

Roll No.

OPEN BOOK EXAMINATION

*Time allowed : 3 hours**Maximum marks : 100**Total number of questions : 4**Total number of printed pages : 7**NOTE : Answer ALL Questions.*

1. A confectionery company VITA was launched in India in 1940 which owned many registered trademarks in India and abroad. The Company is particularly famous for its “Gluco” biscuit. With its unique color scheme and design of farmyard scene the wrapper was registered as a trademark in December 1942. This wrapper is used in connection with the sale of their biscuits known as “VITA Gluco Biscuits” printed on the wrapper. The wrapper is of blue color and depicts a farmyard with a girl in the center carrying a pail of water and cows and hens around her on the background of a farmyard house and trees. For decades, the company had been selling its biscuits in this iconic packaging, building a reputation and goodwill among customers as of which it became well known.

However, in March 1961, they discovered that another company MTC was using a wrapper that they believed was deceptively similar to their registered trademark. VITA served a notice to prohibit the use of their wrapper but MTC, continued to use the wrapper. As a result, VITA filed a lawsuit seeking an injunction.

MTC, in their defense, claimed they were unaware of the registered trademarks and denied that their wrapper was similar to the registered design. They argued that there were notable differences between the two wrappers. For instance, their design depicted a girl carrying a bundle of hay on her head and carrying a sickle and a bundle of food in one hand, the cow, and hens that were different from those in the other party's wrapper. There was also said to be a difference in the design of the buildings on the two wrappers and the words printed on the two wrappers were distinct and separate.

In the light of the above facts, answer the following questions :

- (a) Discuss the concept of Passing off in the context of Trademark Law. What is the difference between Infringement and Passing off ?
- (b) A mark has a direct reference to the character of the Goods/Service. Examine the statement in the light of its capability of distinguishing the Goods/Services from those of others.
- (c) Explain the concept of **Trade Description** under Trademark Law.
- (d) Describe the ingredients of Ecological Diversity.
- (e) Explain the management process of Intellectual Property.

(5 marks each)

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2. The United Kingdom based Company BREXIT along with members of the Scotch Whisky Association (SWA) filed a suit before the Delhi High Court for permanent injunction to prevent the Defendant, Golden Bottling Ltd., an Indian based company from selling whisky under the name “Red Scot” or any other similar designation incorporating the word “Scot”, that creates misrepresentation with the genuine Scotch whisky.

The SWA had previously many times appealed to the defendant from using the word ‘Scot’ or ‘Scotch’ in their whisky productions and dealings, for two years, the defendant dropped using the word Scot in their product, later on again it was found that the defendant was still selling Red Scot Whisky in the market. Therefore, the plaintiff filed a suit before the Delhi High Court. Subsequently, a summon was duly served accompanied by an injunction to prohibit the defendant from further using the word Red Scot or Scot. However, despite service of the summons, the defendant did not appear before the court. Consequently, the Court continued the proceedings *ex parte* against the defendant. The Delhi High Court in its final verdict provided a permanent injunction in favor of the plaintiff as they sought, and also ordered compensation amounting to Rupees Five Lakh along with litigation cost. In the light of the above case, answer the following questions :

- (a) Explain the nature and purpose of the Geographical Indication Act.
- (b) What is bio-piracy ? Examine the impact of bio-piracy on bio-diversity.
- (c) How does the court’s interpretation of software as a ‘literary work’ under the Copyright Act, 1957, influence the legal protection of digital intellectual property in India ?
- (d) Explain the functions of Semi-Conductor Integrated Circuits Layout Design Registry.
- (e) Discuss the criteria outlined in the GI Act for a Good that cannot be registered as a geographical indication. Provide examples to illustrate your points.

(5 marks each)

3. The principle of novelty in patent law is a cornerstone in determining whether an invention qualifies for patent protection. A fundamental requirement for patentability, novelty ensures that the invention is genuinely new and has not been disclosed in any form before the date of filing. Judicial precedents have shaped the legal understanding of novelty, as evident in *Ganjendra Nath Banerji v. Dhanpal Das Gupta*, AIR 1945 in which the court ruled that no fixed rule can define what constitutes an invention. Instead, the assessment depends on whether the claimed invention represents an unexpected advancement beyond the ordinary progression of a given field. If a person skilled in that trade could have arrived at the claimed invention through routine developments without an inventive step, the invention lacks novelty. However, novelty does not always reside in the final product; it may exist in the manufacturing process, making procedural innovations patentable even if the resulting product is known. Additionally, a novel combination of previously known elements may be sufficient to establish novelty if the combination results in a synergistic effect rather than a mere aggregation of known features. For a patent to be granted, an applicant must not only demonstrate an improvement upon the prior art but also prove that the improvement contributes significantly to the existing body of knowledge. The novelty of the invention must be explicitly stated in the claims section of the patent application, as this defines the legal scope of protection and distinguishes the invention from prior art. The emphasis on novelty ensures that patents are granted only for genuine innovations, thereby promoting technological advancement and economic progress.

Answer the following :

- (a) What is meant by ‘Doctrine of Colorable Variation’ ? Explain the doctrine with the help of decided cases.
- (b) Explain piracy of a registered design under the provisions of the Design Act, 2000. State the penalties provided for piracy of a registered design.
- (c) What is the process of pre-grant opposition and post-grant opposition of a patent in India ?
- (d) “A new variety shall not be registered under the Plant Varieties Protection and Farmers’ Rights Act, 2001 unless it satisfies certain criteria”. Explain the meaning of new variety and the criteria required in this regard.
- (e) “An applicant desirous of obtaining a patent is required to describe fully the invention therein claimed in a complete specification.” Bring out the meaning and importance of complete specification.

(5 marks each)

4. Competition Law and Intellectual Property Rights (IPR) have historically evolved as distinct legal frameworks, each serving different yet interrelated objectives. While both legal systems strive to promote innovation, economic growth, and consumer welfare, they achieve these goals through different mechanisms. Intellectual property rights are designed to incentivize innovation by granting inventors exclusive rights over their creations, thereby enabling them to commercially exploit their inventions for a limited period. These rights encourage further advancements by ensuring that valuable knowledge is not kept secret but instead made available to the public. Conversely, competition law seeks to maintain a level playing field in the market by preventing monopolistic practices, regulating mergers, and promoting fair trade. By preventing undue market concentration and restrictive business practices, competition law ensures that no single entity exerts excessive control over a particular industry.

The interplay between these two legal systems becomes particularly complex when the exclusive rights conferred by IP laws come into conflict with competition regulations. While IP laws allow for temporary monopolies on inventions, competition law curtails the abuse of such monopolistic privileges to ensure that market competition remains healthy. In recent years, regulatory authorities and courts have intervened in cases where intellectual property owners have exercised their exclusive rights in a manner that distorts competition. Certain actions, which would ordinarily be lawful under intellectual property statutes, have been deemed anti-competitive when they lead to unfair market dominance or restrict consumer access to essential innovations. This regulatory intervention has sparked debates regarding the harmonization of competition law with intellectual property regimes, as businesses leveraging their IP assets increasingly face scrutiny under “second-tier” competition regulations. One of the most contentious issues arises when an IP rights holder engages in practices that hinder consumer welfare and market innovation. In such scenarios, competition law serves as a corrective mechanism, ensuring that the owner of an intellectual property right does not misuse their dominant position to the detriment of market fairness.

The primary tools of competition law include prohibiting anti-competitive agreements, preventing the abuse of dominant market positions, regulating mergers and acquisitions, and encouraging the efficient allocation of resources. These regulations help protect consumer interests by fostering a market environment where a variety of choices, superior-quality products, and competitive pricing exist. In contrast, intellectual property law maintains a delicate equilibrium between granting exclusive rights to innovators and serving the greater public interest. It guarantees that creators receive adequate protection and commercial benefits while preventing the indefinite monopolization of knowledge. IP rights provide a temporary legal monopoly, enabling innovators to reap economic benefits from their creations before such knowledge becomes part of the public domain. The intersection of competition law and IPR underscores the necessity for a balanced approach that fosters innovation while preserving market competitiveness. Regulators and policymakers must ensure that intellectual property protections do not become instruments for market manipulation, thereby stifling competition and restricting consumer access to technological advancements. Ultimately, the coexistence of these legal frameworks must be structured to encourage technological progress, facilitate fair market practices, and protect consumer interests, ensuring a dynamic and competitive global economy.

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Answer the following :

- (a) How can competition law effectively regulate the abuse of intellectual property rights without undermining the incentive structures that drive innovation ?
- (b) Explain briefly the key clauses in Technology Transfer Agreement.
- (c) Explain the key features of INCOPAT Global Patent database.
- (d) What are the acts that do not constitute infringement of broadcast reproduction right and performers' right ?
- (e) Explain how Personality theory justifies IPR.

(5 marks each)

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