-tariff barriers, have been added by the ASEAN leaders.

Thailand places strong importance on its relationship with India. As observed, trade and investment between the two countries is on the top. This growth is coupled with the increase in the number of visitors from both countries. According to the World Bank, Thailand has elevated itself from a low-income to an upper-income country within a single generation.

Its steady economic growth has allowed the country to reduce its poverty rate from 67 percent to 7.8 percent over the last three decades. Thailand has also extended healthcare insurance coverage to almost all its 70 million citizens.

These remarkable achievements owe much to the long-term socioeconomic planning of the central government. The Thai government recently announced a 20-year blueprint to help the country achieve developed nation status. One of the core tenets of the blueprint is to turn Thailand into a regional investment, production, trade and transportation hub.

Thailand is strategically located amongst the ASEAN nations and has a strong supply chain and values based associations with these nations. Hence, ABG stands to get benefitted from the strong reciprocities with the nearby ASEAN nations.

Question 2

- (a) *The concept of 'New India' has brought many opportunities and hence, challenges for our Industries. Comment through a TOWS framework. (5 marks)*
- (b) *Political stability is the key to economic development. Comment with focus on the Indian Business Environment and the impact visible. (5 marks)*
- (c) *Supply chain and Logistics have thrown entrepreneurial opportunities in our country. Comment focusing on scope with instances and examples. (5 marks)*
- (d) *Why is Porter's five force analysis also known as 'Collaborative Competitive Model' or 'Extended Rivalry Model' ? Explain. (5 marks)*
- (e) *What is the 'WTO take' on Anti-Dumping Duty ? What are the two parameters to assess dumping ? (5 marks)*
- (f) *How has India benefitted from IMF and why India knocked the door of IMF ? (5 marks)*

Answer 2(a)

Post liberalization, our country has witnessed tremendous changes, especially in the decade gone by, related to the macro-environment. Earlier, Globalization brought many forced changes, however, after the current Government took charge at the Centre again, a newer and much bolder concept of national depiction has arrived and is increasingly becoming acceptable across industries and common citizens, called 'New India'. In fact, it is an indicator of economic strength provided by a stable political environment, transforming socio-cultural fabric, action oriented legal environment, addressing ecological concerns and embracing the technological advancements that has repositioned India in a different league of nations altogether and its leading role towards creating a new world order is strongly acknowledged by the traditional power centres on the Globe. Indian industry has come a long way from the command, control style of functioning rooted in an inward looking Import substitution policy to an export orientation, globally competitive, quality driven style of functioning. In short term, with improved investment scenario coupled with government support through and reforms, the industrial performance is expected to do better. But in large run, the performance depends on how well the reforms are initiated, the investment and growth in Infrastructure, the continued availability of natural resources avail of low-cost, high skill workforce and global market scenario.

Threats

- Difficulty in edging out China on many parameters
- Still poor in R&D, gender issues, innovation and industrial facilitation
- Agricultural sector not performing well
- Social security missing for society's lower segment
- Corruption and Red Tapism still prevalent
- Sustainability parameters missing

Opportunities

- Industry becoming highly competitive
- Growing recognition of "Make in India" and "New India" branding in global market
- High outsourcing opportunities
- Quality initiatives being undertaken
- Indian MNCs operations increasing worldwide
- Scale of operations across different sectors going up
- Vast talent pool and skill acquisition by young brigade
- Government initiatives for industrial surge, policies reframing
- Greater concern for green policy framework
- Financial Inclusion initiatives to strengthen the bottom-line

Weaknesses

- Industrial sickness prevalent across certain sectors
- Outdated labour laws
- Regulatory bodies limited agility
- Poor functioning of micro and small enterprises
- Inadequate and poor quality infrastructure in some areas

Strengths

- Government proactiveness on various fronts
- Global outreach politically and economically
- Proximity to global power centres
- Increasing R & D activities and developing educational Institutions
- Balanced Public and Private Sectors
- Growing demand for goods and services
- Availability of comparably low-cost and skilled work-force
- Capacity augmentation across Industrial segments
- Increasing investments and FDI
- Fast technological development

Answer 2(b)

Political Stability is the key to sustainable economic development across the world for not only India but other nations as well. We in particular are guided by the political

environment which develops a conducive framework for other environmental parameters to take shape. Policy formulation to implementation is highly dependent on the political framework present in our country. National level or International level policies gain momentum only through a proactive approach of the Government. We can see how infrastructure augmentation has taken place in the recent years electricity availability, road and rail networks, waterways, multi-modal transport system etc. which buoys the economic conditions. International connectivity and long lasting global relationships are an outcome of a strong foreign policy which comes as a result of political commitment.

The impact is visible in the following manner:

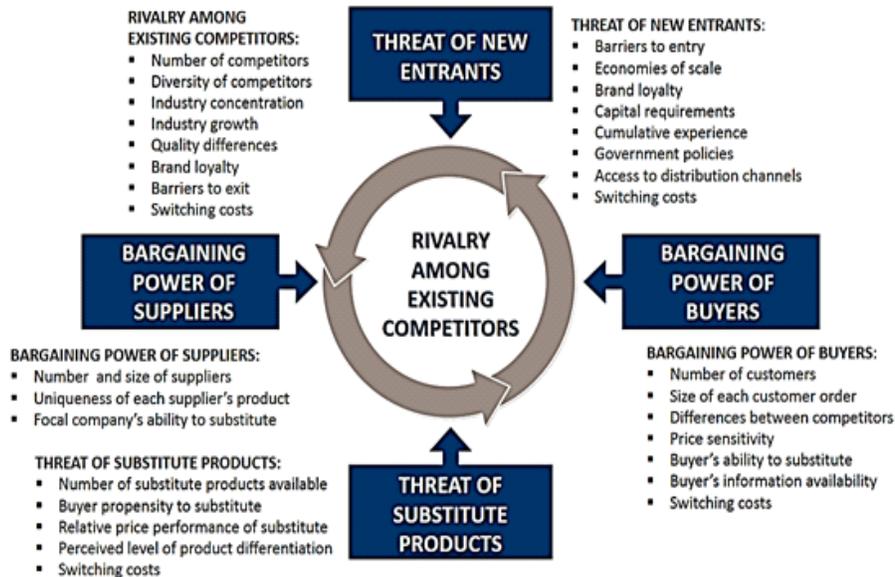
- (a) Better acceptability of Brand India worldwide
- (b) More impetus on Exports rather than imports
- (c) Digression towards modern renewable energy sources
- (d) Start-ups as a formidable career choice amongst youths in India
- (e) Better Job/entrepreneurial opportunities within the country
- (f) More disposable income across families
- (g) Increased consumption of products and services
- (h) Better access to healthcare
- (i) Cultural acceptability/Multi-culturalism
- (j) Technological Integration in everyday work
- (k) Enhanced Consumerism.

Answer 2(c)

Supply Chain Management is not a new phenomenon in any business operation. However, it has gained tremendous momentum in India due to various reasons like improvement in Infrastructure, variations in business operations, enhanced business opportunities in different Industrial segments, warehousing as an entrepreneurial venture, emergence of variations in logistical support, spur in seasonal demand of specific utilities, saturation of cities and foray into village areas, growth in rural markets, easy availability of technology at the input, process and output levels concerning raw materials and finished products. Several entrepreneurial ventures can be seen related to supply chain like warehousing (public, private, bonded, cooperative), container freight logistics (Inbound-Outbound; Regional-National Global), packaging, labeling, inventory management (including containerization), information systems, transport management (including multimodal and IT based fleet management systems) involving facilities, equipments and people etc. Scope also exists in third and fourth party logistics, cold logistics is yet another entrepreneurial venture area. Even Information Technology is providing opportunities in the form of developing MIS, WMS with GPS and RFID. Some of the examples include introducing contactless, cashless, paperless and faceless customs clearance system, revamping port infrastructure, dedicated freight corridors, high speed express ways, privatization of cargo trains, new and modernized air cargo infrastructure in the country that is aiding, assisting in faster logistics and supply chain operations.

Answer 2(d)

Porter's five force model is also known by other names like extended rivalry model or collaborative competition model due to its nature. The five forces, as propounded by ME Porter is as below:



So far we understood competition as rivalry between existing firms, however, other four dimensions were also added by Porter involving buyers, suppliers, substitutes and potential entrants. Since these four newer dimensions appeared, the name extended rivalry automatically comes in. In all, to understand competition between firms, five forces (as depicted above) come into play in different business situations, although, not all forces may occur concurrently. The other name collaborative competition comes from the collaborative models embedded in this analysis. Addition of the time factor may result in forces not competing against each other but collaborating, this enables the managers to get clearer insight in the existence and nature of past, present and future (anticipated) interaction between firm and its industry environment. We also address critical analysis of the original concept, stating that it does take into consideration a firm's potential collaborative relations with determinants of industry environment. Porter's framework brims with the spirit of competition wherein each stakeholder is constantly jockeying to get the better of a relationship, strategic or tactical. The industry environment and technological attributes have changed so dramatically over the last decade that the traditional, including Porter's, view of firms and industries not talking to each other is no longer valid. There is a clear need to redefine the Porter Model to meet the new environmental needs in terms of collaboration, rather than competition.

In the new paradigm, the five forces of collaboration can be stated as: the opportunity of market expansion with competition; the synergy of substitute products or services, the collaborative power of customers (buyers), the collaborative power of suppliers,

and the balance of collaborative and competitive rivalry, all of these analyzed within the framework of a networked industry definition.

The important differences of the collaborative model with the competitive model are as follows. It sees competition not as evil but as a driver of market expansion. It views new products as a bundling opportunity and as a transition to enhanced customer experience. It also views customers and suppliers as being collaborative, rather than combative, with the firm. Finally, it proposes that collaboration and competition coexist in a firm, with the balance between the two forces determining the growth energy of the industry. In the collaborative model, industry is not narrowly defined as in the Porter's competitive model. For example, the Porter model encourages us to define the automobile industry as narrowly as car, truck, bus and motor cycle industries on the basis that each product is not a substitute for the other. The collaborative model, on the other hand, considers all passenger serving industries as one, not only whether these are car, bus and motor cycle but also inclusive of supportive industries such as navigation, electronics, telecommunication and entertainment.

Answer 2(e)

An 'anti-dumping duty' is a protectionist tariff that a domestic government imposes on foreign imports that it believes are priced below fair market value. For protection, many countries impose stiff duties on products they believe are being dumped in their national market, undercutting local businesses and markets. The WTO operates a set of international trade rules. Part of the organization's mandate is the international regulation of anti-dumping measures. The WTO does not regulate the actions of companies engaged in dumping. Instead, it focuses on how governments can-or cannot-react to dumping. In general, the WTO agreement allows governments to "act against dumping where there is genuine (material) injury to the competing domestic industry." In other cases, the WTO intervenes to prevent anti-dumping measures.

There are two fundamental parameters used for determination of dumping, namely, the normal value and the export price. Both these elements have to be compared at the same level of trade, generally at ex-factory level, for assessment of dumping. Normal value is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country. The Export price of the goods allegedly dumped into India means the price at which it is exported to India. It is generally the CIF value minus the adjustments on account of ocean freight, insurance, commission, etc. so as to arrive at the value at ex-factory level.

Answer 2(f)

The International Monetary Fund (IMF) is an organization of 189 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world. Created in 1945, the IMF is governed by and accountable to the 189 countries that make up its near-global membership. The IMF's prime focus ensures the stability of the international monetary system-the system of exchange rates and international payments that enables countries (and their citizens) to transact with each other. The Fund's mandate was updated in 2012 to include all macroeconomic and financial sector issues that bear on global stability.

India also got the following benefits of becoming the IMF members such as:

1. Independence of the Indian Rupee
2. Membership of the World Bank
3. Availability of Foreign Currencies
4. Reputation in International Circle
5. Guidance and Advice
6. Timely Help at the time of balance of payment crisis
7. Freedom from Sterling
8. Sale and Purchase of Foreign Exchange
9. Economic Consultation
10. Help during Emergency

IMF has played an importance role in Indian economy. IMF had provided economic assistance from time to time to India and has also provided appropriate consultancy in determination of various policies in the country. India is the founder member of IMF. It played a significant role in the formulation of Fund Policies.

Question 3

Globalisation is no more a new phenomenon. Its momentum has lost pace in the recent years worldwide. On the contrary, regionalism or region-economic centrism is gaining strength as newer entities like BRICS are consolidating. Do you agree? Why or why not? Explain in detail considering the strategic perspective of Globalisation. (5 marks)

Answer 3

The concept of economic regionalism is defined as an empirically observable process of increasing cross-border activities, cooperation and coordination within a group of countries through integration. Originally, the concept of economic regionalism has been based on economic cooperation between natural partners (neighbouring countries or countries on the same continent). But since technological progress reduced transaction costs, intercontinental and global economic integration has become important in recent decades.

Geographical distance may stay important for trade flows, but intercontinental relations of emerging countries record a steady rise in trade relations. Political Stability is the key to sustainable economic development across the world. In general, regionalism could be defined as preferential cooperation among nations that are relocated in terms of geographical proximity, with certain common characteristics such as historical, cultural, political, and so forth. The objective of cooperation might be economic, political, or cultural in nature. In this context, the economic regionalism is considered more autonomous, outward oriented, comprehensive and multi-dimensional process which included trade and economic integration, environment, social policy issues relating to security and democracy, where the nation-states and other actors played an important role.

The BRICS are a fine example of explaining this new dimension of economic regionalism (regionalism lesser importance on physical borders) where BRICS intra-regional trade relations become the binding factor towards its economic integration and independence.

BRICS countries are trying to build up within the concept of shared democracy by modifying the group's institutional mechanism. Shared democratic decisions are more visible in the form of mutual interests and concerns of BRICS member states, which are enhanced to make a strong institutional mechanism. From a business perspective, globalization has two prime characteristics: first, it involves growing interdependency between countries and, second, it is multi-faceted with many different business aspects. In spite of its growth, globalization is only one of many aspects in the development of international and global business strategy. For many organisations attempting to develop an international or global strategy, globalization is not the prime strategic focus.

Question 4

Joint Ventures have been the most visible entity in collaborative businesses in India. In what way they are advantageous in a typical business set-up ? How can it turn disadvantageous ? (5 marks)

Answer 4

A joint venture is a business opportunity that is undertaken by two or more people, organizations, or parties that still retain their distinctive identities. The goal of a joint venture is to pool specific resources from all entities engaged to accomplish a specific goal. Under the structure of a joint venture, every participant is responsible for the profits, the losses, and any costs which are associated with the project. At the same time, however, the venture will also become its own entity. That makes it separate from the business interests of all the participants. The advantages and disadvantages are listed below:

Advantages:

1. Expertise sharing at its best
2. Better access to Resources of every nature
3. Workable for short term periods
4. Risk managed better, cost is shared
5. Embraces flexibility
6. Offers multiple exit strategies

Disadvantages:

1. Not always a flexible relationship
2. Difficult to structure an agreement with full equality
3. Can expose an internal expertise imbalance
4. Prone to cultural clash
5. May limit future outside current activities
6. Exit problems may be tedious in certain cases

Question 5

Why Government of India introduce export financing and elaborate the two types of export financing available in India? (5 marks)

Answer 5

Huge quantities of goods are sold in the form of exports in the International Market. These exports require a certain amount of financial assistance for the execution of the order. The finance depends upon the types of goods to be executed and also based on the overseas buyers. The amount can vary based on the requirement from short term to long term finance. This financial assistance provided by financial institutions for the export purpose is called EXPORT FINANCE. The two types of Export Finance are pre- and post-shipment finance.

1. Pre-shipment finance:

- Pre-shipment finance is provided when the exporter or seller wants the payment even before the shipment of the products or goods.
- Finance is provided for the purchase of raw materials/goods, processing them into finished products, storage cost, packing and marking of goods prior to shipment.
- This type of finance is approved when a firm order is placed by the importer.
- Also known as packing credit.
- Pre-shipment finance is granted for a period of 180 days as it is a working capital.
- In the case of unforeseen circumstances, it can be extended to 90 days. The maximum period allowable is 270 days.

2. Post shipment finance:

- After dispatching the goods to the importer, the exporter has to make a bill, which is to be paid by the importer. It takes about 3 to 6 months before the amount is received by the exporter. This time gap effects the production of the exporter. For this purpose, the exporter will present the bill to the financial institution which provides finance for exports. The bank can purchase the bill or collect the bill or even discount the bill.
- Post shipment finance is used to pay the wages or other services.
- To pay for cargo/shipping charges.
- To pay for advertising in overseas market for promotion.
- The rate of interest on post-shipment finance varies from minimum 90 days and can be extended based on individual financial institution.

Question 6

Many foreign companies were entered into the Indian market after liberalization of Indian market but many big MNCs were unsuccessful in their venture. Give reason why the foreign companies should think about creating strategic alliances with Indian companies. (5 marks)

Answer 6

Most firms enter into alliances out of need. According to an executive, "With alliances, we can do more for less- Whatever the needs driving alliance formation, managements must take the time to analyse why an alliance is the best strategy". The president of an automotive industry had once explained, "Understanding why you need a partnership is the most critical step. Sorting out the whys in the equation will in turn dictate the answers to key issues such as with whom you want to collaborate, how the partners will combine their strengths, and how the venture will be structured and managed." Some of the reasons for creating strategic alliances are given below:

- (i) *Growth strategies and entering new markets*: In today's fast paced environment companies simply do not have the time to establish new markets one-by one. Therefore, forming an alliance with an existing company already in that marketplace is a very appealing alternative. Partnering with an international company can make the expansion into unfamiliar territory a lot easier and less stressful for a company.
- (ii) *Obtain new technology*: All companies cannot provide the technology that they need to effectively compete in their markets on their own. Therefore, they can team up with other companies who do have the resources to provide the technology or who can pool their resources so that together they can provide the needed technology. Both sides receive benefit from the partnership. Technology transfer is viewed as being significant to the success of a strategic alliance.
- (iii) *Reduce cost by outsourcing*: Another reason for forming strategic alliances is to outsource business functions, which can include, marketing, production, accounting, sales, or virtually any other process, to a company which can do it better and cheaper. Indeed, many companies are forming alliances looking for the best quality or technology, or the cheapest labour or production costs.
- (iv) *Reduce financial risk and share costs of research and development*: Some companies may find that the financial risk that is involved in pursuing a new product or production method is too great for a single company to undertake. In such cases two or more companies agree to spread the risk among all of them.
- (v) *Achieve or ensure competitive advantage*: Alliances are particularly alluring to small businesses because they provide the tools businesses need to be competitive. For many small companies the only way they can stay competitive and even survive in today's technologically advanced, ever-changing business world is to form an alliance with another company or companies. Small companies realize the mutual benefits they can derive from strategic alliances in areas such as marketing, distribution, production, research and development, and outsourcing. By forming alliances with other companies, small businesses are able to accomplish bigger projects more quickly and profitably, than if they tried to do it on their own.
- (vi) *Knowledge transfer*: Companies enter into alliances because there is knowledge required to create something new. An example here is the Senso alliance between

Philips and Sara Lee. Each of the parties was lacking the knowledge the other had. Philips is good in creating household appliances and Sara Lee knows all about coffee. Together they were able to bring a balanced coffeemaker to the market with dedicated Senseo coffee supplies.

- (vii) *Market development* : Companies can enter into alliances to be able to develop new markets, whether it be geographic extensions or new market segments.
- (viii) *Efficiency* : Companies can also form strategic alliances to focus on cost reduction and increasing efficiencies.
- (ix) *Satisfy customer demands* : Customer demands in many markets are changing. For example, in office automation, customers now prefer a "systems solution" and want to rely on a single company to service all equipment. So, companies can enter into strategic alliances to satisfy new customer demands.
- (x) *Use excess capacity* : A large number of companies have used the strategic alliances to soak up excess capacity of manufacturing units they have.

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