

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

DECEMBER 2019

MODULE 3



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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

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

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

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PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2019

ADVANCED TAX LAWS AND PRACTICE

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

2. All the references to sections mentioned in Part - A of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2019-20, unless stated otherwise.
3. Working notes should form part of the answer.

PART A

Question 1

(a) JC & Co., a partnership firm, constituted by two partners Arun and Barun, reports a net profit of ₹10,00,000 before deduction of the following items for the previous year ended 31st March, 2019 :

- (1) Salary of ₹30,000 each paid per month to both the working partners of the firm, which is authorized by the deed of partnership.
- (2) Depreciation on fixed assets as per the Income-tax Act, 1961 of ₹2,50,000.
- (3) Interest on capital to be allowed @ 15% per annum as authorized by the deed of partnership. The amount of capital as contributed by each of the partners is ₹5,00,000.

You are required to compute :

- (i) Book profits of the firm;
- (ii) Allowable amount of salary to the working partners for the assessment year 2019-20, as per the provisions of Income-tax Act, 1961.

Adduce brief reasons/note for your calculations. (5 marks)

(b) Hariharan & family, an HUF, owns a property which has been let out to the partnership firm "Trade n Trade" carrying on business. Hariharan & family, HUF is a partner in the firm Trade n Trade through its Karta Hariharan. Rent has not been charged by the HUF from the firm Trade n Trade for use of the premises by the firm for business. The Assessing Officer, however, has taxed the Hariharan & family (HUF) on the notional income from property, based on municipal valuation. Is the action of the AO justified ? (5 marks)

(c) State with brief reasons as per provisions of the Income-tax Act, 1961, whether the return of income is required to be filed in each of the following independent cases for the Assessment Year 2019-20 :

- (i) Mr. Xavier, a resident individual, aged 81 years, having total income of ₹3,85,000 after claiming deduction of ₹1,50,000 under section 80C and exemption of income of ₹1,20,000 under section 10(38).
- (ii) A registered association, eligible for exemption under section 10(23B), has income from house property of ₹3,60,000. (5 marks)

Answer 1(a)

- (i) As per Explanation 3 to section 40(b) of the Income Tax Act, 1961, "Book Profits" shall mean the net profit as per the profit and loss account for the relevant previous year computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to the partners of the firm, if the same has been already deducted while computing the net profit. In the present case, the net profit given is before deduction of depreciation on fixed assets, interest on capital of partners and salary paid to the working partners. Therefore, the book profits shall be computed as under:

Computation of Book Profit of M/s J.C. & Co. for the A.Y. 2019-20

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Net Profit (before deduction of depreciation salary and interest)		1000000
Less : Depreciation under section 32 of the Income Tax Act, 1961	250000	
Less : Interest @ 12% p.a. [being the maximum allowable as per section 40(b)] (Rs.5,00,000 x 12% x 2)	120000	(370000)
Book Profits		630000

Note : Salary paid to working partners have not been added for the computation of Book Profits in terms of Explanation III of Section 40(b) of the Act as it was initially not deducted for the computation of net profit reported by JC & Company.

- (ii) Salary actually paid to the working partners not charged is of Rs. 30,000 x 2 x 12 = Rs. 7,20,000.

As per the provisions of section 40(b)(v) of the Income-tax Act, 1961, the salary paid to the working partners is allowed subject to the following limits:

On the first Rs. 3,00,000 of book profits or in case of loss Rs. 1,50,000 or 90% of book profits whichever is more.

On the balance of book profits 60% of the balance book profits.

The maximum allowable salary to working partners for the A.Y. 2019-20 in this case would be:

<i>Particulars</i>	<i>Amount (Rs.)</i>
On the first Rs. 3,00,000 of book profit [(Rs. 1,50,000 or 90% of Rs. 3,00,000) whichever is more]	2,70,000
On the balance of book profit [60% of (6,30,000 - 3,00,000)] = 60% of Rs. 3,30,000	1,98,000
Maximum allowable partners salary	4,68,000

Since, the above is lower than the actual remuneration paid, allowable working partners salary for the A.Y. 2019-20 as per provisions of section 40(b)(v) of the Income-tax Act, 1961, is Rs. 4,68,000.

Answer 1(b)

Chargeability to Income from House Property

As per the provision of section 22 of the Income Tax Act, 1961, the Annual Value (ALV) of a property is chargeable to tax under the head "Income from house property" in the hands of the owner.

However, this section specifically excludes property occupied for the purposes of own business or profession of the assessee, the profits of which are chargeable to Income-tax.

Madras High Court in the case of *CIT vs. Shri Champalal Jeevraj* (1995) 215 ITR 289 has observed that where the Karta of the HUF is a partner in the firm in his representative capacity and the firm occupied a portion of the house belonging to the HUF, the benefit of exclusion under section 22 was available to the HUF.

This is based on the premise that business carried on by a firm is a business carried on by each partner. Hence the business here is carried on by one of the partners here.

Hence, the income from the property given to firm for business use shall not be chargeable to tax under the head "Income from house property". Therefore, in this case, the action of the Assessing Officer is not correct.

Answer 1(c)

- (i) Yes, Mr. Xavier is required to file return in the instant case.

As per the provisions of section 139(1) of the Income Tax Act, 1961, every person, whose total Income without giving effect to the provisions of Chapter VI-A and exemption under section 10 of the Income Tax Act, 1961 exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date.

The total income of Mr. Xavier before giving effect to the exemption of Rs. 1,20,000 under section 10(38) and deduction of Rs. 1,50,000 under section 80C is Rs.6,55,000 [Rs. 385000 + Rs.120000 + Rs.150000] which exceeds the basic exemption limit of Rs.5,00,000 applicable to a resident individual aged 80 years or more. Therefore, Mr. Xavier has to furnish his return of Income for the A.Y. 2019-20.

- (ii) Yes, the institution is required to file return in the instant case.

As per section 139(4C) of the Income Tax Act, 1961, every institution referred to, *inter alia*, in section 10(23B), whose total income without giving effect to the provisions of section 10 exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date.

In the above case, the registered association has income from house property

of Rs. 3,60,000 before exemption under section 10, which exceeds the basic exemption limit of Rs. 2,50,000. Therefore, he is under an obligation to furnish its return of income for the A.Y. 2019-20.

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

Question 2

- (a) (i) *What is the role of Transfer Pricing Officer in the matter of reference made by the Assessing Officer u/s 92CA of the Income-tax Act, 1961 ? (3 marks)*
- (ii) *Is it possible for the Assessing Officer to pass assessment order without considering Arm's Length Price determined by the Transfer Pricing Officer? (2 marks)*
- (b) *The Assessing Officer is empowered to make an assessment for any year, to the best of his judgement in certain situations, subject to certain conditions. Narrate the said situations and conditions involved in the making of such best judgement assessment. (5 marks)*
- (c) *Mr. Purushothama, who has been having a turnover of more than 4 crores during the last few years, has utilised the services of an engineer on turn key basis for construction of a factory building and a residential house (for self occupation) for ₹90 lakhs and ₹60 lakhs, respectively. What are the TDS implications ? Will it make any difference, if the work had been entrusted to a head mason (maistry) on turn key basis, instead of an engineer ?*

Your answer should cover the section involved, applicable rate under that section, whether TDS is attracted in the given situation (with reason) and the amount of TDS, if any, to be deducted. (5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *State with reason, whether the following acts can be considered as an act of Tax Planning, Tax Management, Tax Avoidance or Tax Evasion :*
- (a) *Starting business in an industrially backward State which will entitle an assessee to claim a deduction under section 80IB.*
- (b) *Transferring of assets to another person without adequate consideration.*
- (c) *Installation of Air Conditioner costing ₹ 75,000 at the residence of Director as per terms of appointment; but treating it as Plant installed in Quality Control Section in the factory.*
- (d) *Mr. D is a working partner in a firm and he is entitled to a salary of ₹30,000 per month. He treats this as salary instead of business income.*
- (e) *X & Y Ltd. maintains adequate records and registers of tax deducted at source by it to enable timely compliance of legal provisions. (5 marks)*
- (ii) *Rule 10MA(2)(i) of the Income-tax Rules, 1962 postulates that the rollback provision in the context of transfer pricing shall apply in respect of an international transaction that is same as the international transaction to which the agreement*

(other than the rollback provision) applies. What is the meaning of the word "same"?

Also discuss whether this restriction also applies to the Functions, Assets, Risks (FAR) analysis. (5 marks)

- (iii) Explain the provisions of the Income-tax Act, 1961 relating to applicability of Alternative Minimum Tax (AMT), tax credit for AMT, set off and carry forward of AMT. (5 marks)*

Answer 2(a)(i)

As per the provision of section 92CA of the Income Tax Act, 1961, where a reference is made by Assessing Officer, the role of Transfer Pricing Officer is detailed as below:

1. Transfer Pricing Officer shall serve a notice to the Assessee requiring him to produce the evidence in support of computation made by him in respect of Arm's Length Price in relation to an International Transaction or specified domestic transaction.
2. Transfer Pricing Officer after considering the evidences, information or documents as produced by Assessee and after considering such evidence as he may require on any specified points and after taking account all relevant materials which he has gathered, shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction and send a copy of his order to the Assessing Officer for computation of total income of the assessee and also to the Assessee.
3. With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him and in such an event send copy of amended order to the assessing officer for re-assessment.

Answer 2(a)(ii)

No, it is not possible for the Assessing Officer to pass assessment order without considering the Arm's Length Price determined by the Transfer Pricing Officer.

As per Section 92(CA)(4), on receipt of the order from Transfer Pricing Officer, the Assessing Officer shall proceed to compute the total Income of the assessee in conformity with the arm's length price as determined by the Transfer Pricing Officer.

Answer 2(b)

As per the Provision of section 144 of the Income Tax Act, 1961, the Assessing Officer is under an obligation to make an assessment of the total Income or loss to the best of his judgment in the following cases:

- (1) Where any person fails to make the return under section 139(1) and has not filed a belated return under section 139(4) or a revised return under section 139(5).
- (2) Where any person fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A) for getting the accounts audited.
- (3) Where any person, having made a return, fails to comply with all the terms of a notice issued under section 143(2).

Further, section 145(3) of the Income-tax Act, 1961 permits the Assessing Officer to make an assessment in the manner provided in section 144 of the Income-tax Act, 1961:

- (1) where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee; or
- (2) where the income has not been computed in accordance with "Income Computation and Disclosure Standards" notified by the Central Government under section 145(2).

Answer 2(c)

TDS from payments to engineer/mason

When engineer is engaged

Where the services of an engineer, who is a resident in India, is utilized for construction purposes, the provisions of section 194J of the Income Tax Act, 1961 will apply, where the payment is Rs 30,000 or more.

Thus for the construction of the factory building, tax has to be deducted at source @ 10% u/s 194J on Rs. 90 lakhs, i.e. Rs 9 lakhs.

When Head mason is engaged

Where a mason is engaged, section 194C of the Income Tax Act, 1961 will come into play, where the payment made during the year is Rs. 1,00,000 or more.

Since, the recipient is an Individual, the rate of TDS will be 1%.

Thus, TDS to be deducted @ 1% on Rs 90 lakhs i.e. Rs 90,000

Payments made for personal use

In both the situations, if the payment is made exclusively for personal purposes, then the provisions of section 194-J/194-C will not apply.

Thus, where the construction is for residential purposes of the assessee, no tax is required to be deducted at source.

Answer 2A(i)

- (a) Starting business in an industrially backward State which will entitle an assessee to claim a deduction is an act of Tax Planning because incidence of tax is minimised using the exemptions/deduction provided in the Income Tax Act, 1961.
- (b) Transferring of assets to another person without adequate consideration is an act of Tax Avoidance because element of malafide motive is involved to avoid payment of tax.
- (c) Installation of Air Conditioner costing Rs. 75000 at the residence of Director as per the terms of appointment but treating it as plant installed in Quality Control Section in the factory is an act of Tax Evasion because of suppression of fact. This is with the objective to treat factory asset for claiming depreciation to be deducted from business income.

- (d) Tax Evasion because Mr. D tries to reduce his tax liability by misrepresenting the income as salary instead of business income, thereby claiming standard deduction.
- (e) X & Y maintain adequate records and registers of tax deducted at source by it to enable timely compliances of legal provisions is an Act of Tax Management because it involves compliance of law regularly. It enables the company to manage the affairs of business efficiently for timely payment of tax and submission of returns.

Answer 2A(ii)

[Circular No. 10/2015 Dated 10th June, 2015]

The International transaction for which a rollback provision is to be allowed should be the same as the one proposed to be undertaken in the future years and in respect of which the agreement has been reached.

There cannot be a situation where rollback is finalised for a transaction which is not covered in the agreement for future years. The term "same international transaction" implies that the transaction in the rollback year has to be of same nature and undertaken with the same associated enterprise(s), as proposed to be undertaken in the future years and in respect of which the APA has been reached.

In the context of FAR analysis, the restriction would operate to ensure that rollback provisions would apply only if the FAR analysis of the rollback year does not differ materially from the FAR validated for the purpose of reaching an agreement in respect of international transactions to be undertaken in the future years for which the agreement applies.

The word "materially" is generally being defined in the Advance Pricing Agreements being entered into by CBDT. According to this definition, the word "materially" will be interpreted consistently with its ordinary definition and in a manner that a material change of facts and circumstances would be understood as a change which could reasonably have resulted in an agreement with significantly different terms and conditions.

Answer 2A(iii)

Applicability of Alternate Minimum Tax 'AMT'

As per the provision of Section 115JC of the Income Tax Act, 1961, where the regular income-tax payable for a previous year by a person, other than a company, is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income-tax on such total income at the rate of @ 18.50% (+ applicable surcharge + health and education cess) on adjusted total income

Thus, 'Alternate Minimum Tax' shall be applicable to all non-corporate assesses i.e. Individual, HUF, AOP/BOI, an artificial juridical person, Partnership, Limited Liability Partnership etc.

However, AMT provisions are not applicable to an Individual, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI) and artificial juridical person whose adjusted total income does not exceed Rs. 20,00,000.

Tax Credit for Alternate Minimum Tax U/s 115JD

- (1) The credit for tax paid by a person under section 115JC shall be allowed to him in accordance with the provisions of this section.
- (2) The tax credit of an assessment year to be allowed under sub-section (1) shall be the excess of alternate minimum tax paid over the regular income-tax payable of that year:

However where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India under section 90 or section 90A or section 91, allowed against the alternate minimum tax payable, exceeds the amount of the tax credit admissible against the regular income-tax payable by the assessee, then, while computing the amount of credit under this sub-section, such excess amount shall be ignored.

- (3) No interest shall be payable on tax credit allowed under sub-section (1).

Amount of tax credit of AMT carried forward and set off

The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (5) and (6) but such carry forward shall not be allowed beyond the 15 assessment year immediately succeeding the assessment year for which tax credit becomes allowable under sub-section (1).

In any assessment year in which the regular income-tax exceeds the alternate minimum tax, the tax credit shall be allowed to be set off to the extent of the excess of regular income-tax over the alternate minimum tax and the balance of the tax credit, if any, shall be carried forward.

If the amount of regular income-tax or the alternate minimum tax is reduced or increased as a result of any order passed under this Act, the amount of tax credit allowed under this section shall also be varied accordingly.

PART B**Question 3**

- (a) Explain with reference to the provisions of the CGST Act, 2017 whether the following transaction of services provided by different persons shall be subject to levy of GST :

- (i) Government of Rajasthan has provided technical services to ABC Ltd. of Jaipur in the month of February, 2019 against a consideration of ₹75,000.

The turnover of ABC Ltd. in the Financial Year 2017-18 was ₹18,50,000.

(2 marks)

- (ii) Jaipur Municipal Corporation has awarded a contract for construction of city roads to PQR Construction Ltd. in April, 2018. However, PQR Construction Ltd. could not carry out the work and failed to perform the contract work as per terms and had paid the amount of liquidated damages to Jaipur Municipal Corporation in December, 2018 amounting to ₹10,00,000 as per the terms of the contract.

(2 marks)

- (iii) XYZ Ltd. has made payment of ₹80,00,000 to Bihar Government on account of assignment of rights to use minerals in the State of Bihar. (1 mark)
- (b) Explain the following terms in the context and with reference to the provisions contained under the CGST Act, 2017 :
- (i) "Aggregate Turnover" and how the same has to be computed. (3 marks)
- (ii) Casual Taxable Person. (2 marks)
- (c) Samode Charitable Trust, registered under section 12AA of the Income-tax Act, 1961, furnishes the following details of its income/receipts with respect to the activities undertaken by it during August, 2018 :

Particulars of Income/receipts	Amount (₹)
1. Renting of room where charges are ₹ 500 per day	2,00,000
2. Renting of room where charges are ₹ 1,500 per day	3,00,000
3. Renting of community hall given for celebrations, for which amount charged is ₹25,000 or more per day.	5,00,000
4. Renting of shops for business purposes, where charges for each shop are 6,000 per month	3,50,000

You are required to compute the value of taxable supply of Samode Charitable Trust for the above period. Give brief reasons for the treatment given to each while making the computation of taxable supply. (5 marks)

- (d) Mr. Mayank Kohli, a famous cricketer, furnishes you with the following information and particulars of his various receipts/income for the month of March, 2019 :

Particulars	Amount (₹)
1. Receipts from Sports Authority of India for participation in recognized events of matches.	30,00,000
2. Receipts from franchise of Indian Premier League (IPL) which is not recognized sports body for participation in the league matches.	50,00,000
3. Receipts from sports training academy for providing Coaching to young players; the academy is not registered u/s 12AA of the Income-tax Act, 1961.	30,00,000

You are required to calculate the value of taxable supply and the amount of GST payable thereon by taking the rate of GST as applicable of 18%.

(5 marks)

- (e) Raj Bihari Ltd., an importer of goods, had filed a bill of entry after 60 days of filing of the Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹10,000 for the delayed filing of the bill of entry. Since Raj Bihari Ltd., the importer, wanted to clear the goods being urgently required, they have paid the amount of penalty of ₹10,000.

In this backdrop, you are required to examine the issue (i) regarding period available for filing the bill of entry (ii) whether penalty be imposed for delayed filing of the bill of entry, and (iii) whether a bill of entry can be filed in advance, in the context of the provisions contained under the Customs Act, 1962.

(5 marks)

Answer 3(a)

Eligibility to GST

- (i) Services provided by the Central Government, State Government, Union Territory or Local Authority to a business entity with an aggregate turnover of up to Rs. 20 lakh (Rs. 10 lakh in case of a special category State) in the preceding financial year are exempt vide Entry 7 of Notification No. 12/2017-CT (Rate) provided the services are not in the nature as specified in Explanation to such entry.

Hence, GST shall not be levied on the amount of Rs. 75,000 charged for the technical services provided by Government of Rajasthan to ABC Ltd. (being located in other than special category state), as the Turnover of ABC Ltd. in the preceding financial year 2017-18 was of Rs. 18,50,000 being less than Rs. 20 lakh and the nature service is not falling in any of the exceptions specified in Explanation to said Entry 7 of Notification No. 12/2017-CT (Rate).

- (ii) Services falling under HSN 9991 or 9997 provided by Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract are exempt vide Entry 62 of Notification No. 12/2017-CT(Rate).

Hence, no GST shall be payable on liquidated damages of Rs. 10,00,000 paid by PQR Construction Ltd. to Jaipur Municipal Corporation for non-performance of contract.

- (iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration is deemed to be supply of service in terms of Para 5(f) of Schedule II of the CGST Act, 2017 and is leviable to GST under HSN 997337 in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017.

Hence, GST is payable on assignment of rights to use minerals in the State of Bihar by XYZ Ltd on the amount of Rs. 80,00,000.

Answer 3(b)(i)

Aggregate Turnover

As per section 2(6) of the CGST Act 2017, "Aggregate Turnover" mean to include the aggregate value or:-

- (a) all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis);
- (b) all exempt supplies;

- (c) exports of goods and/or service; and
 (d) all inter-state supplies of a person having same PAN

The above supplies/goods and/or services shall be computed on all India basis and be exclusive of the taxes charged under the CGST Act SGST Act UTGST Act and the IGST Act.

For the purpose of computing Aggregate turnover particularly to ascertain threshold for obtaining registration under CGST Act, it shall include all supplies made by the taxable person whether on his own account or made on behalf of all his principals However, the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

Answer 3(b)(ii)

Casual Taxable Person

Casual Taxable Person is being defined in section 2 (2) of the CGST Act 2017 means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, or agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

Note :

- Person includes individuals, Hindu Undivided Family, company including government company, firm, limited liability partnership, an association of persons, a body of individuals, co-operative society, local authority, government including a corporation.
- Principal place of business means the place of business specified as the principal place of business in the certificate of registration

Answer 3(c)

Samode Charitable Trust

Computation of value of Taxable Supply for the period ended 31.03.2019

<i>S.No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1	Renting of rooms where charges are Rs.500 per day	Nil
2	Renting of rooms where charges are Rs.1500 per day	3,00,000
3	Renting of Community hall where charges are Rs.25000 or more per day	5,00,000
4	Renting of shops for business purposes where charges are Rs.6.000 per month for each shop	Nil
Value of Taxable supply		8,00,000

Reasons : As per S.No. 13 of Notification No. 12/2012-Central Tax (Rate) dated 28.6.2017 Services by a person by way of renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 are exempt. However, this exemption shall not be available to the trust where:-

- (i) renting of rooms for Rs. 1000 or more per day.
- (ii) renting of premises, community halls, kalyanmandapam or open area and the like for Rs. 10,000 or more per day.
- (iii) renting of shops or other space for business/commerce purposes for Rs. 10,000 or more per month.

Answer 3(d)

Taxable Person – Mr. Mayank Kohli

Computation of Value of taxable supply and GST for March, 2019

<i>S.No. Particulars</i>	<i>Amount (Rs.)</i>
1 Receipts from Sports Authority of India for participation in recognized sports events. [Exempt vide Entry No. 68 of Exemption Notification No. 12/2017-CT (Rate)]	Exempt
2 Receipts from franchise of Indian Premier League, not a recognized sports body. [being not exempt]	50,00,000
3. Receipts of sports training academy to coach young players [Liable for GST since sports training by charitable entities registered under section 12AA of the Income-tax Act, 1961 alone is exempt vide Entry No. 80 of Exemption No. 12/2017-CT (Rate)], This Academy is not registered under section 12AA of the Income-tax Act, 1961.	30,00,000
Value of Taxable Supply	80,00,000
GST payable @ 18%	14,40,000

Answer 3(e)

Bill of Entry under customs law

- (i) As per Section 46(3) of the Customs Act, 1965, the time limit for filing bill of entry is before the end of the next day following the day (excluding holidays) on which the aircraft/vessel/vehicle carrying the goods arrives at a custom station at which such goods are to be cleared for home consumption or warehousing.
- (ii) As per Regulation 3 of Bill Of Entry (Electronic Integrated Declaration And

Paperless Processing) Regulations, 2018, where the bill of entry is not filed within the time specified in Section 46(3) of the Customs Act, 1965 and regulations made thereunder and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of rupees five thousand per day for the initial three days of default and at the rate of rupees ten thousand per day for each day of default thereafter. Provided that where the proper officer is satisfied with the reasons of delay, he may waive off the charges.

In the present case Raj Bihari Ltd. has filed the bill of entry late and therefore, shall be subject to charges @ Rs.5,000 per day for 3 days and thereafter @ Rs. 10,000 per day.

As such, there is no provision under the Customs Act whereunder penalty can be levied for delay in the filing of Bill of Entry. Thus, penalty imposed by Dy. Commissioner of Customs) cannot sustain.

- (iii) Yes, as per the first proviso to Section 46(3) of the Customs Act, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/ vessel vehicle by which the goods have been shipped for import into India.

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

Question 4

- (a) Explain the provisions of the CGST Act, 2017 relating to issuance of Credit Note in the context of CGST. What is its impact on GST liability in this regard ?
(5 marks)
- (b) Sun & Moon Ltd. sent a consignment of manufactured goods by a ship from Mumbai to London. The company has paid export duty and GST on the components used in manufacture. A duty drawback rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian territorial waters. The Customs Department refused to grant drawback for the reason that the goods did not reach their destination. Discuss whether the refusal of the Custom Department is valid in law, by referring to decided case law, if any.
(5 marks)
- (c) Ganesh, a registered person, has received the supply of services from non-taxable territory. Accordingly the tax is liable to be paid by the recipient on reverse charge basis. Ganesh provides the following information in respect of such service received by him :

Transaction/Event Date

- | | |
|---|--------------|
| 1. Date of payment as entered in the books by service receiver (Ganesh) | — 10-12-2018 |
| 2. Date on which above payment is debited in Bank account of Ganesh | — 17-12-2018 |
| 3. Date on of issue of invoice by supplier of service | — 20-11-2018 |

You are required to :

Explain the relevant provision of Section 13(3) of the CGST, Act 2017 regarding determination of time of supply of service under reverse charge basis. (3 marks)

Determine the point of supply in respect of service received by Ganesh.

(2 marks)

OR (Alternate question to Q. No. 4)

Question 4A

- (i) Briefly explain power to search suspected person entering or leaving India under Section 100 of the Customs Act, 1962. (5 marks)
- (ii) Briefly explain whether the following persons are liable for registration as per the provisions of the CGST Act, 2017 :
- Sachin, an exclusive supplier of Non-taxable goods only.
 - Person making inter-State taxable supply aggregating ₹8,00,000 only.
 - Where the tax on the goods dealt with are payable on reverse charge basis.
 - Jagdish, an individual, who undertakes cultivation of land by the labour of family and his own labour for producing paddy, to the tune of ₹60 lakhs.
 - Ranjan, a trader is coming to Mumbai from Bangalore for an exhibition. The exhibition is to continue for seven days in Mumbai. Ranjan expects supply of goods for ₹8,00,000. (5 marks)
- (iii) Mr. Abinash has received net amount of ₹3,24,000 (after TDS) from Voygers Ltd. on 5th February, 2019 for taxable service rendered in the month of January, 2019. The net payment is after TDS under section 194J of the Income-tax Act, 1961 @ 10%. You are required to answer the following :
- Find the value of Taxable Services (i.e. the value at which GST has been charged).
 - Compute the amount of TDS as per section 194J.
 - Find out the CGST and SGST (GST is 18%). (5 marks)

Answer 4(a)

Issuance of Credit Note

Section 34(1) of CGST Act, 2017 reveals that where one or more tax invoices have been issued for supply of goods or services or both and,

- Taxable value charged in the tax invoice is found to exceed the taxable value in respect of such supply; or
- Tax charged in invoice is found to exceed the tax payable in respect of such supply; or
- Where goods supplied are returned by the recipient; or
- Where goods or services or both supplied are found to be deficient

registered supplier of goods and services or both may issue one or more credit note to recipient of such supply

Impact of issuance of Credit Note

As per Section 34(2) of the CGST Act, 2017, provides that the details of credit note should be declared in the return for the month during which such credit note has been issued but not later than

- (i) September following the end of the financial year in which such supply was made or
- (ii) the date of furnishing of the relevant annual return, whichever is earlier

and the tax liability shall be adjusted in such manner as may be prescribed. However, such reduction in output tax liability of the supplier shall not be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Answer 4(b)

Case study on refusal to grant drawback

As per Rule 3 of the Customs and Central Excise Duties Drawback Rules, 2017, drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government.

Thus, the answer to the issue involved would depend upon whether any export of goods has taken place.

Rule 2(c) of the said rules inter alia defines "export" to mean taking out of India to a place outside India.

Whereas, Section 2(27) of the Customs Act defines "India" to include the territorial waters of India.

The combined reading of the aforesaid provisions reveals that to be eligible to claim drawback, there has to be export of goods and the word export has been defined as taking the goods from India to a place outside India. India has been defined so as to include Indian Territorial Waters. In short, the export is said to have taken place only of goods cross Indian territorial waters.

In the present case, the consignment sent by Sun and Moon Ltd from Mumbai to London ran into trouble and sunk in Indian Territorial Waters. Thus, it is clear that export of goods have not been taken in the instant case. Accordingly, the duty drawback will not be admissible and denial thereof by the Customs Authorities is justified in law.

The present issue is covered by the judgment of the Hon'ble Supreme Court in the matter of *Union of India vs. Rajindra Dyeing & Printing Mills Ltd.* 2005 (180) ELT 433(SC).

Answer 4(c)

Time of supply under reverse charge basis

- (i) Under Section 13(3) of the CGST Act, 2017, in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be earliest of the following dates :
 - (a) The date of payment as entered in the books of account of the recipient or

the date on which the payment is debited in his bank account, whichever is earlier

or

- (b) The date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called in lieu thereof by the supplier.

Where it is not possible to determine the time of supply under clause (a) or clause (b), as above, the time of supply shall be the date of entry in the books of account of the recipient of supply :

At the same time, in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

The scheme is such that the recipient has to first determine the date when it makes an entry towards payment of supply in its books of accounts and the date when the payment is debited from its bank account. If the earliest of the said two dates is prior to the expiry of 60 days from the date of invoice issued by the foreign service supplier, then such earliest date shall be the time of supply. However, If the earliest of the said two dates falls after the expiry of 60 days from the date of invoice issued by the foreign service supplier, then the time of supply shall be the 61st day from date of invoice.

The time of supply in case of services received from an associated enterprise shall be the date when such inward supply is accounted in the books of the recipient.

(ii) Determination of Point of supply

The point of supply in the present problem shall be the earliest of the following dates:

- | | | |
|---|---|------------|
| (a) Date of payment as entered in the books by service receiver(Ganesh) | - | 10-12-2018 |
| (b) Date on which above payment is debited in Bank account of Ganesh | - | 17-12-2018 |
| (c) The date immediately following the 60 days from the date of issue of invoice (20.11.2018 + 61days = 20.01.2019) | - | 20-01-2019 |

Point of supply : 10.12.2018 (Earliest)

Answer 4A(i)

Power to search under customs law

Under Section 100 of the Custom Act 1962 where the proper officer of the customs has reason to believe that the following categories of persons have secreted any goods, liable to confiscation or any documents thereto, he may search such persons.

The categories of such persons referred to in this section are as follows:

- (a) Any person who has landed from or is about to board or is on board any vessel within the Indian Customs waters;
- (b) Any person who has landed from or is about to board or is on board of foreign – going aircraft;
- (c) Any person who got out of, or is about to get into, or is in vehicle, which has arrived from, or is to proceed to any place outside India;
- (d) Any person not included in clauses (a), (b), or (c) who has entered or is about to leave India;
- (e) Any person in customs area.

Answer 4A(ii)

Necessity of registration under GST law

- (a) As per Section 23(1)(a), any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act is not liable to take registration. In the present case, since Sachin is engaged exclusively in the business of supplying goods that are not liable to tax, he is covered under the aforesaid provision, thus **not liable for registration**.
- (b) Section 24 of CGST Act provides for compulsory registration of persons making inter-state taxable supplies. However, Notification No. 10/2017-I.T., dated 13-10-2017 confers exemption to the supplier of services from obtaining registration where the aggregate turnover calculated on all India basis does not exceed Rs. 20 lakhs [Rs. 10 lakhs in case of special category states] in a financial year.

In the present case, since the aggregate turnover is Rs. 8,00,000/- below the minimum threshold, there is no requirement to take registration.

- (c) As per Notification No. 5/2017-Central Tax, dated 19-6-2017, the person who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods and services or both are exempted from obtaining registration under GST law.

Thus, in the instant case, **registration is not required**.

- (d) As per Section 23(1)(b) of the CGST Act, the agriculturist, to the extent of supply of produce out of cultivation of land, is **exempt from registration**. Therefore, Jagdish is not required to obtain registration.
- (e) As per Section 24(ii) of the CGST Act, casual person making taxable supply is mandatorily required to obtain registration regardless of the aggregate turnover effected by it. Here, Ranjan is casual taxable person, thus **required to obtain registration**.

Answer 4A(iii)

Let Value of Taxable Service -	x
+ GST @ 18% of value of Taxable Services (18% of x) =	0.18x
Value of Bill -	1.18x
- TDS @ 10% under section 194J of Income Tax Act (10% of x)	(0.1x)
Net amount paid by the client	1.08x
Net amount received by Abinash	Rs. 3,24,000
(A) Value of Taxable Supply(x) = (324000/1.08) =	Rs. 3,00,000
(B) Amount of TDS under Section 194J (Rs. 3,00,000 x 10%)	Rs. 30,000
(C) The GST Payable : CGST = 9% of Rs. 3,00,000 = Rs. 27,000 SGST = 9% of Rs. 3,00,000 = Rs. 27,000	Rs. 54,000

Note : CBDT vide Circular No. 23/2017, dated 19th July, 2017 has clarified that wherever in terms of the agreement or contract between the payer and the payee, if "GST on Services" component has been indicated separately in the invoice, then no tax would be deducted at source under Chapter XVII-B of the Income-tax Act, 1961 on such GST component as GST for these purposes will include CGST, SGST, IGST and UTGST.

Question 5

- State the conditions to be satisfied for refund of export duty paid, as per the provisions of the Customs Act, 1962. (3 marks)*
- Briefly explain the provisions of section 122 of the Customs Act, 1962 relating to adjudication of confiscations and penalties. (3 marks)*
- State the rate of tax for collection of tax at source applicable to electronic commerce operator under CGST Act, under SGST Act and under IGST Act, 2017. Also specify when and on what value the rate of tax for collection at source will be applicable. (3 marks)*
- Determine by giving brief reason the Time of Supply (TOS) in each of the following independent cases, in accordance with the provisions of section 12 of the CGST Act, 2017, where supply involves movement of goods supplied in one lot :*

Sl. No.	Date of Removal	Date of Invoice	Date when goods made available to recipient	Date of receipt of payment
1	01-12-2018	02-12-2018	03-12-2018	15-01-2019
2	03-11-2018	01-11-2018	04-11-2018	05-12-2018
3	04-11-2018	04-11-2018	06-11-2018	01-10-2018

(3 marks)

(e) State the provision and also the amount of pre-deposit required to be made by a registered supplier to file an appeal against the order in each of the following independent cases under the CGST Act, 2017 :

(1) Order dated 18th Oct., 2018 passed in the case of M/s RR Ltd. by the Joint Commissioner creating a tax demand of ₹40,00,000. M/s RR Ltd. has admitted ₹5,00,000 as tax liability but intends to file an appeal with the Commissioner (Appeals) against the balance tax demand.

(2) In an order dated 18th Nov., 2018 passed in the case of M/s KK Ltd., the Joint Commissioner of Central Tax has created a tax demand of ₹35,00,000 and also has imposed a penalty of ₹5,00,000. M/s KK Ltd. intends to file an appeal with the Commissioner (Appeals) both against the order creating demand of ₹35,00,000 and order imposing penalty of ₹5,00,000.

(3 marks)

Answer 5(a)

Under Section 26 of the Custom Act 1962, any export duty paid on goods exported will be refunded if following conditions are satisfied :

- (i) Goods are re-imported within one year from the date of export,
- (ii) These goods are returned otherwise than by way of resale and
- (iii) Refund claim is lodged within six months from the date when the proper officer made an order for clearance of goods for re-importation.

Answer 5(b)

Section 122 read with Notification No. 50/2018-Cus. (N.T.), dated 8-6-2018 provides that in every case in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged by the following adjudicating authorities:

<i>Customs officer</i>	<i>Value of goods liable for Confiscation</i>
1) By a Principal Commissioner of Customs or Commissioner of Customs or a Joint Commissioner of Customs	Without limit
2) By Assistant Commissioner of Customs or Deputy Commissioner of Customs	Above Rs. 1 lakh but not exceeding Rs. 10 lakhs
3) By A Gazetted officer of Customs lower In rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs.	Not exceeding Rs.1 lakh

Answer 5(c)

Tax Collected at Source (TCS) under GST law

Under Section 52 of the CGST Act, 2017, every electronic commerce operator, not

being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council. However, on the recommendations of the Council, the Government has issued notifications whereby it has fixed rate of TCS @ 0.5% under CGST Act and 0.5% under SGST Act, in case of intra-state supplies, and @ 1% under IGST Act, in case of inter-state supplies.

TCS would be calculated on the net value of taxable supplies made through the electronic commerce where the consideration with respect to such supplies is to be collected by the electronic commerce operator.

The net value of taxable supplies is the aggregate value of taxable supplies of goods or services or both made during any month by all registered taxable persons through the operator as reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

It has also been clarified that net value for the purpose of Section 52 shall not include TCS collected under the Income Tax Act.

TCS shall be collected by the Operator while paying to the supplier the price of the product/services.

Answer 5(d)

As per Section 12(1) of CGST Act, 2017, the time of supply of goods shall be the earlier of the following dates, namely:

- (a) the date of issue of invoice by the supplier or the last date on which he is required to issue invoice under section 31; or
- (b) the date on which the supplier receives the payment with respect to the supply.

Further, Section 31 of the CGST Act provides that a registered person supplying taxable goods shall issue a tax invoice, before or at the time of,

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) delivery of goods or making available thereof to the recipient, in any other case.

In view of the above stated legal position, the time of supply of goods in each of the independent cases shall be as tabulated below:-

<i>No.</i>	<i>Time of supply</i>	<i>Reasons in brief</i>
1	1.12.2018	Invoice is not issued on or before the date of removal of goods, hence TOS is the date of removal of goods.
2	1.11.2018	TOS is date of issuance of invoice because the invoice is issued prior to the date of removal of goods.
3	4.11.2018	TOS is date of issue of invoice. Advance received in respect of supply of goods is not liable to be taxed at the time of receipt vide Notification No. 66/2017 CT dated 15.11.2017.

Answer 5(e)

Section 107(6) of the CGST Act, 2017 requires an appellant filing appeal before the Appellate authority to pre-deposit full amount of tax, interest, fine, fee and penalty as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute. Considering the said legal position, the pre-deposit to be made in the instant cases shall be as below;

RR Ltd. has to pre-deposit Rs.5,00,000 (admitted tax) and Rs. 3,50,000 (i.e. 10% of Rs.35,00,000 tax in dispute) in total of amount of Rs.8,50,000.

In the case of KK Ltd. Since no amount of tax or penalty has been admitted by the appellant, it has to pre-deposit 10% of the tax amount i.e. (10% of Rs.35,00,000) which comes to Rs.3,50,000.

Question 6

Sakshitha Dancers, owned by Mrs. Lasliya, a famous Bharata Natyam dancer, wishes to organise a 'Lasliya Dance Concert' in Chandigarh (Haryana). Sakshitha Dancers is registered in Jaipur, Rajasthan. It enters into a contract with an event management company, Hasan Arts (P) Ltd. (registered in Delhi) for organising the said dance concert at an agreed consideration of ₹10,00,000.

Hasan Arts (P) Ltd. books the lawns of Hotel Sky Dine, Chandigarh (registered in Haryana) for holding the dance concert, for a lump sum consideration of ₹6,00,000. Sakshitha Dancers fixes the entry fee to the dance event at ₹6,000; 600 tickets for 'Lasliya Dance Concert' are sold.

From the aforesaid details, identify the different supplies which are involved and determine the CGST and SGST or IGST liability, as the case may be, in respect of all the supplies involved in the outlined situation.

Rates of GST may be taken as under :

SGST	9%	
CGST	9%	
IGST	18%	(15 marks)

Answer 6**Identification of supplies involved and GST payable**

In the given problem, three supplies are involved:

- (i) Services provided by Sakshitha Dancers to audiences by way of admission to dance event.
- (ii) Services provided by Hasan Arts (P) Ltd. to Sakshitha Dancers by way of organising the dance event.
- (iii) Services provided by Hotel Sky Dine to Hasan Arts (P) Ltd. by way of accommodation in the Hotel lawns for organising the dance concert.

The CGST and SGST or IGST liability in respect of each of the above supplies is determined as under:

(i) Services provided by Sakshitha Dancers to audiences by way of admission to dance event

As per the provisions of section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to, inter alia, a cultural event shall be the place where the event is actually held.

Therefore, the place of supply of services supplied by Sakshitha Dancers to audiences by way of admission to the music concert is the location of the Hotel Sky Dine, i.e. Chandigarh, Haryana.

Since the location of the supplier (Jaipur, Rajasthan) and the place of supply (Chandigarh, Haryana) are in different States, IGST will be leviable.

Therefore, IGST leviable will be computed as follows:

Consideration for supply 600 tickets @ Rs. 6,000 per ticket) = Rs. 36,00,000

IGST @ 18% on value of supply = Rs. 36,00,000 x 18% = Rs. 6,48,000.

(ii) Services provided by Hasan Arts (P) Ltd. to Sakshitha Dancers by way of organising the dance event.

Section 12(7)(a)(i) of IGST Act, 2017 stipulates that the place of supply of services provided by way of organization of, inter alia, a cultural event to a registered person is the location of such person.

Therefore, the place of supply of services supplied by Hasan Arts (P) Ltd. to Sakshitha Dancers (Jaipur, Rajasthan) by way of organising the music concert is the location of the recipient, i.e. Jaipur(Rajasthan).

Since the location of the supplier (Delhi) and the place of supply (Jaipur, Rajasthan) are in different States, IGST will be leviable.

Consideration for supply = Rs. 10,00,000

IGST @ 18% on value of supply = Rs. 10,00,000 x 18% = Rs. 1,80,000

(iii) Services provided by Hotel Sky Dine to Hasan Arts (P) Ltd. by way of accommodation in the Hotel lawns for organising the dance concert

As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, inter alia, any cultural function shall be the place where such immovable property is located.

Therefore, the place of supply of services supplied by Hotel Sky Dine (Chandigarh, Haryana) to Hasan Arts (P) Ltd. by way of accommodation is the place where immovable property i.e. Hotel Sky Dine is located.

Since the location of the supplier (Chandigarh, Haryana) and the place of supply (Chandigarh, Haryana) are in the same State, CGST and SGST will be leviable.

Therefore, CGST and SGST leviable will be computed as follows:

Consideration for supply = Rs. 6,00,000

CGST @ 9% on value of supply = Rs. 6,00,000 x 9% = Rs. 54,000

SGST @ 9% on value of supply = Rs. 6,00,000 x 9% = Rs. 54,000

DRAFTING, APPEARANCES AND PLEADINGS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

Comment on the following :

- (a) Aims and Prerequisite of Arbitration.*
- (b) Attestation, Registration and Stamp Duty on Agreements.*
- (c) Patents and their Registration.*
- (d) Ratification of Pre-incorporation Contract by Company. (5 marks each)*

Answer 1(a)

Aim of Arbitration

The 'arbitration agreement' under the Arbitration and Conciliation Act, 1996 means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of defined legal relationship whether contractual or not.

Civil litigation takes years and years to settle simple disputes. Arbitration is a means devised to quick and economical settlement of a dispute between two contracting parties, who also agree as part of the main agreement to refer dispute or difference arising out of or touching upon the terms and conditions of the agreement to a third person to give his judgement, which shall be binding on both the parties. Where the decision of a person is binding on only one of the parties and not on all the parties to the dispute, it cannot be said that the function, which the person giving the decision is exercising, is arbitral in character.

Every arbitration must have the following three pre-requisites:

- (i) a dispute between parties to an agreement, requiring a settlement;
- (ii) its submission for a settlement to a third person; and
- (iii) a decision by such third person according to his own judgement based on the facts and circumstances of the dispute, which is binding on both the parties.

Answer 1(b)

Attestation : It is not necessary for an agreement to be attested by any witness. But agreements are usually attested by one witness. Where registration is desired the agreement should be attested by two witnesses.

Registration : Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registrable. Only agreements creating an interest in immovable property worth more than Rs. 100 are required by law to be registered.

Stamp Duty : For the purpose of stamp duty, agreements are covered by Article 5 of Schedule I of the Indian Stamp Act, 1899. The stamp duty for different kinds of agreements varies from State to State. While drafting an agreement the draftsman should ascertain the proper stamp duty with regard to the amendments made in the Stamp Act of the concerned State where the agreement is to be executed.

Answer 1(c)

Patent is a right, granted by the Government under the Patents Act, 1970 to the grantee, of exclusive privileges of making or selling a new invention or process protected under the patent. The Act confers upon the patentee the right to safeguard his property in the patent and sue the person who infringes upon his patent right.

After a complete specification in pursuance of an application for a patent has been accepted and on the request of the applicant, the Controller shall cause the patent to be sealed with the seal of the Patent Office under Section 43 of the Patents Act, 1970. Section 48 of the Act, confers upon the Patentee where the subject matter of the patent is a product, the exclusive right to prevent third parties who do not have his consent from the act of making, using, offering for sale, selling or importing for those purposes in India.

Where the subject matter of the patent is a process, the patentee is given exclusive right to prevent third parties who do not have his consent from the act of using that process and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India provided that the product obtained is not a product in respect of which no patent shall be granted under this Act.

Section 68 of the the Patents Act, 1970 makes provision with regard to the assignment of patents. The Section lays down:

“An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and the application for registration of such document is filed in the prescribed manner with the Controller within six months from the execution of the document or within such further period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows.

Provided the document shall, when registered, have effect from the date of its execution.”

Section 69 of the Act dealing with registration of assignments prescribes:

“Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title, or, as the case may be, of notice of his interest in the register.”

Answer 1(d)

Companies Act, 2013 does not contain any provisions about Promoter’s Contract. The promoters of a company usually enter into contracts to acquire some property or

right for the company which is yet to be incorporated, such contracts are called preliminary or pre-incorporation contracts. The promoters generally enter into such contracts as agents for the company about to be formed. The legal position is that since presence of two consenting parties is necessary for a contract, and the company before incorporation is a non-entity, the promoters cannot act as agents for the company, which has yet to come into existence. As such, the company is not liable for the acts of the promoters done before its incorporation.

A company also cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purporting to have been made on its behalf before it came into existence, as ratification by the company is legally impossible after its formation. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of the contract by the agent. Where a contract is made on behalf of principal known to both parties to be non-existent, the contract is deemed to have been entered into personally by the actual maker, i.e. the agent. A company may, if it desires, enter into a new contract, after its incorporation, with the other party which is known as novation of promoter's contracts and if it makes a fresh contract in terms of the preliminary contract, the liability of the promoters comes to an end and if it does not make a fresh contract within a limited, period of time, either of the parties may rescind the contract.

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

Question 2

Explain the following :

- (a) *Compounding of Offence and its advantages.*
 - (b) *Complaint under Criminal Procedure Code and Requisite of Valid Complaint.*
 - (c) *Guidelines for use of a particular 'words and phrases' in drafting.*
 - (d) *Appointment, power and functions of Receiver under Mortgage.*
- (4 marks each)*

OR (Alternate question to Q. No. 2)

Question 2A

Write notes on the following :

- (i) *Fowlers' five rules of Drafting*
 - (ii) *Advocacy Tips*
 - (iii) *Revocation and Extinction of Trusts*
 - (iv) *Surrender of Lease and its impact.*
- (4 marks each)*

Answer 2(a)

Compounding means that the accused and the complainant have come to terms and the dispute between the parties has been settled amicably or adjusted by agreement and the complainant agrees not to prosecute the accused. The accused and the

complainant then make a joint application to the court that the parties have come to terms and the case may not be proceeded with. Thus, in compounding, there is a compromise or agreement, while in case of imposition of fine under the provisions of an Act, there is no agreement as such. Generally, offences which are of a private nature and relatively not serious are made compoundable.

Advantages of Compounding

There are various advantages of compounding under any legislation, if it is done before the trial by the court, wherein either of the parties to the dispute which is at fault willingly agrees to its fault and a compromise is done between both the parties without the matter being adjudicated by the court. Compounding saves the parties from the hassle of spending a lot of money, time and energy in lengthy legal proceedings. In a country like India where there are thousands of cases pending in the courts, 'compounding' is a good way of settling disputes or matters.

Answer 2(b)

Complaint under section 2(d) of the Criminal Procedure Code means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but it does not include a police report. The petition of complaint must be submitted to the Magistrate. If it is submitted to some other official it is not a complaint. In order to be a complaint the petition must make allegations about occurrence of some offence. The object of the petition of complaint submitted before the Magistrate must be with a view to his taking action. Mere information to a Magistrate is not a complaint. A petition to Civil Court complaining some obstruction is not complaint within the meaning of the Criminal Procedure Code. A petition submitted before the District Magistrate or Superintendent of Police is not a complaint.

However, a report made by the police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer making the report as a complainant. In general a complaint into an offence can be filed by any person except in cases of offences relating to marriage, defamation and offences mentioned under Sections 195 and 197 of Criminal Procedure Code.

A complaint in a criminal case is what a plaint is in a civil case. The requisites of a complaint are:

- (i) an oral or a written allegation;
- (ii) some person known or unknown has committed an offence;
- (iii) it must be made to a magistrate; and
- (iv) it must be made with the object that he should take action.

Answer 2(c)

The draftsman must be cautious about the appropriate use of the words and should be clear of its meaning. The following rules may be prescribed for the guidance of the draftsman for using any particular word and phrase in the drafting of the documents:

- (1) For general words refer to ordinary dictionary for ascertaining the meaning of the

words. For example, Oxford Dictionary or Webster's Dictionary or any other standard dictionary may be referred to for this purpose.

- (2) For legal terms refer to legal dictionary like Wharton's Law Lexicon or other dictionaries of English Law written by eminent English Lexicographers as Sweet Cowel, Byrne, Stroud, Jowit, Mozley and Whiteley, Osborn etc. In India, Mitra's Legal and Commercial Dictionary is quite sufficient to meet the requirements of draftsman.
- (3) As far as possible current meaning of the words should be used and if necessary, case law, where such words or phrases have been discussed, could be quoted in reference.
- (4) Technical words may be used after ascertaining their full meaning, import of the sense and appropriate use warranted by the circumstances for deriving a technical or special meaning with reference to the context.
- (5) The choice of the words and phrases should be made to convey the intention of the executor to the readers in the same sense he wishes to do.
- (6) The draftsman should also use at times the recognised work of eminent legal expert on the interpretation of statutes.

Answer 2(d)

Under Section 69A of the Transfer of Property Act, 1882 a mortgagee having the right to exercise the power to sell is entitled to appoint by writing signed by him or on his behalf a Receiver of the income of the mortgaged property or any part thereof. Any person who has been named in the mortgage deed and is willing and able to act as a Receiver may be appointed by a mortgagee. If any person has been so named or if the person or persons are not capable and unwilling to act or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees. Failing such an agreement the mortgagee shall be entitled to apply to the Court for appointment of a Receiver and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

The following powers and functions of the Receiver have been set out in the Section 69A of the Transfer of Property Act, 1882

- (i) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee.
- (ii) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section.
- (iii) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

- (iv) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose.
- (v) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.
- (vi) The Receiver is required to apply all money received by him as follows:
 - (i) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;
 - (ii) in keeping down all annual sums or other payments, and the interest on all principals sums, having priority to the mortgage in right whereof he is Receiver;
 - (iii) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;
 - (iv) in payment of the interest falling due under the mortgage;
 - (v) in or towards discharge of the principal money, if so directed in writing by the mortgagee.

Answer 2A(i)

According to Fowler, “anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid.”

The principle referred to above may be translated into general in the domain of vocabulary as follows:

- (a) Prefer familiar words to the farfetched (familiar words are readily understood).
- (b) Prefer concrete words to the abstract (concrete words make meaning more clear and precise).
- (c) Prefer single word to the circumlocution (single word gives direct meaning avoiding adverb and adjective).
- (d) Prefer short words to the long (short word is easily grasped).
- (e) Prefer Saxon words to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand).
- (f) Always prefer active voice to passive voice in the drafting of documents.

Answer 2A(ii)

Some of the tips given by legal experts which professionals like Company Secretaries should bear in mind while appearing before Tribunals or other quasi-judicial bodies are given herein below. During pleading, a judge focuses on the following attributes :

- (i) *Clarity* : The judge’s time is limited, so make the most of it.
- (ii) *Credibility* : The judge needs to believe that what you are saying is true and that you are on the right side.
- (iii) *Demeanour* : We don’t have a phrase “hearing is believing”. The human animal which includes the human judge, is far more video than audio. The way we collect most of our information is through our eyesight.
- (iv) *Eye contact* : While pleading, maintain eye contact with your judge.
- (v) *Voice modulation* : Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use is rarely. Always be in control of it.
- (vi) *Psychology* : Understand judge’s psychology as your job is to make the judge prefer your version of the truth.
- (vii) *Be likeable* : At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.
- (viii) *Listen* : Learn to listen.
- (ix) *Humorous Approach* : At times adding little humour during arguments may assist immensely in steering out of a tough situation.

Answer 2A(iii)

Revocation of a trust is not possible unless :

- (1) all the beneficiaries give consent;
- (2) a power of revocation has been reserved in the deed; and
- (3) in case of a trust for payment of debts, it has not been communicated to the creditors. If the trust property is to be applied for the author’s own benefit the trust can be revoked. A power of revocation may with advantage always be reserved in the deed.

The declaration of trust for creating provident fund, pension fund, superannuation fund, gratuity fund etc. should be irrevocable. If they are otherwise the recognition under the Income Tax Act, 1961 will not be available to such trusts and in consequence the payment made to such funds will not be allowed as deduction in the hands of the authors of the trusts in their income tax assessments.

A trust is extinguished:

- (a) when its purpose is completely fulfilled; or

- (b) when its purpose becomes unlawful; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

Answer 2A(iv)

Surrender of lease is not a transfer but mere yielding up by the lessee of his interest under the lease to the lessor by mutual agreement. It effects a merger of the estate of the lessee into the reversion. It is not a transfer or an assignment of any right or estate within the meaning of Section 5 of the Transfer of Property Act [*Makhanlal v. Nagendranath*, (1933) 60 Cal 379].

The person who surrenders is called the surrenderer and the person to whom surrender is made is called the surrenderee. A surrender must be made with clear intention to yield up as mere non-payment of rent for years together or abandonment of the site does not amount to surrender (*Misri Lal v. Durga Narain*, AIR 1940 All. 317). A Requisition Order by the Government does not amount to any surrender (*Torabai v. Padan Chand*, 62 CWN 176). It may be expressed or implied. Except in a case of some special kinds of lease as required by special Act, no writing or registration is necessary. A surrender may be oral, if accompanied by delivery of possession.

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

Question 3

Draft the following Documents (Assume facts if necessary) :

- (a) *Power of Attorney to present Documents for Registration of any immovable property.*
- (b) *Deed of Redemption or Re-Conveyance of Mortgaged property by the Mortgager in favor of the Mortgagee.*
- (c) *Affidavit in support of Writ Petition filed against the State before the Hon'ble High Court of Rajasthan.*
- (d) *Deed of Assignment of Shares in a Company.* (4 marks each)

OR (Alternate question to Q. No. 3)

Question 3A

Distinguish between the following :

- (i) *Click Wrap Agreements and Shrink Wrap Agreements.*
- (ii) *Memorandum of Association and Articles of Association.*
- (iii) *Continuing Guarantee and Counter Guarantee.*
- (iv) *First Information Report (FIR) and Complaint.* (4 marks each)

Answer 3(a)

BY THIS POWER OF ATTORNEY I, AB of etc., do hereby appoint CD of, etc., my

attorney for me and on my behalf to appear for and represent me before the Sub-Registrar of..... of all times as may be necessary and to present before him for registration the..... deed dated the..... day of..... made between, etc., to admit the execution of the said deed by me (if necessary to admit the receipt of consideration), to do any act, deed or thing as may be necessary to complete the registration of the said deed in the manner required by law and when it has been returned to him after being duly registered, to give proper receipt and discharge for the same.

And I, the said AB, do hereby agree and declare that all acts, deeds and things done, executed or performed by the said CD shall be valid and binding on me to all intents and purposes as if done by me personally which I undertake to ratify and confirm whenever required.

Accepted
CD

Signed, sealed and delivered
Witnesses

AB

Schedule of Property

Answer 3(b)

THIS DEED is made the... day of between 'A' son of ...aged about .years, of ... of etc. (hereinafter called "the mortgagee") of the One Part and 'B' son of ... Aged about ... years, of of etc. (hereinafter called "the mortgagor") of the Other Part.

WHEREBY by a mortgage deed dated the property mentioned in that deed was mortgaged by the said 'B' in favour of the said 'A' to secure payment of the amount of Rs.... with interest @ . per cent per annum.

NOW THIS DEED OF RECONVEYANCE WITNESSETH:

That in consideration of all principal moneys and interest secured by the said mortgage deed dated having been paid, the receipt whereof the said 'A' hereby acknowledges. The said 'A' as mortgagee hereby redeems or reconveys unto the said 'B' all the property comprised in the said mortgage deed to hold the same upto and to the use of the said 'B' as absolute owner discharged from all principal money and interest secured by and from all claims and demands under the aforesaid mortgage deed.

Signed, sealed and deliveredMortgagee
.....Mortgagor

Witness:

- 1.....
- 2.....

Answer 3(c)**Affidavit in support of Writ petition**

IN THE HON'ABLE HIGH COURT OF JUDICATURE AT RAJASTHAN

Writ petition No. of 20.....

*Mr..... aged about years, son of , resident of.....
.....Petitioner*

Vs.

The State of Rajasthan through the Secretary, Education Department, Rajasthan
.....Opposite Party

Writ Petition under Article 226 of the constitution of India.

Ison ofaged about.....years resident of.....hereby solemnly
affirm and states on oath as under:

1. That the deponent is the Petitioner in the above noted Writ Petition and he is fully conversant with the facts of the case deposed in the Writ Petition.
2. That the contents of Paragraph.....to.....of the accompanying Writ Petition are true to my personal knowledge.
3. That the contents of' paragraph..... to..... are based on legal advice, which I believe to be true.
4. That no part of it is false and nothing material has been concealed. So help me God.

Deponent

Verification

I.....,the above named deponent, do hereby verify that the contents of paragraph 1 to 4 of this Affidavit are true to the best of my knowledge.

Signed and verified this. day of.....at

Deponent

Answer 3(d)

THIS ASSIGNMENT is made this day of
between AB, son of, resident of..... (hereinafter called
"the Assignor") of the one part, and CD, son of....., resident of
(hereinafter called "the Assignee") of the other part.

THE DEED WITNESSES:

That in consideration of the sum of Rs..... (Rupees.....)
paid by the assignee to the assignor, the receipt whereof the assignor hereby
acknowledges, the said AB hereby assigns, sells and transfers to the said
CD..... Equity Shares of Rs..... each, fully paid up, bearing consecutive

Nos..... to..... (inclusive), which stand in the name of the assignor in the Register of Members of..... Co. Ltd. TO HOLD the same to the assignee absolutely, subject nevertheless to the conditions on which the assignor held the same up to date.

AND the assignee hereby agrees to take the said Equity Shares subject to such conditions.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.

Witness: Assignor

Witness: Assignee

Answer 3A(i)

Click Wrap Agreements are the agreements which we generally come across while surfing internet such as “I AGREE” to the terms or “I DISAGREE” to the above conditions. A click-wrap agreement is mostly found as part of the installation process of software packages. It is also called a “click through” agreement or click-wrap license.

Click-wrap agreements can be of the following types:

1. Type and Click where the user must type “I accept” or other specified words in an on-screen box and then click a “Submit” or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.
2. Icon Clicking where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a “take-it-or-leave-it” type of contract that lacks bargaining power.

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

Answer 3A(ii)

Difference between Memorandum of Association and Articles of Association

1. The Memorandum of Association contains the fundamental conditions upon which alone company is allowed to be incorporated. The Articles of Association are the internal regulations of the company.
2. Memorandum lays down the area beyond which the activities of the Company cannot go. Articles provide for regulation inside that area. Thus, Memorandum lays down the parameters for the Articles.
3. Memorandum of Association can be altered only under certain circumstances

and in the manner provided in the Act but Articles can be altered by the members by passing a special resolution only.

4. Memorandum of Association cannot include any clause contrary to the provisions of the Companies Act. The Articles of Association are subsidiary both to the Companies Act and the Memorandum of Association.

Answer 3A(iii)

Continuing Guarantee' and 'Counter Guarantee'

Section 129 of the Indian Contract Act, 1872 lays down that a guarantee which extends to a series of transaction is called a Continuing Guarantee, and according to section 130, a continuing guarantee may be revoked by the surety at any time as to future transactions, by notice to the Creditor. A Continuing guarantee may be revoked at any time by the guarantor in respect of future transactions, unless there is a continuing consideration as to the transactions that the guarantor does not give up.

A Guarantee given by the principal debtor to the surety providing him 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'.

Answer 3A(iv)

The First Information Report is different from a Complaint and the following are the points of distinction between them:

1. A Complaint is an allegation orally or in writing to a Magistrate. The First Information Report is given in writing or orally to a Police Officer.
2. The Magistrate can take cognizance of an offence on a Complaint, but not on First Information Report.
3. Any person can give the First Information, but a Complaint can be given only by a person authorized under law under certain circumstances. The First Information Report on the other hand, only empowers the Police officer to start investigation in cases of cognizable offences.
4. A Complaint can be made for Cognizable and Non Cognizable offence while First Information Report can be made for cognizable offence only.

Question 4

- (a) *Draft a Specimen Deed of Hypothecation of Goods to Secure Fixed Loan Granted by a Bank.*
- (b) *Mr. X from Teerathgarh in Jagdalpur District. He is an old man of 56 years of age hailing from a responsible family. He has been put on trial u/s 409 of IPC, Criminal breach of trust by Public Servant which is a non-bailable offence. He had collected ₹1100 as a land revenue and failed to deposit it in Treasury. He has been arrested and is under trial.*

Draft an application of bail on behalf of Mr. X by choosing your own facts, name of Court hearing the trial and other necessary details. (8 marks each)

Answer 4(a)

The Manager,

.....Bank,

Sir,

In consideration of your Bank advancing to me/us on loan the sum of Rs..... I/We hereby agree to hypothecate and hold under lien to the Bank as security for the repayment as per Schedule hereto of the principal amount of the loan and payment of interest on demand at.....% per annum subject to a maximum of.....% per annum above Bank Rate.

The goods so to be held by me/us under lien to the Bank I/We declare to be my/our absolute property, and to be stored in my/our godowns at..... I/We hereby agree to furnish you at the close of business on the last day of each English calendar month so long as any money remains due in respect of the said loan with a full and correct statement of particulars of all goods so held under lien to the Bank, with the market value thereof respectively on that day.

All goods from time to time held by me/us under lien to the Bank in terms of this agreement shall be kept separate and apart from all other goods in my/our possession, and no moneys shall be borrowed by me/us from any company, firm or person on the security of such goods stored in the same godown in a way that such other goods may be mixed with the goods held under lien to the Bank nor shall I/We do any other act by means of which the Bank's lien on the goods so held shall be in any way impaired or affected.

It is understood that I/We are at liberty, from time to time in the ordinary course of business, to sell all or any of the goods from time to time held under lien to the Bank under this agreement provided that no such sale shall reduce the value of the goods held under lien below the amount of my/our said debt to the Bank plus the margin of..... per cent. In case of any goods held under lien to the Bank reducing the value of the goods held under this lien to less than the amount of my/our said debt to the Bank plus such margin, the proceeds of such sale, as soon as the same are received, shall be paid into the bank in part satisfaction of the said loan and shall in the meantime be held as specifically appropriated to payment of the amount due by me/ us on the security.

I/We empower you or any one from time to time authorised by you on behalf of the Bank to enter the godowns in which the goods held under lien to the bank under this agreement shall be from time to time stored, for the purpose of inspecting and taking an account of the said goods.

I/We further empower you or anyone authorised by you as aforesaid so long as any money advanced by the bank under this agreement remains unpaid, to take possession of any goods from time to time held by me/us under lien to the Bank under this agreement and/or any promissory notes or bazaar chits held by me/us in respect of any of the goods which may have been sold in such manner as you may think fit and on so taking possession to exercise on behalf of the Bank all the rights of a pawnee under the Indian Contract Act and failing payment of the amount under this loan on.....

to sell and realise the said goods and promissory notes or bazaar chits. No notice to me/ us of such sale shall be necessary, and I/ We hereby agree to waive any such notice. I/ We agree to accept the Bank account of such sale signed by the Manager, Accountant or other duly authorised officer of the Bank as sufficient proof of the correctness of the amount realised by the Bank and the charges and expenses incurred in connection with such realisation, and I/We hereby further agree to sign all documents, furnish all information and do all acts and things necessary for the purpose of enabling the Bank to sell any goods or realise any promissory notes or bazaar chits of which you shall so take possession.

I/We undertake to keep all held under lien to the Bank under this agreement, insured against fire to their full value, and to produce and deposit the policies with the Bank any time on demand and to hold all moneys which may become payable under any such policies in trust for the Bank so long as any money shall remain due in respect of my/our said loan. It shall be optional for, but not obligatory on the Bank, to insure the said goods in the Bank's name or to appropriate floating policies for the time being effected by the Bank towards insurance of the said goods and in either case to debit the said loan with relative premiums.

It is understood that the Bank's lien on the goods, so held under this agreement shall extend to any other sum or sums of money for which I/we or any other of us either separately or jointly with any other person or persons may be or become indebted or liable to the bank on any account.

Schedule of securities referred to in the agreement.....

Schedule of instalments for the repayment of the loan amount.....

Yours faithfully,

For

Authorised Signatory,

Place :

Dated :

Answer 4(b)

In the Court of Sh. Magistrate First Class Jagdalpur

Criminal Complaint Number.....of 2019

Police Station :

In the matter of:

State of Chhattisgarh

Complainant

Verses

Mr. X Son of Mr. Y resident of Teerathgarh

Accused

Application for bail under section 436 CRPC

It is submitted on behalf of aforesaid accused as under:

1. That the accused was arrested by the Teerathgarh police station on 22nd January

2019 under section 409 of Indian Penal Code and is under police custody for last 10 days

2. The main allegation is that the accused in the capacity of public servant has failed to deposit a petty sum of Rupees 1100 in the State treasury and hence has committed criminal breach of trust.
3. Although the offence is non bailable, but considering such a small amount involved, it is highly improbable that he would ever think of misappropriating such a small sum.
4. This could be due to some honest mistake on part of the accused which can well be attributed to his growing age.
5. The accused has otherwise an absolute clean record, belongs to a responsible family in the village and his chances to abscond are remote.
6. Under the above circumstances it is prayed that the said accused may be enlarged on bail for which the accused is willing to give such security as may be determined by the Honourable Court
7. For this act of kindness the accused shall be duty bound and is prayed accordingly

SD/-

Advocate for Mr X

Place : Jagdalpur

Date :

Question 5

- (a) *Explain the power to grant Special Leave (SL) under Article 136 of the Constitution of India. Who can exercise this power? Are the provision of this Article applicable on Defense Personal?* (4 marks)
- (b) *Define Slump Sale. Discuss the steps involved in carrying out Slump Sale.* (6 marks)
- (c) *Draft a Power of Attorney authorize Mr. X to sign for a Permanent Injunction to be filed before Civil Court.* (6 marks)

Answer 5(a)

Where a High Court refused to issue the required certificate to enable an aggrieved party to appeal to the Supreme Court against the judgment, order or sentence awarded by the High Court, the aggrieved party may petition to the Supreme Court for grant of special leave to appeal under Article 136 of the Constitution.

Article 136 of the Constitution confers upon the Supreme Court power to grant special leave to appeal. Section 112 of the Code of Civil Procedure, 1908 keeps the powers of the Supreme Court under Article 136 of the Constitution to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter

passed or made by any Court or tribunal in the territory of India, beyond the scope of the provisions of the Code.

The Article lays down:

- (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India.
- (2) Nothing in clause (1) shall apply to any judgement, determination, sentence or order passed or made by any Court or tribunal constituted by or under any law relating to the Armed Forces.

Therefore, the provisions of this Article are not applicable to Defence Personnel.

Answer 5(b)

The concept of 'slump sale' was incorporated in the Income Tax Act, 1961 by the Finance Act, 1999 with the inclusion of section 2(42C). The term 'slump sale' is defined as transfer of one or more undertakings as a result of the sale for a lump-sum consideration without values being assigned to the individual assets and liabilities in such sales.

Slump Sale is carried out through following steps:

1. *Find Buyer*: The seller has to find the potential buyers. Before opting for slump sale there are various issues that needs to be analyzed especially the impact of capital gain tax to the seller and stamp duty to the buyer in the light of business strategies.
2. *Sign MoU/Term sheet*: Once the buyer company is selected, there is need to sign MoU (Memorandum of Understanding) which helps the buyer company to get access to seller entities information for making due diligence, valuation etc.
3. *Make Valuation*: Valuation is a process of determining the value of assets and liabilities of business. It is one of the most important aspects of slump sale process, as seller wants maximum valuation for its business whereas buyer wants it at lowest end. Valuation of business is mandatory for listed company.
4. *Deal Structuring*: A deal should be structured considering agreement between buyer and seller. It should be time, cost and compliance effective.
5. *Slump sale agreement*: Deal needs to be executed through agreement, capturing all slump sale clauses, effecting objectives predetermined and executed by both parties. The executed agreement needs to be registered as per applicable Stamp Act.

Answer 5(c)

In the Court of etc.

Suit (or Case) No..... of 20.....

Plaintiff (or Applicant, Complainant)

X, son of..... of, etc.

versus

Defendant (or Non-applicant, or Accused),
Y, son of..... of, etc.

Claim for (or, in the matter of), etc.

BY THIS POWER OF ATTORNEY, I, 'Y', defendant (or, etc.), in the above suit (or case), do hereby nominate, constitute and appoint, 'M' advocate etc., my attorney, for me, in my name and on my behalf to appear, act and plead in the said case, to make or present Permanent Injunction to the court, and to do all other lawful acts, deeds and things in connection with the case as effectually as I could do the same, if I were personally present; to engage and appoint any other advocate or advocates whenever my said advocate thinks proper to do so.

Provided, however, that, if any part of the advocate's fee remains unpaid before the first hearing of the case (or, etc.), or if any hearing of the case be fixed beyond the limits of this town, then and in such an event my said advocate shall not be bound to appear before the court; Provided also that if the case be dismissed by default, or if it be proceeded ex parte, the said advocate shall not be held responsible for the same except in case of gross negligence, wilful default. And all whatever my said advocate shall lawfully do, I do hereby agree to and shall in future ratify and confirm.

Signed, sealed and delivered

'Y'

Accepted, subject to the aforesaid conditions

'M', Advocate.

Question 6

- (a) *What is Relinquishment Deed ? Draft a Specimen Deed of release between two partners on Dissolution of Partnership.* (8 marks)
- (b) *Draft a Bank guarantee by a bank in favor of State Government on behalf of 'Y' Ltd. for performance of a construction.* (8 marks)

Answer 6(a)

A release or relinquishment deed is an instrument whereby a person renounces a claim upon another or against any specified property which he is or may be entitled to enforce. It may be deed poll or as a deed to which both the releaser as well as the person in whose favour the release is made are made parties.

A release is sometimes called relinquishment. When considered from the point of view of the person in whose favour the transaction operates, it is "release" as it releases him or his property from an obligation or liability. When considered from the point of view of the releaser, it may be said to be a "relinquishment" as the releaser relinquishes a certain right which he has, or may be entitled to enforce.

A release must be in writing signed by all the releasers. It can be drafted as a deed poll or as a deed. If it is drafted as a deed then all releasers and all persons having an interest in the claim or property should be made parties. If the release is of a claim under an instrument then it would require attestation, if the instrument required attestation. If

the release is required to be registered it should be attested by at least two witnesses. In other cases it may be attested by one witness.

If the subject matter of the release is an immovable property the amount of value of which exceeds Rs. 100, it is compulsorily registrable. The release deed should contain the recitals regarding the origin of the claim, acknowledgement of the releaser about the claim and words and expressions sufficiently clear to convey the intention of the releaser to discharge the claim.

DEED OF RELEASE BETWEEN TWO PARTNERS ON DISSOLUTION OF PARTNERSHIP

THIS RELEASE is made on the day of..... BETWEEN X etc., (hereinafter called the "one party") of the first part

AND Y, etc. (hereinafter called the "other party") of the second part

WHEREAS the said X, and Y were carrying on in partnership the business of and the said business was wound up and the partnership dissolved by deed, dated executed by the said parties;

AND WHEREAS the winding up of the said business was entrusted to the arbitration of M of and he after realising the debts and calling in the property and assets of the said business and after paying all creditors and liquidating all the liabilities apportioned the shares of the parties, giving to the said X a sum of Rs and to the said Y the sum of Rs.....

AND WHEREAS the parties for mutual safety are desirous of executing this deed of release so that all future disputes in regard to the said partnership or the business may be set at rest.

NOW THEREFORE THIS DEED WITNESSES that in pursuance of the said mutual desire the said X hereby releases the said Y and also that the said Y hereby releases the said X from all sums of money, accounts, proceedings, claims and demands whatsoever which either of them at any time had or has up to the date of the said dissolution against the other, in respect of or in relation to the said partnership or the business of the said partnership.

IN WITNESS WHEREOF the said X, and the said Y have hereto at signed on the day and the year first above-mentioned

Witness

1.....

X.....

2.....

Y.....

Answer 6(b)

DEED OF GUARANTEE BY A BANK IN FAVOUR OF STATE GOVERNMENT FOR PERFORMANCE OF A CONSTRUCTION

THIS DEED OF GUARANTEE made this.....day of..... Two thousand..... between the (Bank).....(hereinafter called "the Bank") of the One part and

The State of represented by the authorised Representative of Governor, Shri..... (hereinafter called 'I the State") of the other part.

WHEREAS by Acceptance of Tender No. dated. made between Y Ltd., a company incorporated under the Companies Act, 2013 having its Registered Office at It has been agreed by the Company Y Ltd with the State for the supply of plant, machinery and equipment in accordance with the terms, specifications and conditions therein contained which inter alia to.....% of the total value of the contract price, such payment to be secured by a Bank guarantee;

AND WHEREAS the bank has, at the request of the Company Y Ltd, agreed to stand surety for and guarantee refund of the said advance in case the plant, machinery and equipment of the value of Rs..... aforesaid is not delivered to the State in accordance with the terms and conditions of the said agreement, and the State agreed to make the said advance on such bank guarantee as aforesaid:

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the State of..... having agreed to advance a sum of Rs..... to the Company Y Ltd, through the Bank, for the purpose hereinafter indicated, the bank, does hereby guarantee that in case the Company Y Ltd shall fail and/or neglect to supply the State, the plant, machinery and equipment of the value of Rs. in accordance with the terms, specifications and conditions contained in the Acceptance of Tender dated the..... subject to any amendments or modifications thereof, if any, when made, the bank shall repay to the State such amount or amounts as the bank may be called upon to pay subject to the maximum limit of Rs.
2. This guarantee of the Bank shall be effective immediately upon receipt of the sum of Rs. from the State for and on behalf of the Company Y Ltd and shall continue in force until the supply of plant, machinery and equipment of the value of Rs..... aforesaid is fully executed.
3. The guarantee hereinbefore contained shall not be affected by any change in the constitution of the bank or of the Company Y Ltd nor in the event of any winding up being made against the Company Y Ltd.

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

For and on behalf of the Bank For and on behalf of the State of....

Witness 1

Witness 2

BANKING LAW AND PRACTICE (Elective Paper 9.1)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Read the following case study and answer the questions that follow :

Regulatory Framework and Compliance in Banks

Regulation is a set of rules and guidelines on how to do banking business such that financial stability is attained and that stakeholders' interest are taken care of. In other words regulations are the contours within which the banks have to operate.

Compliance is essentially doing business as per regulations and as per well established ethical business practices and rules. To comply is to adhere with regulations which are beneficial to the Banking Institution.

Banks in India have a good track record in regard to regulation, governance, operations and compliance. However, post the global financial crisis and a plethora of new regulations and guidelines, both global and local; there is a pressure on banks for complete compliance.

Now-a-days there is renewed demand for governance and transparency. New regulations are indeed creating new compliance challenges and risks. Needless to say, the cost of compliance is on the increase.

About the Case :

The Global Bank Ltd. proposed to open their full fledged Branch in "Financial District" of Hyderabad. Based on the survey conducted by the Branch, Bank found lot of Business Potential i.e. Deposits, Advances and other Miscellaneous Business (Including Cross Selling of Third Party Products etc.) exist as Big IT Companies, IT Professionals are located.

Bank applied for license to Reserve Bank of India (RBI) and RBI has given approval to open their branch in Financial District.

Inauguration date is finalized and Bank proposed to inaugurate the Branch in the Hands of Country Head Mr. Gopal of M/s Indian Software Ltd. who is going to visit to Financial District, Hyderabad on that particular date on official work. Bank has given wide publicity for opening ceremony of the Branch particularly in TWIN Cities of Hyderabad in various newspapers. Good Media coverage was given and Bank is expecting ₹5 Crore of Deposits on the First day of opening of the Branch. Some of the IT Companies given assurance to Asst. General Manager (AGM) and Mr. Rohit Aggarwal, Branch Head that they wish to open their office Current Account with The Global Bank Ltd., Financial District Branch.

The Branch was inaugurated on the fixed date by Country Head Mr. Gopal of M/s Indian Software Ltd. Mr. Gopal was happy and he gave a promise to Mr. Rohit Aggarwal that he would instruct Finance Department of M/s Indian Software Ltd. to shift all staff members Salary Accounts with The Global Bank Ltd., Financial District Branch from other banks. After one week of inauguration 20 officials of M/s Indian Software Ltd. met Mr. Rohit Aggarwal, Branch Manager and they wish to avail Home Loans, Car Loans, Education Loans and Personal Loans from Financial District Branch of The Global Bank Ltd. (Due to lower rate of interest, processing charges etc., and also branch is nearer to their office.) As Mr. Rohit Aggarwal is new to Credit Management i.e. processing and sanction of Loans and Advances and that too in bulk lot i.e. 20 officials with 4 products each, he requested 20 officials of M/s Indian Software Ltd. to visit again to the Branch on the next day evening.

Immediately, he visited to the Zonal Office of The Global Bank Ltd. and met Mr. Prasad, Asst. General Manager (AGM) and appraised the credit requirements of M/s Indian Software Ltd. officials i.e. Home Loans, Education Loans, Car Loans and Personal Loans for 20 officials.

Immediately, Mr. Prasad, AGM called Chief Manager (Advances) of Zonal Office and instructed him to provide full information on Credit Management process to Mr. Rohit Aggarwal as he is new in Credit Function of the bank.

Mr. Prasad, AGM also instructed the Chief Manager (Advances) to discuss in details with Mr. Rohit Aggarwal on important areas like Legal and Regulatory Compliance with regard to General Banking and Credit Management in particular of the Bank and also its importance in Banks to mitigate the Credit and Operational Risks.

He also informed that the following Acts are the important legal and regulatory guidelines which are relevant in Credit and General Banking Functions of the Bank which are to be discussed with Mr. Rohit Aggarwal to avoid the remarks/irregularities or mistakes pointed out earlier in Compliance Audit of the Bank.

- *Banking Regulation Act, 1949.*
- *Reserve Bank of India Act, 1934.*
- *The Credit Information Companies (Regulation) Act, 2005.*
- *Power of Attorney Act, 1882.*
- *Indian Stamp Act, 1899.*
- *Transfer of Property Act, 1882.*
- *The Central Registry of Securitization Asset Reconstruction and Securities Interest of India (CERSAI Act) and its importance.*
- *The Recovery of Debts Due to Banks and Financial Institutions Act, 1993.*
- *The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).*

After meeting with Asst. General Manager is over, both Chief Manager (Advances) and Mr. Rohit Aggarwal sit in the discussion room of Zonal Office and Chief Manager

(Advances) starts discussion on importance of Legal and Regulatory Compliance in Banks in processing of Advances of the Bank particularly the above mentioned Acts.

If you are appointed as a Compliance Officer of The Global Bank Ltd., how you will advise to Mr. Rohit Aggarwal, Branch Manager to remove the Knowledge Gaps on Legal and Regulatory Compliance in Banks with regard to processing advance products and general banking aspects of the Bank particularly on the following areas:

Questions :

- (i) Briefly explain the objectives of Regulations in Banking Sector and why compliance function in Banks is important ? (5 marks)*
- (ii) Discuss in brief the important aspects of the following acts in day to day banking activities and lending process of the Banks :*
 - (a) Banking Regulation Act, 1949.*
 - (b) Reserve Bank of India Act, 1934.*
 - (c) The Credit Information Companies (Regulation) Act, 2005.*
 - (d) Power of Attorney Act, 1882.*
 - (e) Indian Stamp Act, 1899.*
 - (f) Transfer of Property Act, 1882.*
 - (g) The Central Registry of Securitization Asset Reconstruction and Securities Interest of India (CERSAI Act) and its importance.*
 - (h) The Recovery of Debts Due to Banks and Financial Institutions Act, 1993.*
 - (i) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).*

(5 marks each × 9 = 45 marks)

Answer 1(i)

Objectives of Regulation

The objectives of bank regulation and the emphasis vary between jurisdictions. The most common objectives are as under:

Prudential Management is to reduce the level of risk to which bank creditors are exposed to (i.e., to protect depositors).

1. Reduction in systemic risk to reduce the risk of disruption resulting from adverse trading conditions for banks causing multiple or major banks failures.
2. Avoid misuse of banks to reduce the risk of banks being used for criminal purposes, e.g. laundering the proceeds to crime.
3. To protect banking confidentiality.
4. Credit allocation to favoured sectors.

5. It includes rules about treating customers fairly and having corporate social responsibility.

Strong measures taken by the Central Banks in disciplining banks which had committed violations Anti Money Laundering (AML) Laws/ Rules and other lapses speak volumes for the importance attached by regulatory authorities on the aspect of compliance. The growing instances of violations have also attracted the attention of media and public. In this background, the major risk faced by banks today is not the penalty that the banks paid to the regulator but the reputation risk, as even minor violations are high-lighted in the media. Consequently the impact on the banking sector is substantial. Hence there is a growing importance and relevance of compliance function in banks.

There are number of issues that will lead to better compliance.

- The first is a clear message from the top management about the commitment to compliance and zero tolerance for non-compliance.
- The second issue is having appropriate systems. If the systems and processes are well laid the chance of non-compliance is reduced.
- The third factor is about having skilled and exclusive vertical within the organization that will monitor and mentor compliance.

Here again a clear message from the top management is essential because there exists a view that compliance and business decisions are contrary to each other. Compliance should not be sacrificed in the name of business or because there is cost attached to the compliance function.

Answer 1(ii)(a)

Banking Regulation Act, 1949 (hereinafter referred to as "the Act"), is the most important as it affects the functioning of all institutions carrying on banking business whereas the other enactments relate only to certain specific type(s) of banks.

Some of the important provisions of the Act are as under

According to Section 5(b) of Banking Regulation Act, 1949, Banking is defined as "the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, and order or otherwise".

According to Section 24 of Banking Regulation Act, 1949, Statutory Liquidity Ratio refers to the amount that the commercial banks require to maintain in the form of Gold or Government approved securities before providing credit to the customers. Statutory Liquidity Ratio is determined and maintained by the Reserve Bank of India in order to control the expansion of bank credit. It is determined as percentage of total net demand and time liabilities. The current CRR is 19.25% (Change from time to time as decided by RBI).

The objectives of SLR are as under :

- To augment the investment of the banks in government securities.
- To ensure solvency of banks.
- A reduction of SLR rates looks imminent to support the credit growth in India.

The SLR is commonly used to contain inflation and fuel growth, by increasing or decreasing it respectively.

Section 22 of the Banking Regulation Act, 1949 prohibits a company from carrying on banking business in India unless it holds a license issued by the RBI. The licence may be a conditional licence. The licence may be cancelled if the company ceases to carry on banking business in India or fails to comply the conditions imposed upon it under sub-section (1) of this section or fails to fulfill any other condition laid down in the section.

Other Important Provisions of the Banking Regulation Act, 1949 are:

Sec 4	Power to Suspend Operation of the Act
Sec 5(c)	Banking Companies
Sec 6	Forms of Business
Sec 11, 12 and 13	Requirements as to Minimum Paid-up Capital and Reserves and Regulation of Capital
Sec 14 and 14A	Prohibition on Creation of Charge on Unpaid Capital
Sec 15	Restriction on Payment of Dividend
Sec 17	Reserve Fund
Sec 19	Restriction on Nature of Subsidiary Companies
Sec 20 and 21	Restriction on Loans and Advances
Sec 23	Restrictions on Opening and Transfer of Places of Business
Sec 29-33	Provisions Relating to Accounts and Audit

Answer 1(ii)(b)

As per section 42 of RBI Act, 1934, every bank included in the Second Schedule of the Reserve Bank of India Act shall maintain with the RBI an average daily balance of its total demand and time liabilities (at present 4%). RBI has power to increase the said rate by issuing notification in the Gazette of India.

Cash Reserve Ratio : Cash Reserve Ratio (CRR) is the amount of funds that all Scheduled Commercial Banks (SCB) excluding Regional Rural Banks (RRB) are required to maintain without any floor or ceiling rate with RBI with reference to their total net Demand and Time Liabilities (DTL) to ensure the liquidity and solvency of Banks (Section 42(1) of RBI Act 1934). The current CRR is 4% and at present no incremental CRR is required to be maintained by the Banks.

Other Important Provisions of the Act are:

Section 35	Inspection by RBI
Section 26	Unclaimed Deposits
Section 17	Reserve Fund
Section 20	Restriction on loans and advances
Section 30 {(excluding sub section (1B),(1C) and (2)}	Audit
Section 45ZA	Nomination for payment of Depositor's etc.

Answer 1(ii)(c)

A good credit score of a person / company is a sine qua non for good credit health and is crucial for a person to avail financial assistance. So maintaining a good credit score is an indispensable activity. A Credit Information Company (CIC) collects and maintains records of an individual's payments and dues pertaining to loans and credit cards. These records are submitted by the respective banks and other credit institutions to the CIC. This information is then used to create credit information report which is provided to credit institutions in order to access the creditworthiness and capacity of a borrower to repay his loan and advances and discharge his other obligations in respect of credit facility availed or to be availed by him. Inaccurate record of information of a person maintained by credit institutions and CIC may have dire consequences and so it is imperative that accurate reporting be done.

The Credit Information Companies (Regulations) Act, 2005 was therefore enacted to regulate credit information companies and to facilitate efficient distribution of credit rating of an individual.

CIBIL score is a numeric summary of one's credit history and it helps one get their loan applications evaluated and approved. Banks and other financial institutions rely on CIBIL Scores to evaluate the potential risk posed by lending money to consumers and to mitigate losses. CIBIL score plays a very important role in India's financial system and helps consumers secure credit quicker and also help loan providers manage their business efficiently.

CIBIL score acts as the first impression for the lender, the higher the score, the better chances of the loan/credit card being approved. A good CIBIL score get the best interest rates and terms. Higher the credit score, better the interest rate.

Answer 1(ii)(d)

The term 'Power of Attorney' is an authority given by an instrument by one person, called as the donor or principal, authorizing another person, called donee or agent to act on his behalf. There may be possibility of giving 'Power of Attorney' by two or more persons jointly to one or more persons. Here a legal authority is given by the principal to the agent which may be broad or limited and an agent can take all necessary decisions i.e. financial, property related matters and all other matters where principal cannot be present to sign due to principal's illness and disability. A paper signed by principal giving powers to an agent is sometimes itself called a power of attorney. A paper giving a power of attorney should be clear and understandable.

General Power of Attorney : A general power of attorney gives broad powers to a person or organization (known as an agent or attorney-in-fact) to act in your behalf. These powers include handling financial and business transactions, buying life insurance, settling claims, operating business interests, making gifts, and employing professional help.

Special Power of Attorney : Specify exactly what powers an agent may exercise by signing a special power of attorney. This is often used when one cannot handle certain affairs due to other commitments or health reasons. Selling property (personal and real), managing real estate, collecting debts, and handling business transactions are some of the common matters specified in a special power of attorney document.

Answer 1(ii)(e)

Stamp duty means an extra charge placed on certain legal documents by purchasing a stamp to be placed on said document. It can either be fixed or variable (according to the legal instrument), levied on certain legal documents, thereby providing that law can exclude certain documents from the purview of stamping and stamp duty is paid by purchasing a stamp and not by any other means.

In India, levying of stamp duty is governed by two legislations, i.e., a Stamp Act legislated by the Parliament and Stamp Act legislated by Legislature of each State. Article 246 read with Schedule VII of the Indian Constitution state that Parliament can enact laws relating to rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bill of lading, letter of credits, insurance policies, transfer of shares, debentures, proxies and receipts etc. It is to be noted that Legislature of State can legislate on any matter other than those mentioned above.

According to section 3 of the Indian Stamp Act, 1899 (the Parliament Legislation) stamp duty will be levied on the following document:

1. List of documents mentioned in First Schedule of the Parliament Legislation;
2. Every bill of exchange payable otherwise on demand or promissory note drawn or made out of India and accepted or paid or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated and
3. Every instrument (other than a bill of exchange or promissory note) mentioned in First Schedule, which not having been previously executed by any person, is executed out of India, related to any property situate, or to any matter or thing was done or to be done in India and is received in India.

Liability of Paying Stamp Duty : An agreement, among the parties, can impose liability on a party for payment of the stamp duty. Section 29 of the Parliament Legislation, gives a choice to the parties of an agreement to decide the party who shall be liable to pay the stamp duty levied on the concerned agreement which, in the absence of an agreement, imposes the liability of paying stamp duty on certain persons.

Penalty for non-compliance with the Parliament Legislature or the State Legislature.

The legislatures enacted by the Parliament and the respective State Government under various provisions of the respective Acts provide that an unstamped or an inadequately stamped instrument will not be admissible as evidence.

Answer 1(ii)(f)

Section 58 (a) of Transfer of Property Act, 1882, Mortgage : "A mortgage is the transfer of interest in specific immoveable property, for the purpose of securing the payment of money advanced or to be advanced by way of loan, on existing or future debtor the performance of an engagement which may give rise to pecuniary liability".

Section 58 (b) of Transfer of Property Act, 1882, Simple Mortgage : "Without delivering possession of the mortgaged property, the mortgager binds himself personally to pay the mortgage money and agrees, expressly or impliedly, that in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the

mortgaged property to be sold by a decree of the court in a suit and the proceeds of the sale to be applied so far as may be necessary in payment of the mortgage money".

1. Intervention of court required.
2. Mortgagee has no right to get any payments out of the rents and produce of the mortgaged property
3. Mortgagee not put in possession of the property
4. Registration is mandatory

Section 58 (f) of Transfer of Property Act, 1882, Equitable Mortgage: "where a person delivers to a creditor or his agent documents of title to immoveable property, with the intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds".

1. Deposit of title deed with intention to secure debt.
2. Original documents are required.
3. Registration is optional.
4. Deposit at notified places only.
5. Independent of location of the property.

Answer 1(ii)(g)

Central Registry of Securitization Asset Reconstruction and Security Interest (CERSAI) is a central online security interest registry of India. It was primarily created to check frauds in lending against equitable mortgages, in which people would take multiple loans on the same asset from different banks.

The Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) is set up under section 20 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). At the solicitation of the Department of Financial Services, Ministry of Finance, the Indian Banks' Association has found a way to get consolidation of the Central Registry of Securitization Asset Reconstruction and Security Interest of India.

Section 20 of SARFAESI Act - Central Registry: The Central Government may, by notification, set-up or cause to be set-up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitization and reconstruction of financial assets and creation of security interest under this Act.

Answer 1(ii)(h)

Banks and financial institutions duly registered with Reserve Bank of India (RBI) provide loan facility to legal entities and individuals (borrowers). In the event where the borrower fails to repay loan amount or any part thereof which also includes unpaid interests and other charges and /or debt becomes Non-Performing Asset (NPA), banks and financial institutions can recover the debt by approaching appropriate judicial forums.

It came on the Statute Book as The Recovery of Debts due to Banks and Financial

Institutions Act, 1993 (51 of 1993). An Act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto.

Section 3, provides for the establishment of Debt Recovery Tribunal (DRT), by notification to be issued by the Central Government, for exercising, jurisdiction, powers, and authority conferred on such tribunal under the RDDBFI Act. First DRT was established in Kolkata in the year 1994. Presently 33 DRTs are functioning at various places in India, and 6 more DRTs are also being established. As per section 4, DRT consists of sole member only, known as Presiding Officer. Section 5, provides that a person who has been or is qualified to become District Judge can be appointed as Presiding Office of DRT.

As per section 1(4), the provisions of RDDBFI Act does not apply where the amount of debt due to the bank or financial institution or the consortium of banks and financial institutions is less than Rupees Ten Lakh or any other amount not below Rupees One Lakh, cases where the central government may by notification specify. Thus, in essence, minimum debt which is to be recovered from DRT should not be less than Rupees Ten Lakhs.

Answer 1(ii)(i)

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 is a legislation that helps financial institutions to ensure asset quality in multiple ways. This means that the Act was framed to address the problem of NPAs (Non-Performing Assets) or bad assets through different processes and mechanisms.

The Act stipulates four conditions for enforcing the rights by a creditor.

1. The debt is secured;
2. The debt has been classified as an NPA by the banks;
3. The outstanding dues are one lakh and above and more than 20% of the principal loan amount and interest there on;
4. The security to be enforced is not an Agricultural land.

In case the borrower fails to discharge his liability in full within the period specified in sub-section (2) of section 13, the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:

1. Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;
2. Take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;
3. Appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
4. Require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may

become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Question 2

- (a) *What is the procedure that will be followed by a Bank in booking Forward Contracts for its customers ?* (10 marks)
- (b) *Explain the reasoning in brief on the following statements :*
- (i) *The fundamental objective behind Capital Adequacy Ratio (CAR) is to strengthen the soundness and stability of the banking system.*
 - (ii) *“Core Banking is the Nerve Centre of any Banking Operation”.*
 - (iii) *“Enforcement of Security Interest” is important for recovery of the bank’s bad loans.*
 - (iv) *Money Laundering is a process for conversion of money obtained illegally to appear to have originated from legitimate sources.*
 - (v) *Downstream investment and Indirect Foreign Investment are different as per FEMA Guidelines. Explain.* (2 marks each × 5 = 10 marks)
- (c) *Explain Banking Codes and Standard Board of India (BCSBI) and their objectives.* (10 marks)

Answer 2(a)

The procedure followed by the banks in booking and utilization of a forward contract may be summarized as under:

1. The transaction of booking of forward contract is initiated with the customer enquiring from his bank the rate at which the required forward currency is available. Before Quoting a rate the bank should get the details about:
 - The currency
 - The period of forward cover including the particulars of option, and
 - The nature and tenor of the Instrument.
2. If the rate quoted by the bank is acceptable to the customer, he is required to submit an application to the bank along with documentary evidence to support the application, such as the sale contract.
3. Contracts must state the first and last dates of delivery. It is not permissible to state in contracts 'Delivery one week' or 'Delivery one month' or 'Delivery three months forward' etc. Charges for booking the forward contract as prescribed by the bank concerned is recovered from the customer.
4. When the customer delivers foreign exchange on the due date, the transaction is done at the rate agreed upon.

Answer 2(b)(i)

Capital Adequacy Ratio is the test of a financial institution’s ability to meet its financial obligations. Capital adequacy mean that a bank and financial institution must have enough money to conduct its business.

The fundamental objective behind the norms is to strengthen the soundness and stability of the banking system.

The credit risk exposure attached to off-balance sheet items has to be first calculated by multiplying the face amount of each of the off-balance sheet items by the credit conversion factor. This will then have to be again multiplied by the relevant weightage.

Banks are also required to disclose in their balance sheet the quantum of Tier I and Tier II capital fund, under disclosure norms.

An annual return has to be submitted by each bank indicating capital funds, conversion of off balance sheet/non-funded exposures, calculation of risk-weighted assets, and calculations of capital to risk assets ratio).

Answer 2(b)(ii)

Core banking is the Nerve Centre of any banking operation. In core banking, customer of a specified branch of a particular area is a customer of the entire bank spreading its branch network across the world.

Advantages : The CBS process is beneficial both to the customers and the banks in the following ways:

1. *Customer*

Transaction of business can be effected from any branch, and there are less number of errors. Therefore higher accuracy in transactions can be achieved and better funds management can be done due to immediate availability of funds.

2. *Banks*

There is standardization of process in the bank. Better customer service leads to customer retention and increased customer dealings. Availability of exact and precise data & better use of available infrastructure are possible. Better MIS and reporting to external agencies such as Govt., RBI, etc. can be achieved. Moreover, increased business volume with better asset liability management will be in place.

Answer 2(b)(iii)

The objective of enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 was to regulate securitization and reconstruction of financial assets and the enforcement of security interest and also for the matters connected therewith or incidental thereto.

The following are the important aspects of the SARFAESI Act:

1. This Act empowers the banks and financial institutions to recover their dues in Non- Performing Asset (NPA) accounts, without the intervention of a court.
2. This Act also authorizes the banks and financial institutions to issue notice for recovery from the defaulting borrowers and guarantors, calling upon them to discharge the dues in full within 60 days.

3. In case the borrower and / or guarantor fails to fulfil the 60 days' notice issued by the bank or financial institution in repayment of full dues, then the bank and or financial institution can:
 - (a) Take the possession or the management of secured assets of the borrower, and also can transfer the same by way of lease, assignment or sale for realizing the secured assets without the intervention of a court / Debts Recovery Tribunal.
 - (b) Appoint any person to administer the secured assets which have been taken over by the secured creditor (bank).
 - (c) Instruct at any time by a notice in writing to a person as follows:
 - (i) Who holds secured assets of the Borrower?
 - (ii) From whom any money due or becoming due to the borrower.
 - (iii) To pay such money to the secured creditor.

Answer 2(b)(iv)

Laundering means acquiring, owning, possessing or transferring any proceeds (of money) of crime or knowingly entering into any transaction related to proceeds of the crime either directly or indirectly or concealing or aiding in the concealment of the proceeds or gains of crime, within or outside India. It is a process for conversion of money obtained illegally to appear to have originated from legitimate sources. Invariably, there are three stages through which money laundering takes place.

The three stages of money laundering are as follows:

The **first step** is called the placement, when the cash is deposited in the domestic banks or is used to buy goods such as precious metals, work of art, etc.

The **second step** is called the layering. Once the funds are entered into the financial system (banks), the funds are converted by transfers to different destinations. This stage is called as layering. At different locations, bank accounts are opened and the funds are transferred as quickly as possible (at times breaking into series of small transactions to escape from the limits set up by banks for cash transactions).

The **last stage** is called the integration. In this stage, the launderer attempts to justify that the money obtained through illegal activities is legitimate. Through different methods attempts are made at this stage, like using front offices of the companies, using the tax haven and offshore units, using these funds as security for loans raised, etc.

Answer 2(b)(v)

Downstream investment is investment made by an Indian entity which has total foreign investment in it or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity.

If the investor company has total foreign investment in it and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India then such investment shall be "Indirect Foreign Investment" for the investee company.

Answer 2(c)

The Banking Codes and Standards Board of India was registered as a society under the Societies Registration Act, 1860 in February 2006. It functions as an independent and autonomous body. Membership of BCSBI is voluntary and open to scheduled banks. Initially the membership of BCSBI was open to scheduled commercial banks and has now been extended to include Regional Rural Banks and select Urban Co-operative Banks.

The general superintendence, direction and control of the affairs and funds of the Society is vested in the Governing Council (constituted by RBI) consisting of members drawn from different disciplines such as banking, economics, service etc.

- To plan, evolve, prepare, develop, promote and publish comprehensive Codes and Standards for banks, for providing for fair treatment to their customers.
- To function as an independent and autonomous body to monitor, and to ensure that the Codes and Standards adopted by banks are adhered to, in letter and spirit, while delivering services to their customers.

BCSBI has in collaboration with the Indian Banks' Association (IBA), evolved two codes - Code of Bank's Commitment to Customers and the Code of Bank's Commitment to Micro and Small Enterprises - which set minimum standards of banking practices for member banks to follow when they are dealing with individual customers and micro and small enterprises. These Codes are subject to periodical review and revision. The central objective of these Codes is promoting good banking practices, setting minimum standards, increasing transparency, achieving higher operating standards and above all, promoting a cordial banker-customer relationship which would foster confidence of the common man in the banking system. The Codes lay great emphasis on transparency and providing full information to the customer before a product or service is sold to him. The Codes are not only commitments of banks to their customers but also in a sense a Charter of Rights for the common person. By setting the minimum standards of customer service, the Codes make the customer aware of he can expect each bank to deal with his / her day-to-day requirements.

Question 3

M/s Super Great & Company, a partnership firm is maintaining a satisfactory Current Account for last five years with PQR Bank branch. An accountant of M/s Super Great & Company, who is the regular visitor to the branch, presents two cheques of ₹25,000 each signed by a partner. The branch as a matter of routine paid the cheques. The firm, on reconciliation of their accounts, informs the branch that the accountant was removed a month back and the cheques which were paid by the bank were not signed by the partners. As such the firm demands that the debit entries be removed from the account. Discuss the liability of the bank as well as the firm. (5 marks)

Answer 3

The bank is liable as the payment has been made on the basis of forged signature of the drawer. Forgery being a nullity, the bank has no valid mandate to debit the customer with the amount.

As per Section 10 of Negotiable Instruments Act, 1881 the payment made in case

of forged signature of the drawer, the paying banking will not get the valid discharge as the same will not be considered as payment in due course. Therefore, bank has no mandate to debit the accounts of M/s Super Great & Company.

Thus the bank will have to reverse the entry.

The firm need to inform the Bank in writing about debit entries in firm's account found at the time of reconciliation.

Question 4

“Obtaining proper Security Documents for the Loans and Advances sanctioned by the Banks reduces the Credit Risk”. Explain the precautions to be taken by the banker in this regard. (5 marks)

Answer 4

The following are the precautions, in nutshell, which should be taken care of both by the borrower as well as banker, at the time of preparation, execution and registration of loan documents etc. thereby it is admissible in the court of law, if the borrower not paid the amount to the banker. Judicial authority not accept the improper documents of contract agreements for loans and advances sanctioned by the banks, thereby it leads to credit risk of the banks.

- a. Person, executing the loan documents must be competent to enter into a contract i.e., he or she should have contractual capacity.
- b. The loan documents should bear proper type of stamps i.e. adhesive, embossed etc. Further value of stamp duty should be adequate, keeping in view the laws of the State in which the documents are executed.
- c. No column of the loan documents should be left blank. While executing the documents, the borrower must sign in full and in the same flow in which his signatures are available in the bank. The cuttings & over writings must be avoided and if at all, they become unavoidable, they should be authenticated by the borrowers by signing in full.
- d. Sometimes the borrower does not understand the language of the loan documents. In such a case, a separate letter, in the language of the borrower should be taken from him stating that the contents of the loan documents have been explained to him and well understood by him, including the terms and conditions of the loan sanctioned. The letter should be got witnessed by another person.
- e. In the case of an illiterate borrower who puts his thumb impression on the loan documents, the bank official in whose presence the documents are executed, should give a certificate on a separate paper that the contents have been fully explained to the borrower in a language which he speaks and understands. This certificate should be got witnessed by independent persons.
- f. All the documents must be completely filled in before their execution.
- g. The guarantee form should be executed if so agreed and stipulated as a term of sanction.

Question 5

Prepare an estimate of working capital requirement from the following information of a trading concern :

Projected Annual Sales :	₹6,50,000
Percentage of net Profit on Sales :	25%
Average Credit period allowed to debtors :	10 Weeks
Average Credit period allowed by Creditors :	4 Weeks
Average Stock holding in terms of sales requirement :	8 Weeks

Calculate :

- (i) Current Ratio and
(ii) Working Capital Gap. (5 marks)

Answer 5

Current Assets	Rs.
Debtors (10 weeks) at cost (Rs. 4,87,500 X 10 weeks) / 52 Weeks	93,750
Stock (8 Weeks) (Rs. 5,20,000 X 8 Weeks) / 52 Weeks	75,000
Total Current Assets	1,68,750
Current Liabilities	
Creditors	
(5,20,000 x 4 Weeks) / 52 Weeks	37,500
(i) Current Ratio (Rs. 1,68,750 / Rs. 37,500)	4.5: 1
(ii) Working Capital Gap (1,68,750 – 37,500)	1,31,250
<i>Working Notes:</i>	
Cost = Sales – Net Profit	
= 6,50,000 – 25% on 6,50,000 = 4,87,500	

Question 6

XYZ Bank Branch had issued a Bank Guarantee of ₹50 lakh on behalf of a Construction Company in favour of Oil Authority of India. The period of bank guarantee was 3 years with an additional provision that the beneficiary could invoke the bank guarantee within 3 months after the expiry of 3 years period of the bank guarantee. After 3 years, the bank guarantee was invoked by Oil Authority of India. The customer of the bank has filed a claim in the court requesting for issue of injunction order on the ground that the contract was completed as per the terms of guarantee and the beneficiary has invoked the guarantee on flimsy grounds, and that in fact, the officials of Oil Authority were demanding money from the customer. The Court however did not accept the contention of the construction company and refused to issue stay

orders restraining the banks from making payment of the bank guarantees on invocation by the beneficiary.

How will you handle the situation as a Branch head of XYZ bank ? (5 marks)

Answer 6

Banks grant loans and advances (fund based) and provide other credit facilities (non-fund based) such as, bank guarantee and letters of credit. Non-fund-based limits are granted by banks to facilitate the customers to carry on with the trading and business activities more comfortably. Bankers can earn front end fees and these non-fund based items become contingent liabilities for banks.

A contract of guarantee is covered under the Indian Contract Act, 1872. Section 126 of the Contract Act 1872 defines a guarantee as contract to perform the promise or discharge a liability of a third person in case of his default. The contract of guarantee may be oral or in writing. Banks, however insist on written guarantees. There are 3 parties to the contract of guarantee i.e. the Surety, Principal Debtor and the Creditor. These parties are also called as the guarantor, borrower and the beneficiary.

In this Case:

Bank guarantee is a commercial document and it should be handled as per the terms and conditions. As per the bank guarantee, bank undertakes to make the payment on demand without demur on invocation i.e., when demanded by beneficiary. As such bank has no option but to make the payment.

As Bank guarantee is a commercial document and have the characteristics similar to those of promissory notes and they should be payable on demand. As such, courts do not give stay orders restraining the banks from making payments, unless there are convincing cases of fraud.

CAPITAL, COMMODITY AND MONEY MARKET
(Elective Paper 9.2)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

- (i) A Ltd. is considering the acquisition of B Ltd. The financial data at the time of acquisition is as follows :

	A Ltd.	B Ltd.
Net profit after tax (₹/lakh)	30	6
Number of shares (lakh)	6	2.50
Earning per share (EPS) (₹)	5	2.40
Market price per share (₹)	75	24
Price earning ratio	15	10

Assuming that the net profit after tax of the two companies would remain the same after amalgamation (i.e. ₹36 lakh).

Explain the effect on EPS under each of the following situations :

- (a) A Ltd. offers to pay ₹30 per share to the shareholders of B Ltd. (15 marks)
- (b) A Ltd. offers to pay ₹40 per share to the shareholders of B Ltd. (15 marks)
- The amount in both the cases is to be paid in the form of shares of A Ltd.
- (c) Comment on the above offers. (10 marks)
- (ii) Ramesh has sold one month put option of equity share of Moon Ltd. @ ₹60. The strike price of the option is ₹600 and current market price is ₹572.
- (a) What is the time value of the option when he is selling the option ? (2 marks)
- (b) What is net profit/loss to him if the price of Moon Ltd. closed on the expiry is ₹549 and he hold the position till the expiry ? (3 marks)
- (iii) An index consist of two companies having different market capitalisation. The market capitalisation of first company is ₹100 crore while that of the second company is ₹50 crore. If the first company plans bonus issue and second company plans rights issue, what will be the effect on the index ? (5 marks)

Answer 1(i)(a)

In case A LTD. offer to pay ₹30 per share to the shareholders of B Ltd.

The share exchange ratio would be $30 / 75 = 0.4$

In other words ALTD would give 0.4 share for every one share of B LTD. The total number of shares to be issued by A LTD to the shareholders of B LTD.

Would, therefore, amount to 1,00,000

(i.e. $2,50,0000 \times .4$)

The Total Number of shares of A LTD after acquisition of B LTD would now increase to 7,00,000 (6,00,000 + 1,00,000)

The EPS of the amalgamated company will now be ₹5.14 calculated as follows

$$\frac{\text{Total Net Profit after Interest and Tax}}{\text{Total Number of Shares}}$$

$$\frac{36,00,000}{7,00,000} = ₹5.14$$

Thus As a Result of amalgamation the EPS of A LTD will improve from ₹5 to ₹5.14

However, the former shareholders of BLTD, would experience a reduction in their EPS. Their EPS would now amount to $5.14 \times .4 = ₹ - 2.06$ which is lower than ₹2.4 before Merger.

Answer 1(i)(b)

In case A LTD offers ₹40 per share to the shareholders of B LTD the exchange Ratio would be $40 / 75 = .533$ shares of A LTD for each shares of B LTD.

Thus, A LTD would issues in all 1,33,250 (i.e. $2,50,000 \times .533$) shares to shareholders of B LTD.

The Total Number of shares of A LTD after acquisition of B LTD would now increase to 7,33,250 (6,00,000 + 1,33,250).

The EPS of the merged company would be ₹4.91 i.e. $36,00,000 / 7,33,250$

Thus, on account of merger. There is a dilution in the earning per share of A LTD. However the former shareholders of B LTD would stand to gain.

The EPS, on Account of merger, there is a dilution in the earning per share of A LTD. However the former shareholders of B LTD. Would stand to gain. The EPS would amount to ₹2.62 (i.e. $₹4.91 \times .533$)

As compared to the EPS of ₹2.4 before merger.

Answer 1(i)(c)

Comments

It may be noted that initial increase and decrease in earnings per share, are both possible in case of merger. Generally the dilution in EPS will occur wherever the P/E ratio of acquired company calculated on the Basis of price paid exceeds the P/E ratio of an acquiring company and vice-versa. This can verified with the figures given in case of present illustration.

In situation (a) the price earning offered by A LTD per share of B LTD is ₹30 and the EPS of B LTD is 2.4, which would become the earnings of A LTD. after merger.

Thus price earnings ratio on account of merger would be $\frac{₹30}{2.4}=12.5$. Since, this is lower than P/E ratio of A LTD. Before emerge (i.e. 15) the EPS of A LTD after amalgamation increases of ₹5.14.

In situation (b), the price earnings (P/E) ratio offered for merger is $\frac{40}{2.4}=16.7$, which higher than P/E ratio of A LTD. Before merger.

Hence the EPS of A LTD after merger would get diluted

Answer 1(ii)

(a) The time value plus intrinsic value is total option value

$$\text{Intrinsic value} = ₹600 - 572 = ₹28$$

Total option value is ₹60

$$₹60 - 28 = ₹32 \text{ (time value)}$$

(b) If the price closes on ₹549

Then he will pay ₹51 and

$$\text{Hence net profit is ₹9 (60-51)}$$

Answer 1(iii)

In case off bonus issue the market capitalisation of the company does not go any change in Base market capitalisation only the number of shares in the formula is changed. Hence there is no change in index.

When a company included in the compilation of the index issue Right Share. The free float-Market capitalization of the company is increased by the number of additional shares issued a based on ex right price. Asproportionate adjustment is then made to Base Market Capitalization.

Question 2

(i) *The following information is available with respect to an investor Ram, trading in future market :*

- *Ram has purchased 80 lot of index future @ 881, on day one out of which he sold 20 lot @ 878 and carry remaining 60 lot. Closing price of index future is 888 for day one.*
- *For day two the closing price is 878 and he has not made any trade.*
- *On day three he sold all the remaining 60 lot @ 908. The closing price of the day is 864.*
- *One lot = 125 units.*

Based on the above information, compute :

(a) *The mark to market position for day one and day two. (5+5 marks)*

(b) *The total pay off from the above transaction and also cross verification with the daily Mark to Market (MTM) of all three days adjusted with intra day trade.* (5+5 marks)

(ii) *ABC Limited, an Indian profit making dividend paying company, for the past 40 years, proposes to issue convertible debentures. List out the advantages to the company and to the investor of this issue.* (10 marks)

Answer 2(i)

- (a) For Day One
 For Future Sold
 $20 \times (881-878) \times 125 = 7500$ Loss.
 For Future Carry Forward
 $60 \times (888-881) \times 125 = 52,500$ Profit
 Net M-M 45,000 Credit
 For Day Two
 $60 \times (888-878) \times 125$
 Net M to M. 75,000 Debit.
- (b) Day One 45,000 Credit
 Day Two 75,000 Debit
 Day Three $878-908 = 30 \times 125 \times 60$
 $= ₹2,25,000$
 By adding the Three Day M To M
 $45,000 - 75,000 + 2,25,000$
 $= ₹1,95,000$ Profit
 By original Sauda
 $20 \times 125 \times (881-878) = ₹7,500$ Loss
 $60 \times 125 \times (881-908) = ₹2,02,500$ Profit
 $= ₹1,95,000$ Profit

Answer 2(ii)

The advantages of convertible debentures for the company are as under

1. Capitalization of interest cost till the date of commissioning of the project is allowed in accordance with accounting principle. If the conversion of the debentures is duly linked with the commissioning of the project the entire interest cost can be capitalized, without charging the interest to profit & loss account and pulling down the profits of the company.
2. Convertible debentures carry lower interest as compared to the rate charged by the Banks and Financial Institutions.

3. From the point of view of the debt equity ratio the convertible part of the debentures is treated as equity by financial institutions. The company is thus enabled to have a high degree of flexibility in financing its future projects.
4. Equity capital gets increased after each conversion, facilitating easier servicing of equity by payment of dividend.
5. Tax benefits are higher as interest on debentures is allowed as a deduction in computation of taxable income of the company. Additionally a company having a proven track record and future earning potential will be able to reasonable premium at the time of conversion. This will result in reducing the servicing cost of equity.
6. This is a popular form of financing in companies as the interest rates are cheaper than those charged by Financial Institutions on term loans.
7. In the case of term loans from Financial Institutions (FIs) and Banks they usually impose many conditions on management including placing their representative on the Board. In the case of convertible debentures there is thus a greater degree of autonomy for the companies

Advantages to the Investor

The advantages of the convertible debentures to the investors are:-

1. The investor is assured of a fixed return by way of interest on the debentures till conversion. On conversion equity shares the investor becomes entitled to receive dividend declared on equity shares. The advantage to the investor is that he receives a fixed return on his investment by way of interest even during the gestation period and project implementation period.
2. As price of equity shares tends to rise on completion of the project of the company, the investor gets value appreciation on his investment, if converted into equity share.
3. In most cases, debentures carry security with a charge on all or a part of movable/ immovable properties of the company. This assures prompt payment of principal and interest by invoking the assistance of a debenture trustee. However in terms of SEBI Regulations where the debentures have a maturity period of 18months or less it is mandatory for the company to create security on the debentures
4. A fair amount of liquidity is enjoyed by convertible debentures listed on the stock exchanges depending on the track record of the companies. Even if debentures are not traded as actively as equity shares, convertible debentures of good companies command reasonable liquidity. Where a debenture has several parts, each part of the convertible debentures can be traded separately or in full on the stock exchanges.
5. The following options are available to the investor who has bought convertible debentures issued in several parts:
 - (a) To sell all the parts immediately on allotment;

- (b) To sell one or more parts and retain other or other till conversion and to obtain equity shares for retention or sale.

Question 3

- (a) *What is the penalty for depository participant who fails to enter into an agreement with its account-holder. It is assumed that depository participant is registered with Securities and Exchange Board of India.* (2 marks)
- (b) *Sohan has two different demat accounts, one account with one depository and the other with second depository. Can he transfer the shares from one depository account to other depository account ? Explain.* (3 marks)

Answer 3(a)

Section 19 B Provide that if a depository or participant who is registered intermediary with SEBI and is required under this Act to enter into such agreement fails to enter into agreements such intermediary shall be liable to a penalty of one lakh Rupee for each day during which such failure continues or one crore whichever is less for every such failure.

Answer 3(b)

Yes, He can transfer the shares from his first Account to other account. Transfer of securities from an account in one depository to an account in another depository is termed as an inter-depository transfer. It can be done only for securities that are available for dematerialisation on both the depositories. He has to take inter depository DIS from first depository participant and fill the detail in the slip which shares he want to transfer and client ID and DP ID of other account completed DIS should be delivered to the depository participant from which he want to deposit the shares.

Question 4

Bombay Stock Exchange (BSE Limited) came out with an IPO. The shares are listed at National Stock Exchange (NSE). State the reasons for the same and why the stock is not listed on BSE ?

What is the co-relation between sensex and the stock price of BSE Limited ?

(5 marks)

Answer 4

BSE Limited (Bombay Stock Exchange) is a company which has trading platform for stocks, shares & other instruments. It is a limited company.

There is a basic principle that the same of the company cannot be listed on its own trading platform. This is the reason for its listing with national stock exchange.

Sensex indicates all major companies of BSE. Sensex is calculated using share prices of 30 major companies which are listed in BSE. If the Sensex goes up it means that share values of most of the major companies have gone up and vice versa.

Question 5

XYZ Ltd. merchant banker while conducting due dilligence of his client company

shared the information to a real estate company, Real Ltd., an another client of the company.

Examine the case in the light of SEBI (Merchant Bankers), Regulations 1992.

What are the consequences which XYZ Ltd. may face ? (5 marks)

Answer 5

A merchant banker is any person who is engaged in the business of issue management by making arrangements regarding selling, buying or subscribing to securities.

Regulation 13 of chapter III of merchant banker regulation stipulates responsibility of member's banker.

According to the code of conduct. A merchant banker shall not divulge to anybody either orally or in writing. Directly and indirectly any confidential information about its clients which come to its knowledge, without taking permission of its client except where such disclosures are required to be made in compliance with any law for the time being in force.

Chapter V containing Regulation 35 deals with the procedure for taking action against the merchant banker in case of default. Regulation 35 provides that a merchant banker who contravenes any of the provisions of the Act, rules or regulations, framed there under shall be liable for one or more actions specified therein including the action under Chapter V of SEBI (Intermediaries) Regulations, 2008.

Question 6

A farmer expects an output of 500 tonnes of wheat in the month of May. He expects wheat prices in the May month to go down. The current month is February and cost of wheat per tonne is ₹1043. The May month future of wheat is trading at ₹1,172.

- (i) What position he should take in future market to protect himself from sudden fall ? (1 mark)*
- (ii) The May month future expires @ ₹1133 and he sold wheat @ ₹1133 in physical market on the expiry day. What will be the net profit/profit to him, if he hedges the position in the future market ? (2 marks)*
- (iii) He sold all the 500 tonnes of wheat of the May future market @ ₹1172 in the month of February. Thereafter, in the month of May he square-up future option position @ ₹1155 and sold all lots in physical market @ ₹1153. Based on this information, compute the net pay off. (2 marks)*

Answer 6

- (i) He should sell 500 tonnes of wheat @ 1,172 for the protection
- (ii) **Computation of Net Profit / Profit to the farmer, if he hedges the position in the future market**
 $1172 - 1133 = 39$ per tonnes
 Total 500 tonnes
Net Profit = 500 x 39 = ₹19500

(iii) Computation of Net Pay Off.

In future market

$$1172 - 1155 = 17$$

$$17 \times 500 = \text{₹}8,500 \text{ Profit}$$

In cash / physical market

$$1153 - 1043 = 110 \text{ per ton}$$

$$\text{For 500 ton} = 500 \times 110 = \text{₹}55,000 \text{ profit}$$

$$\text{Total } 8,500 + 55,000 = 63,500 \text{ profit}$$

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

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

KK (suffering from cancer-terminal stage) was admitted to the hospital in Kanpur City. He felt difficulty in breathing. The duty nurse called some doctor to attend to the patient. No doctor turned up for 20 to 25 minutes. Then the appellant Doctor and another Doctor came to the patient's room. An oxygen cylinder was brought and connected to the mouth of the patient but the breathing problem increased further. The oxygen cylinder was found to be empty. There was no other gas cylinder available. Later, the patient was declared dead. An offence under Sections 304-A/34 Penal Code, 1860 was registered and charges filed against the doctors. Doctor's petition to High Court to quash the charges was dismissed. According to the appellant, the deceased KK was suffering from cancer in an advanced stage and as per the information available, he was, in fact, not being admitted by any hospital in the country because of his being a case of cancer at terminal stage. He was only required to be kept at home and given proper nursing, food, care and solace coupled with prayers. But his sons, who were very influential persons occupying important positions in Government, could prevail over the doctors and hospital management and got the deceased admitted as an inpatient on compassionate grounds for regulated medical treatment and proper management of diet. It was abundantly made clear to the informant and his other relations who had accompanied the deceased that the disease was of such a nature and had attained such gravity, that peace and solace could only be got at home. The patient was treated with utmost care and caution and given all the required medical assistance by the doctors and paramedical staff. The complainant and his relations, who were misguided or were under mistaken belief as to the facts, lodged police report against the accused persons which was wholly unwarranted and uncalled for.

The Hon. Court in its judgment concluded that :

A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men is found to be sufficient. So also, the standard of care, while assessing the practice as adopted, is judged in the light knowledge available at the time of the incident, and not at the date of trial. A professional may be held liable for negligence on one of the two findings : either he had not possessed

the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices.

The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 holds well in its applicability in India. The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of 'mens rea' must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution. The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304 A of the IPC has to be read as qualified by the word 'grossly'. To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

Questions :

- (a) *In the light of the given case, differentiate between a Liability Insurance Policy and a Traditional Indemnity Insurance Policy and also explain the growing increase in the sales of Professional Indemnity Policies in India of late, with specific focus on Doctor's Professional Indemnity Insurance Policy. (10 marks)*
- (b) *"Negligence, actual or alleged breach of duty, neglect, errors in work, mistake, and misstatements" are generally the grounds for claims under liability insurance. Does Insurance pay for all these negligent loss claims ? (10 marks)*
- (c) *Discuss the underwriting factors considered for premium calculation in a Doctors' Professional Indemnity Policy. (10 marks)*
- (d) *Discuss the scope of coverage of persons and loss exposures under a Doctor's Professional Indemnity Insurance Policy. (10 marks)*
- (e) *Can the accused appellant and the hospital be prosecuted u/s 304 A of the IPC? Discuss the liability of the insurance company in the given case. (10 marks)*

Answer 1(a)

The given case, is based on Liability Insurance. Liability insurance is a part of the general insurance system of risk financing to protect the purchaser (the "insured") from the risks of liabilities imposed by lawsuits and similar claims. It protects the insured in

the event he or she is sued for claims that come within the coverage of the insurance policy. There are several types of liability insurance, the most basic being Public liability. Product liability. Workers Compensation liability and of late the Professional Indemnity Liability insurance gaining more prominence with the increase in more law suits on the charges of fraud and misappropriation against business organizations and professionals. Unlike a Traditional Indemnity Insurance Policy, a Liability insurance policy differs both in principle and in practice from a general insurance policy. In principle, liability insurance policy is a valued policy and the compensation under these policies are governed by the legislations and the decision of the Courts. On contrast, all the general insurance policies are indemnity policies which means the compensation for actual loss is given to enable the policyholder to come to his pre-loss financial position and not become richer after the loss occurrence. As mentioned earlier, the growing increase in the sales of Professional Indemnity Policies in India of late, is because of the growing increase of cases of negligence too on the part of sometimes, doctors, and sometimes by other supporting medical and para-medical personnel, poor maintenance of the hospitals, lack of infrastructure and safety facilities at hospitals, and other work places is actually resulting in more accidents and casualties and thus more claims for the insurance companies.

Answer 1(b)

"Negligence, actual or alleged breach of duty, neglect, errors in work, mistake, and misstatements" are generally the grounds for claims under liability insurance. Generally in Professional indemnity insurance policies, indemnities are designed to provide insurance protection to professional people against their legal liability to pay damages arising out of negligence in the performance of their professional duties and legal liability arises out of professional misconduct. Such policies are available to Doctors. Medical establishments. Engineers. Architects and Interior decorators. Chartered Accountants, Company Secretary, Financial Consultants. Management Consultants. Lawyers etc. in the case of D & O policy, it is a specialized insurance policy introduced to cover the liabilities of Directors or Officers of a Company. Since they hold positions of trust and responsibility, they may become liable to pay damages to shareholders, employees, creditors etc. of the company for wrongful acts committed by them in the supervision and management of the affairs of the Company. Besides this, Company itself may be liable. The policy is designed to provide protection to the Company as well as its Directors and Officers against their personal civil liability. On the other hand. Professional risks fall into the following two broad groups:

- Where professional negligence may result in bodily injuries (fatal or otherwise). Doctors. Dentists etc., fall into this group
- Where professional negligence may result in financial loss. Chartered Accountants. Company Secretary. Lawyers etc. fall into this group.

Further, as the accident did not occur owing to any fault of the driver, the policy condition relating to effective driving license is non-operative. This further leads us to conclude that there was negligence and deficiency in service on the part of the Insurance Co. by not settling the Complainant's claim Users of professional services may financially suffer, or sometimes become victims of professional negligence. Generally professionals include Advocates. Doctors, Chartered Accountants etc. Hence, it is important that these policies are to be underwritten very carefully. Professional indemnity cover is also

available to insurance brokers and agents on account of whose wrong advice to their clients, may be facing repudiation of a genuine claim from an insurer. Insurance pay do pay for all these negligent loss claims provided the intention to cheat, of deceive or cause harm is not there. In other words, it means that the loss must not be caused knowingly and the act must not be done recklessly or carelessly.

Answer 1(c)

The underwriting factors considered for premium calculation in a Doctors' Professional Indemnity Policy is based on several aspects. A Doctor's Professional Indemnity insurance policy covers the financial liability which doctors and medical practitioners face if they commit any negligence or errors in discharging their duties. In the case of doctors, human life is at stake. If there is any error or mistake, the patient might die or face severe physical injuries or become disabled. Due to such contingencies, doctors might be sued by the patient for their mistakes. In case of litigation, heavy expenses are involved. A doctor's professional indemnity insurance policy takes care of these costs. It covers defense costs and also pays the required settlements to injured patients. Premium for a doctor's professional indemnity insurance policy is calculated taking into consideration the sum insured opted and the level of risk. Moreover, there are various other factors which determine the premium calculation.

The doctor's professional indemnity insurance cost can also depend on the following-

- Risk group of doctors
- Limits of indemnity selected
- Ratio of limits

Here are the factors based on which the premium for a doctor's professional indemnity insurance policy is calculated -

- *Sum insured* - the higher the sum insured opted by the policyholder, the higher would be the premium payable.
- *Nature of practice* - certain doctors who are specialized in their fields and handle high risk cases face higher risks than general physicians. So premiums for a doctor's professional indemnity policy taken for cardiologists, gynecologists, oncologists, etc. would be higher than premiums for a policy taken on a general physician.
- *Number of individuals covered* - if a medical establishment buys a policy covering the medical practitioners working there, the premium would depend on the number of individuals covered under the policy. The higher the number of insured individuals, the higher would be the premium rate.
- *Limits of indemnity and their ratio* - a doctor's professional indemnity insurance policy works on the concept of Any One Accident (AOA) : Any One Year (AOY) limit. AOA is the maximum claim payable in any one accident while AOY is the total loss covered under the policy in a year. The limits selected and their ratio determines the premium payable.
- *The size of the establishment* - the size of the hospital or the clinic which is

buying the policy also determines the premium. The larger the size of the establishment, the more risk it would tend to face and hence the higher would be the premium.

- *Experience of the doctors* - doctors learn with experience that is why the risk of mistakes reduces if the doctor is experienced. The premium would, therefore, depend on the experience of the medical professional being covered. If the doctor is experienced, their premiums would be relatively low and vice-versa.
- *Claim history* - the past history of claims has a direct effect on the premiums. If there have been past claims, the premium charged would be higher.
- *Deductible selected* - every doctor's professional indemnity insurance policy has a limit of the deductible. This deductible limit is the claim which is borne by the Policyholder himself. If a relatively higher deductible limit is selected, the claim burden for the insurance company reduces and so the premiums are also reduced.

These are some of the most important factors which affect the premium charged by a doctor's professional indemnity. The premium, therefore, is not uniform. It varies from policy to policy and is calculated taking into consideration the above-mentioned factors.

Answer 1(d)

The scope of coverage of persons and loss exposures under a Doctor's Professional Indemnity Insurance Policy is exhaustive. Doctors are trained professionals who deal with human lives. They have the power of restoring health and hence good quality of life to the sick and unwell. However, during the course of their work, they might commit some professional errors which, in turn, might lead to severe consequences. Though making mistakes is human, the mistakes made by doctors and medical professionals have far-reaching consequences. Their mistakes might cause loss of life, physical injury or physical impairment. If such contingencies happen, doctors face a heavy financial liability. They might be sued by the patient and/or her family which would imply incurring heavy legal costs. They might also be liable to pay a lump sum settlement to the aggrieved party. This incurs a substantial financial loss for them and this is where a doctor's professional indemnity policy comes into the picture. Further, litigation and court appearances can create involvement in time, leading to damage to the Doctor's earning capacity. The doctor's professional indemnity insurance policy covers the legal liability faced by doctors due to mistakes which they commit unintentionally in their profession.

The policy pays for the following –

- Defense costs incurred by the insured medical practitioner in defending himself in a lawsuit.
- Settlement payable to the third party.
- Court fees incurred in a litigation.

The policy can be bought by independent medical practitioners or by medical establishments on behalf of their consulting and full-time medical practitioners. The coverage level under the policy depends on two main things - Any One Accident (AOA)

and Any One Year (AOY). The AOA limit denotes the maximum claim payable in a single instance of claim. The AOA limit is expressed as a percentage of the AOY limit which is the maximum liability undertaken by the insurance company. The AOY limit states the maximum claim which the insurance company will pay in any given policy year. Multiple number of claims can be made under the policy and they would be covered provided the aggregate claims payable do not exceed the AOY limit. The coverage amount chosen should be decided based on the expected liability faced by the medical practitioner. Premiums are calculated depending on the coverage availed, the ratio of AOA: AOY, the profile of the doctor being insured, experience of the doctor, past claims history, etc. Claim would be made under the policy if the doctor makes a mistake and faces a civil liability. Instances of criminal liability are not covered under doctor's professional indemnity insurance policy. Only civil liability cases which arise out of unintentional negligence are covered. Negligence is said to occur when the doctor had taken on the duty to care for the individual but the doctor breached, this duty due to which the individual suffered physical injuries, impairment of physical faculties or death. As a result of the doctor's negligence, the patient or their family can file a lawsuit against the doctor. If negligence is proven, the doctor's professional indemnity policy would cover the legal costs and settlements which are faced by the doctor. The doctor's professional indemnity insurance policy offers a comprehensive scope of coverage to medical practitioners and protects their finances from the implication of their mistakes. Individuals should, therefore, understand what the policy entails and get themselves covered under it. A comprehensive doctor's professional indemnity insurance policy covers all possible scenarios due to which doctors might face a professional or legal liability.

Coverage under a comprehensive doctor's professional indemnity policy includes the following:

- Legal costs incurred by the insured doctor would be covered subject to the consent of the insurance company. These legal costs should have arisen due to unintentional errors committed by the insured doctor when rendering professional medical treatments and advice.
- The settlement payable to the third party is also covered under the policy. This settlement should also be a result of any mistake committed by the doctor.
- The court fees incurred for defending the insured doctor in case of a litigation would be covered.
- Claims are also covered on a retroactive basis. This means that if the policy is allowing coverage in the present year and a claim is made for any previous years when the policy was applicable, such claims would be covered. There are certain conditions however that can apply here.
- Many insurance companies also enhance their scope of coverage by providing doctors with professional legal counsel and support so that the doctors can be effectively defended in a lawsuit which has been filed against them.
- Though the standard doctor's professional indemnity insurance policy covers almost all types of claims, there are further policy extensions which enhance the scope of coverage. Through extensions, one can cover claims made by foreign individuals, negligence by employees or staff of the medical practitioner, loss of documents, etc.

Answer 1(e)

The accused appellant and the hospital be prosecuted u/s 304A of the IPC is not valid. On the basis of the facts of the case before us, we are satisfied that all the averments made in the complaint, even if held to be proved, do not make out a case of criminal rashness or negligence on the part of the accused appellant. Probably, the hospital may be liable in civil law (or may not be. we express no opinion thereon) but the accused appellant cannot be proceeded against under Section 304A IPC. The appeals are allowed. The prosecution of the accused appellant under Section 304A/34 IPC is quashed.

Question 2

G Textiles Pvt. Ltd. Co. availed a Standard Fire and Special Perils Insurance Policy as per the standard format for factory building and machinery and also for stocks as given below. Insurance coverage for the building and machinery was on reinstatement value basis :

Assets	₹
Building	2,80,00,000
Machinery	7,20,00,000
Stocks	5,62,50,000

An accidental fire occurred on a Sunday night, when the factory was not in operation. The factory building, some machinery and stocks stored in the process block were damaged. As per the 'Appointed Surveyor's Risk Inspection Report, the reinstatement value of the entire building and machinery, value of stocks immediately prior to accident was as below :

Assets	₹
Building	4,00,00,000
Machinery	9,00,00,000
Stocks	5,62,50,000

The Surveyor's assessment of loss of different assets before application of underinsurance was as given below :

Assets	₹
Building (on the basis of actual repairs and replacement)	1,23,75,000
Machinery	
Totally destroyed machinery	
• On reinstatement value basis	2,81,25,000
• On depreciated value basis	1,57,50,000
Repairs to partially damaged machinery on actual	50,62,500
Stocks	27,00,000
Salvage Value	NIL

While the damaged building was completely repaired the insured did not reinstate the totally destroyed machinery for some business reasons. Based on the given facts, answer the following questions:

- (a) *Define Fire and discuss the scope of coverage and exclusions under a Standard Fire and Special Perils Policy. (10 marks)*
- (b) *Interpret and explain the following Causes as applicable in a FIP :*
- *Reinstatement clause*
 - *Average clause*
 - *Coinsurance clause*
 - *Over insurance clause*
 - *Salvage clause*
- (c) *Calculate the amount of underinsurance in case of building and machinery and work out the total claims amount payable by the Insurance Company under the FIP. (10 marks)*

Answer 2(a)

The term 'fire' is used in its popular and literal sense and means a fire which has 'broken bounds'. 'Fire' which is used for domestic or manufacturing purposes is not fire as long as it is confined within usual limits. In the fire insurance policy, 'Fire' means the production of light and heat by combustion or burning. Thus fire, must result from actual ignition and the resulting loss must be proximately caused by such ignition.

Fire Insurance policy (Standard Fire and Special Perils Insurance Policy) is a specialized form of insurance that covers financial loss to insured for damage to its property due to Fire & other special perils. The popular name for this policy is Standard Fire and Special Perils or SFSP policy. Fire Insurance policy covers perils like Fire, Lightning, Explosion, Implosion, Aircraft damage, Riot, Strike and Malicious Damage (RSMD), Storm, Tempest, Flood, Inundation (STFI), etc. Any financial loss occurring due to damage to property of insured because of any of these perils will be indemnified by the Fire Insurance Policy (Standard Fire and Special Perils Insurance Policy). Insured can take Fire Insurance policy to cover its property, stock, plant & machinery, furniture & fixture, and specific items like bullion, drawings, coins, work of arts, etc.

Following are the 12 perils of the standard fire insurance policy:

1. *Fire* : Damage caused to the insured property/goods due to fire is covered under a fire insurance policy. However, this policy will not cover the property/goods against: Damage or destruction caused due to its own fermentation, Damage or destruction caused due to natural heating. Damage or destruction caused due to spontaneous combustion, Damage or destruction caused due to any heating or drying process. Burning of the insured property due to orders issued by the Public Authority.
2. *Lightning* : Fire or any other damage caused to the property due to a peril like lightning is covered by the office fire insurance policy. Striking of a lightning can

cause cracks in the building; such damage is also covered by this insurance policy.

3. *Explosion/Implosion* : This policy protects against the loss caused due to explosion and implosion. A vessel can explode when its inside pressure reaches to or is more than the atmospheric pressure outside. Whereas, an implosion occurs when the external pressure is more than the internal pressure. Both of these phenomena can result in a fire. However, the fire insurance policy does not cover the loss, destruction or the damage caused to:
 - Boilers
 - Economizers or other vessels
 - Machinery, apparatus or their contents generating steam
 - The policy also does not cover the damage or destruction caused by centrifugal forces.
4. *Aircraft Damage* : It covers the loss or damage caused by Aircraft, other aerial or space devices.
5. *Riot, Strike, Malicious Damage* : The fire insurance policy in India covers the loss, visible physical damage or destruction to the property caused by external violent means. Riot, strike and malicious damage are caused by an intention of causing disturbance to the public peace.
6. *Storm, Cyclone, Typhoon and Flood* : The violent destruction caused to the property or goods due to the above-mentioned perils are covered by all types of fire insurance policy. However, the policy does not cover for earthquake, volcanic eruption or other perils of nature under the standard peril list. The insured must ask the insurance company for an additional cover to get protection against the same.
7. *Impact Damage* : Fire insurance policy covers claims arising from the damage or destruction caused to the insured property due to direct impact/contact by any rail/road vehicles or animals. However, it is important that such vehicles or animals are not owned by the insured, or any occupier of the premises or the employees in the course of their employment.
8. *Subsidence and Landslide including Rockslide* : Subsidence means the sinking of the area on which the property is located, and landslide means the collapse of the mass of earth from a mountain or a cliff. Fire insurance policy covers loss, destruction or damage directly caused by subsidence of part of the site on which the property stands or landslide and rockslide. However, it does not cover for damage or destruction caused to the property due to:
 - Demolition, repair, or structural alterations of the property or groundwork or excavations
 - Coastal or river erosion
 - Normal cracking or settlement of new structures

- Settlement or movement of made up ground
 - Defective design or defective workmanship or use of defective materials
9. *Bursting and/or overflowing of water tanks, Apparatus and Pipes* : This policy also covers for the loss or damage caused to the property by water due to the above-mentioned perils like bursting and/or overflowing of water tanks, apparatus and pipes.
 10. *Missile Testing Operations* : This policy also covers the damage or loss to the property due to any kind of missile testing operation.
 11. *Leakage from Automatic Sprinkler Installations* : Damage caused due to accidental discharge of water from a leaked automatic sprinkler installation is covered under this policy. However, it does not cover for the loss or damage caused due to:
 - Repairs of alterations to the buildings
 - Repairs, removal or extension of the sprinkler installation
 - Defects in construction which is already known to the Insured
 12. *Bush Fire* : The policy covers for the damage caused due to the burning of bushes and jungles by Fire. However, it does not cover for any loss, destruction or damage caused by the forest fire.

Exclusions:

The list of exclusions is common under most fire insurance policies though they might be offered by other insurance companies. This list is as follows -

- 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.
- Costs of surveyors, engineers, architects, etc. would not be covered under the plan. However, there is an extension available for covering these costs. The policy holder 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 is not covered under the plan
- Loss of earning or loss due to delay in production after damage has occurred is not covered.

Answer 2(b)

Reinstatement clause : In fire insurance the principle of indemnity can be modified in the case of building, machinery and other fixed assets but not on stocks where subject to the sum insured representing the value of similar new property, it can be insured under 'Reinstatement Value" clause. In case of reinstatement value policy, the basis of loss settlement is the value of new property without taking any depreciation into account. This type of insurance enables the owner to replace his property without any financial strain on his own resources and is quite commonly taken by industrialists and building owners. Reinstatement clauses typically do not reset a policy's coverage limit, but they do allow the policy to restart coverage for future claims

Average clause : Average clause comes in to affect, when the policy taken covers the loss up to a specific amount which is less than the real value of the property. The actual value of the property is not taken into consideration while determining the amount of indemnity. Such a policy is not subject to 'average clause'. 'Average clause' is a clause by which the insured is called upon to bear a portion of the loss himself. The main object of the clause is to check under-insurance, to encourage full insurance and to impress upon the property owners to get their property accurately valued before insurance. If the insurer has inserted an average clause, the policy is known as "Average Policy". The doctrine of average - or average clause is always applied in indemnity policies - primarily in property claims - fire and engineering. At the time of taking the policy the insured has to consider the value of the risk or subject matter of insurance-sum insured. He must ensure that the adequate value has been declared and insured. Due to the presence of the average clause in the fire insurance policy, the liability of the insurance company is reduced as per the application of the proportionate approach. The insurers do not pay the full amount of loss incurred to the insured. The insured is then responsible for the payment of the unpaid claim amount.

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

"leading office", that is the office earning the largest share in the business. All co-insurances are agreed upon prior to the issue of the original policy. In the event of a claim all policies would contribute equally, subject to maximum of actual loss. In case, in rare instances where two policies are extent for a same risk, both would contribute in proportion of their interest in the sum insured at the time of claim. Notably, policies would contribute in a manner to ensure that the insured is indemnified and not benefitted from the loss. In marine cargo claims, subrogating to the rights and remedies enjoyed by the insured against the carrier or third party, illustrates the practical application of the principle of subrogation.

Over-insurance - This refers to a situation, when an individual insures the asset at a value at a higher sum than its market value, then it is said to be over insured. However, in such a situation the maximum compensation that the policyholder is entitled to receive is the market value of the vehicle as the policy owner cannot 'profit' from a motor insurance claim.

Example:

Your car is insured for Rs. 200,000 and is written off in an accident. The assessor comes to the conclusion that the car can be replaced for Rs. 160,000.

As a result only Rs. 160,000 is paid out. You have however been paying premiums to cover an amount of Rs. 200,000 and those premiums paid on the additional Rs. 40,000 have been paid unnecessarily.

Over insurance is a risk to the insurance industry and especially to insurance fraud. The insured who is over insured may be tempted to make a false claim to profit from a loss.

Salvage clause : Salvage is also a form of recovery in any claim. In most property claims, including transit insurance claims, damaged property can be disposed of for either lower or scrap value, this is done to reduce the financial impact of claims. Hence, most insurers advise the surveyors to complete the net assessment by valuing the salvaged value of the damaged property as well. Especially in total loss cases, the insured may abandon the wreck or damaged property in favor of the insurer who would thereafter sell the same and credit the sale proceeds to claims account.

Answer 2(c)

The amount of underinsurance in case of building and machinery and the total claims amount payable by the Insurance Company under the FIP is as follows:

In order to discourage under-insurance, fire insurance policies often include an average clause.

The effect of this clause is that if the amount of the policy is less than the value of the subject-matter insured, the insurer will be liable only for that proportion of the loss which the amount of policy bears to the total value of the subject matter.

For example, if stock worth Rs. 4 lakh is insured only for Rs. 3 lakh and if the loss amounts to Rs. 1,80,000, the claim admitted by the insurer will be $\text{Rs. } 1,80,000 \times \frac{3,00,000}{4,00,000} = \text{Rs. } 1,35,000$.

Insurance for the building and machinery are on Reinstatement Value (RIV) basis.

Under Insurance for Building :

Sum Insured / R.I. Value x 100 = 2, 80, 00,000/4, 00, 00,000 x 100 = 70%

Hence Under Insurance is 30% i.e. Rs. 37,12,500

Under Insurance for Machinery :

Sum Insured/R.I. Value x 100= 7,20,00,000/9,00,00,000 x 100 = 80%

Hence the Under Insurance is 20% i.e. Rs. 31,50,000

Assessment of Loss

Building

Building has been fully reinstated. Therefore, as per the RIV clause no deduction for depreciation needs to be made on the surveyor's assessment.

Surveyor's assessment before under insurance	Rs. 1,23,75,000
Taking into account under insurance of 30%	Rs. 37,12,500
Net Amount of claim for Buildings (A)	Rs. 86,62,500

Machinery

Totally destroyed machinery was not reinstated, hence settlement under the policy will be only depreciated value basis for these machinery.

Surveyor's assessment on this machinery before under insurance	Rs. 1,57,50,000
Under Insurance of 20%	Rs. 31,50,000
Net amount payable for totally destroyed machinery	Rs. 1,26,00,000
Partially damaged machinery -Repair cost as per surveyor	Rs. 50,62,500
Total claim for machinery (B)	Rs. 1,76,62,500

Stocks

As there is no under insurance

Amount of loss as assessed by the surveyor	Rs. 27,00,000
Amount of claim for stocks (C)	Rs. 27,00,000
Total amount of claim (A+B+C)	Rs. 2,90,25,000
Compulsory excess 5% of the claim amount	Rs. 14,51,250
Total Net amount of claim	Rs. 2,75,73,750

Question 3

- (a) *X was a risk person by nature. He wanted adequate coverage for his health and so he took two health insurance policies from two different companies. But, he was unaware of the fact that he has to inform about the policies to both the insurance (new and existing). Discuss the liabilities of the insurance in case of such multiple health insurance policies. (2 marks)*

(b) "A Trust under a life insurance policy is created by the policyholder holding the policy". Explain the statement and its implications and advantages. (2 marks)

Answer 3(a)

X was a risk averse person by nature. He wanted adequate coverage for his health and so he took two health insurance policies from two different companies. But, he was unaware of the fact that he has to inform about the policies to both the insurers (new and existing). One is required to fill up proposal forms, wherein the insurer asks for disclosure of any existing policy. The main purpose of asking this is because there is a contribution clause in most policies. The contribution clause means that for the same 'insured interest' if there is more than one policy, then in case of any claim situation all the policies will contribute in equal proportion to the sum insured. The norms regarding the contribution clause have slightly changed recently. One may also go for another policy of policies, if suppose one is having a policy provided by one's employer and the coverage is not adequate for the entire family. One may also like to have separate policies for one's parents as well as for one's spouse and kids. If a customer is holding more than one policy he has the choice to prefer the claim with any of the insurers. For e.g. If he holds an individual health policy with Insurer X and a group health policy with insurer Y. he may choose to make his claim with any of the insurers.

As far as the liability of the insurance companies is concerned, the rules specify that the contribution clause will not be applicable if ones' claim amount is less than the sum assured of the insurer where are is claiming. And only if ones" claim amount is more than the sum assured of the policy, the insurance company is allowed to impose the contribution clause.

Therefore, you need to inform about the existing policy or policies to the other insurer(s) while buying a policy or making a claim simply because if you do not disclose this fact, you are violating the terms and conditions of the health insurance contract and in case of investigation this could be termed as mis-representation.

Answer 3(b)

"A Trust under a life insurance policy is created by the policyholder holding the policy" The concept of Trusts in a Life policy is necessitated by the applicability of estate duty on transfer/inheritance of benefits under a life insurance policy, including annuities. While with the abolition of estate duty in India, the concept of Trusts may no longer be preferred, it is beneficial to understand the subject in detail.

The principal advantages to putting a life insurance policy into trust are as follows:

1. Trusts can help sidestep inheritance tax

Life insurance policies are such an asset, and putting a policy into a trust can affect what happens to the payout from a policy in the event of your death.

In industry jargon, putting a life insurance policy into a trust is known as "writing life insurance in trust" or a policy is "written in trust".

By writing a life-insurance policy in trust, the proceeds from the policy can be paid directly to the beneficiaries rather than to your legal estate, and will therefore not be taken into account when inheritance tax is calculated.

This means the value of your estate may not move above the threshold, depending on your circumstances.

2. You don't need probate to be granted in order for the policy to pay out

Writing a policy in trust also means payment to your beneficiaries will probably be quicker, as the money will not go through probate. This is a legal process which confirms an executor's authority to deal with your possessions.

So, for example, if you leave everything to your spouse in your will, then your spouse will have to get probate granted before they can distribute your money, property and so on.

This process can take a long time, even when there is a will. In cases of intestacy (where there is no will), it can drag on for a lot longer. However, if the life insurance policy is put into trust, then it can pay out before probate is granted, as the insurance provider will just require a death certificate before paying out.

3. You could get greater control over your policy

Writing life insurance in trust allows you to specify how you want the proceeds to be paid out. For example, trustees can be appointed to oversee money for the benefit of children under 18.

In addition, setting up a trust means that the payout will go to the people you intend it to.

4. It does not involve any extra cost

The insurance provider should be able to provide with this option for free when taking out the policy. Some existing life policies can also be transferred into trust

Question 4

Following a Supreme Court order, the insurance and motor insurance reforms and has asked all general insurance companies to offer guaranteed renewal health insurance and long-term third-party motor insurance covers which recently came into into effect from 1st September, 2018.

(a) Do you think this duration shift from yearly to long term in motor insurance and by elimination of waiting period and PED conditions in health insurance are going to have a positive impact on the earnings of the company and the economy at large ? (3 marks)

(b) What are the other major changes that has come about in the recent years in Indian insurance markets ? (2 marks)

Answer 4(a)

The Supreme Court has been intervening as far as the insurance industry is concerned to uphold the interests of the policyholders. Following the directions, the Insurance Regulator Insurance Regulatory and Development Authority of India (IRDAI) has introduced series of health insurance and motor insurance reforms and has asked all general insurance companies to offer guaranteed renewal health insurance and long-term third-party motor insurance covers which recently came into effect from 1st September,

2018. To promote the healthy growth of the sector on the whole. Health insurance products have complex policy conditions and usually it is difficult for a customer to appreciate benefits available. It is difficult for customers to compare product offerings from different companies. Standard terms and conditions help in comparisons and clarify things so that customers know exactly what the terms are so overall there is less room for confusion. The steps proposed by the regulator are likely to make it easier for customers to compare product offerings by different companies.

Waiver of waiting period: It is attractive to policyholders and gives them the assurance of full cover from day one of purchase. Health products with waiting period may not appeal to the prospective policyholder as they may not like the idea of paying premiums with no entitlement to benefits during the initial period.

Covering pre-existing illness after a period of 3 years: This would give assurance to a section of population who are currently suffering from life style diseases like diabetes, blood pressure etc. to get some level of cover for complications arising out of pre-existing illness at some point of time in future. Both these proposals seem to give natural terms i.e. what customers would expect. They may also reduce hassles at the claims stage as there will be fewer conditions to check.

Long term Motor policies: On the other hand in the motor insurance reforms, the companies have introduced long term policies, as Indians have a regular habit of either delaying in renewal or non-renewal of policies. The impact on premium outflow will be more in the first year. Instead of making annual premium payments, the TP premium will have to be paid as an upfront-lump sum payment. Saying that the premium has increased by a certain multiple may not be the right way. The third-party premium i.e. the tariff is fixed by IRDAI. In the new rule, only the outflow has increased in the first year, while no premium is to be paid in 2nd and 3rd year. As we see below, the tariff has also increased for certain categories.

Answer 4 (b)

Apart from the changes in the coverage, of late the IRDAI has introduced revision in the motor Third Party Premium rates. For new cars, except for below 1000 cc segment, premium for all other car owners has increased as mentioned below:

- *Not exceeding 1000 cc:* This segment stands to gain. Instead of Rs. 1,850 which totals 5,550 for 3 years, the new long-term TP rate will now be Rs 5,286, a gain of about Rs. 264.
- *Exceeding 1000 cc but not exceeding 1500 cc:* This segment stands to lose. Instead of Rs. 2,863 which totals Rs 8,589 for 3 years, the new long-term TP rate will now be Rs. 9,534 (almost 3.33 times more), an extra amount of about Rs. 945.
- *Exceeding 1500 cc:* This segment stands to lose. Instead of Rs. 7,890 which totals Rs 23,670 for 3 years, the new long-term TP rate will now be Rs. 24,305, an extra amount of about Rs. 635

The IRDAI has also increased the FDI limit from 26 percent to 49 percent for the foreign partners to bring in more capital as Insurance primarily in capital intensive sector. Reinsurance companies are now allowed to open their branches and operate in India.

Many innovative distribution channels are coming up in the industry such as Point of Sales persons. Web aggregators to support on-line sales. Insurance companies are also going digital and doing away with agents in between to encourage on-line purchase of policies.

Question 5

ABC is a newly started Life Insurance Company, which sells its products through banks, agents and brokers. Enumerate and explain the various general insurance policies that would be appropriate and necessary for ABC Life Insurance Company to manage its various risk exposures. (5 marks)

Answer 5

ABC is a newly started Life Insurance Company, which sells its products through banks, agents and brokers. Since insurance company is also a business organization, it is exposed to many risks. Hence, as an organization, it is also obligated to provide safety and security to its employees, and provide safe working conditions. Hence, the various general insurance policies that would be appropriate and necessary for ABC Life Insurance Company to manage its various risk exposures arising from its financial and business operations as well as providing some general insurance cover to its own employees include the following:

- Liability insurance to indemnify the company from legal damages in the form of compensation to a third party arising out of some form of negligence. Such covers include:
 - Employers' liability (e.g. compensating an employee or their estate for accidents caused by negligence of the employer or other employees).
 - Motor third party liability (e.g. third-party claims from company owned cars involved in accident).
 - Public liability (e.g. compensating a third party for damages from say, a falling object within the company's office).
 - Product liability.
 - Professional indemnity (e.g. insurance for Directors and Officers of the company).
- Property damage insurance to protect from loss of, or damage, to own material property. Examples include, the company insuring its fixed assets, cars, other vehicles, other office property and other own property.
- Financial loss insurance covers:
 - Pecuniary loss (e.g. borrower defaulting on interest payment).
 - Fidelity insurance (e.g. employees involved in financial fraud, cash in transit)
 - Business interruption (e.g. losses from disruption of business due to fire).
- Fixed benefits (e.g. health insurance and personal accident insurance for employees) such as Group Medi-claim insurance policy. Group Personal Accident insurance policy).

Question 6

Write brief notes on the following :

- (a) *Off-Balance Sheet Capital of an insurance company as a risk transfer mechanism.*
(5 marks)
- (b) *Principles of Insurable Interest and Utmost Good Faith as applicable to Life and General insurance contracts.*
(2 marks)

Answer 6(a)

Off balance sheet capital of an insurance company is being utilized as a risk transfer mechanism by Insurance companies. Insurance is an invisible trade. Being an intangible product, it embodies a pledge of protection. By default, insurance transaction relates to assumption of risk—that is reflected in collection of premium—and later paying off claims as and when arise and set aside some money as a residual for future servicing to policyholders. Its quality depends on a visible assurance of the ability to redeem this pledge, as much as on the intrinsic worth of the protection provided. It may sound simple but in reality, it is far more complex. Insurance companies are balance-sheet-driven businesses. Investors use balance sheets to evaluate a company's financial health. In theory, the balance sheet provides an honest look at a company's assets and liabilities, enabling investors to make a determination regarding the firm's health and compare results against the firm's competitors. Because assets are better than liabilities, companies want to have more assets and fewer liabilities on their balance sheets. The sine qua non of insurance operation is to service the capital adequately and appropriately. If the adequacy of servicing relates to the probability of increase in shareholder's value, its appropriateness concerns claims paying ability for which the capital is deployed. Insurance industry is capital intensive and claims sensitive. Adequacy of capital for a successful insurance operation is a must. Capital is a scarce commodity and it comes at a cost. Since debt capital appearing on the balance sheet involves constraint and cost, insurers often tend to increase their net worth to transact insurance business in a frequently competitive market by taking recourse to 'Off-Balance Sheet Capital' obtained through reinsurance and further down the line by retrocession. The complexity to read the balance sheet of an insurance company arises because of its significant reliance on 'Off-Balance Sheet Capital'. Regulatory compliance requires an insurance company to arrange first a proper risk transfer mechanism which is known as reinsurance facility for shedding off the additional exposure beyond its limit of retention on any one risk. This is known as "Off-Balance Sheet Capital" as this is a kind of capital that is not visible on the balance sheet but remains obscured that provides financial strength to the company to assume more risks to augment its business.

Answer 6(b)

Principles of Insurable Interest and Utmost Good Faith are both importantly applicable to Life and General insurance contracts.

In the law of insurance, the insured must have an interest in the subject matter of his or her policy, or such policy will be void and unenforceable since it will be regarded as a form of gambling. An individual ordinarily has an insurable interest when he or she will obtain some type of financial benefit from the preservation of the subject matter, or

will sustain pecuniary loss from its destruction or impairment when the risk insured against occurs.

An insurable interest is an economic stake in an event for which an insurance policy is purchased to mitigate risk of loss. An insurable interest is a basic requirement for an insurance company to issue a policy. Entities not subject to financial loss from an event do not have an insurable interest and cannot purchase an insurance policy to cover that event. Insurable interest is what makes an insurance contract legal and valid, and protects against intentionally harmful acts. If there is no insurable interest, the contract becomes wagering (gambling) contract. All wagering contracts are illegal & therefore null & void. It should be noted that while in life insurance insurable interest is tested only at the time of inception of the contract, in a general insurance contract, it essentially represents the ownership of the asset and hence every year on the renewal of the policy, proof of insurable interest must be submitted to the insurer.

Due to the nature of an insurance agreement, each party needs - and is legally entitled - to rely upon the representations and declarations of the other. Each party must have a reasonable expectation that the other party is not attempting to defraud, mislead, or conceal information and is indeed conducting themselves in good faith. In a contract of utmost good faith, each party has a duty to reveal all material information (that is information that would likely influence a party's decision to either enter into or decline the contract), and if any such data is not disclosed, the other party will usually have the right to void the agreement.

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

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

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

The Music no. 1 is a music company operating from Mumbai. The Company initially started with creating musical work and recording. Later as their popularity chart increased, they started venturing into film production, direction, recording of audio and video musical contents for the Bollywood industry. The Company is known for producing some of the best classical movies as well as modern movies. It becomes the number one company in the film industry in terms of creative contents, revenue generation and popularity charts. In all the work created under their banner they claim to be the owner of the copyright in the repertoire of songs, cinematography films, sound recordings etc. It claims to have created around 10000 Hindi Non film songs and around 30000 songs in regional languages. The company admits that their business is largely dependent upon the exploitation of its copyright. The said copyright exploitation enables the plaintiff to sustain its creative activities, thereby giving opportunities to many talents including composers, artists, singers, etc. The plaintiff states that the monetary gains arising from copyright exploitation further empowers it with financial strength to carry on its business of film making.

The infringements of such works of the plaintiff, thus, causes royalty losses to the plaintiff and are responsible for the loss in the business of the plaintiff. The plaintiff claims that the copyright exploitation of the works is done by the licensing system whereby the company gives public performance licences to the parties who in turn give the necessary royalty.

*The **share.com** is stated to be a social networking and entertainment website which offers a variety of entertainment applications including sharing, viewing of music, images, cinematograph works having its base in the United States of America and operates from there. Mr. XYZ is the owner of the share.com. As per the Company, the share.com website as a place for friends and projects its website as a place to upload pictures and videos. The said website provides country specific content and is one of the most popular social networking and content sharing website in the world. The company contends that the share.com's basic point of attraction in running this website is to make available the multimedia content including songs, pictures, clips which can be seen and shared by the user over the internet space. The said website not only includes recently released infringing material but also the material which has not yet been released or is authorized for broadcast through the authorized distribution channels. The features of the website are being described as that the user or visitor need not subscribe to the website in order to enable him to search and*

view the video on the same. But for the purposes of uploading a video on to the website, the user is required to subscribe and create a user profile. It is also pointed out in the plaint that when a user in India visits the said website the said user is immediately forwarded to India centric version of the website namely in.share.com which is catering to the Indian community. The company states that the website contains the additional features and instructions which encourages the users and enables them to learn how to share videos. These additional functions create additional unauthorized copying, electronically store, transmit the content that infringes the rights of the others including the company. The website of the website is stated to also generate revenue by offering of this illegal content/infringing works. The said revenue is made through the medium of advertisements being displayed on each webpage. The whole business of the website is specifically depend upon authorizing free uploading and then distributing the content through downloading or streaming content to end users. The complaint of the company emerges from the kind of business model adopted by the website wherein it states that the songs, cinematograph works including the ones which are for new movies or upcoming movies distributing which the company earns its revenue and completes its cost of film making gets deprived due to illegal dissemination of the songs, cinematographs works by the website whereby the website encourages and authorizes the users to share these contents and the end users are benefitted with the said songs and films free of charge by in turn distribution by the defendants to the public at large.

The plaintiff has stated that in the year 2007 a non-disclosure agreement was signed between the company and the website owner and thereafter there were in talks with the website whereby they were called upon to take the licences from the company. But, the talks broke down and the XYZ rather offered the company to go for registration of rights management tool programmed by way of email dated January 18, 2008. However, the company then gave a legal notice on February 22, 2008 informing the XYZ about its rights. The reply to the notice of the company by the defendants was issued on March 12, 2008 wherein the XYZ on behalf of website assumed that the content of the company's copyright has been taken down and also that the same shall not be made available on the website in future. However, in December 2008, it was realized by the company that the website have not removed the said infringing material from the website.

Therefore, the Company filed the present suit feeling dissatisfied with the assurances of the XYZ and sought the interim reliefs from this court to the following terms :

- (i) Grant an order of permanent injunction restraining the defendants, their officers employees, agents, servants and representatives and all others acting on their behalf and in active concert or participation with them or any of them from reproducing, adapting, distributing, communicating, transmitting, disseminating or displaying on their website www.share.com or any sub-domain thereof or otherwise infringing in any manner the cinematograph films, sound recordings and/or the underlying literary or musical works in which the plaintiff owns exclusive, valid and subsisting copyright(s).*
- (ii) Grant an order of permanent injunction restraining the defendants, their officers, employees, agents, servants and representatives and all others acting on their behalf and in active concert or participation with them or any of them from*

causing, contributing to, inducing, enabling, facilitating or participating in the infringement of the cinematograph films, sound recordings and/or the underlying literary or musical works in which the plaintiff owns exclusive, valid and subsisting copyright(s) on their website www.share.com or any sub-domain thereof or otherwise; and

- (iii) Grant an order of rendition of accounts by the defendants to the plaintiff.*
- (iv) Grant an order requiring the defendants jointly and severally to pay damages as stated hereinabove to the plaintiff.*
- (v) Grant costs of the instant suit to the plaintiff; and*
- (vi) Pass any other such order(s) in favour of the plaintiff.*

The defendants have replied and have raised the following defences :

This court does not have territorial jurisdiction to entertain and try the present proceedings on the grounds : The defendant No. 1 is a foreign national and is carrying on business outside the jurisdiction of this court in US. No part of cause of action has occurred within the territorial jurisdiction of this court. The defendant No. 1 is not amenable personally to jurisdiction of this court and therefore cannot be compelled to be under the jurisdiction of this court.

Questions :

- (a) Whether the court have the territorial Jurisdiction in the given case ? (10 marks)*
- (b) What are the rights of the copyright owner as per the Copyright Act ? (10 marks)*
- (c) Whether the third party can be subject matter of copyright infringement ?
(10 marks)*
- (d) What is the best mode of copyright protection under the given environment ?
(10 marks)*
- (e) Whether the copyright holder shall be entitled to any claim or rendition of accounts/profit ?
(10 marks)*

Answer 1(a)

The issue of territorial jurisdiction will come up in the given case due to the reason that both the parties i.e., plaintiff and defendant are not within the same territory. One party is in Mumbai and other party (defendant) is in USA. Due to involvement of two separate territories the issue of jurisdiction of the court to adjudicate the matter before it is important. Defendant has rightly raised the issue of jurisdiction of the Court since he is not present or conduct any business within the jurisdiction of the State. The Civil Procedure Code jurisdiction are defendant centric and therefore focus on the presence of the defendant. However, in the given case special legislation has to be taken into consideration for deciding the jurisdiction of Court i.e. Indian Copyright Act. Section 62 of the Copyright Act, 1957 deals with the jurisdiction of the Court and focus is plaintiff centric. As per the Section 62 of the Copyright Act, the Courts have the jurisdiction where the plaintiff resides or carries on business. Therefore, the Court has the jurisdiction to proceed with the matter.

Answer 1(b)

An assignment is a transfer of the copyright owner's economic rights. In contrast to the economic rights under copyright, moral rights cannot be sold or assigned to another person (moral rights are the right to be identified as the author of the work or to object to derogatory treatment or to a distortion or mutilation of the work, to protect the personality and reputation of authors). The copyright owner has the economic right of the author. If the author and owner of the copyright work are the same, then the author can enjoy all the economic rights in the capacity of the owner. But if the author and owner are not the same but two different individuals then the economic rights will depend as per the nature of rights transferred by the author due to fault or under the contract. Therefore, all or partial economic rights can be transferred by the author to the owner by a recognised mode of transfer i.e., assignment and licensing. Therefore it can be said that subject to the contract the owner of the copyright has the right to reproduction, translation, adaptation, publication, communication to the public, etc.

Rights of the copyright owner are as under:

Right of Reproduction – The person having the copyright is free to make copies of the protected work in any form. Prior to copying the permission of the author is required unless it can be shown that such copying is not intended for any commercial use.

Right to Distribute - The person owning the copyright may distribute his work in any manner he deems fit. The owner is also entitled to transfer the whole or some rights in favor of any other person while retaining others.

Right to make Derivative Works - The copyright owner has the right to use his work in various ways, for instance making adaptations or translations. One example of adaptation is making a movie based on a novel, so here to make any derivative work the consent of the owner is mandatorily required.

Right to Public Performance - The owner of the copyright has the right to public performance of his works. Example, he may perform dramas based on his work or may perform at concerts, etc. This also includes the right of the owner to broadcast his work.

Chapter IV of the Copyright Act contains sections 17 to 21 dealing with ownership of copyright and the rights of the owner.

Answer 1(c)

Depending on the facts and circumstances a party can be the subject matter of copyright infringement. Broadly, there are two parties in the copyright infringement. First is the copyright owner and victim of the copyright violation. Second party is the party who directly infringed the copyright work. There can be a third party to the infringement where the infringement happens because the third party facilitates the act of infringement. They may not be benefiting out of it, but may be facilitating the violation. While the first category of infringement is direct infringement, the second category is known as indirect infringement. The concept is recognized under section 51 of the Copyright Act, 1957. Here in case, the search engine is an intermediary as per the Information Technology Act, 2000 and search and server engine is facilitating the location and download of the

information. In such a way facilitating the violation of copyright at their platform, therefore this nature of infringement is indirect infringement or secondary infringement and they can be the subject matter of copyright infringement despite the fact that they are third party.

Answer 1(d)

The best mode of copyright protection are as follows:

1. Awareness of the legal rights and infringement issues.
2. As far as possible transfer the copyright through clear contractual means.
3. Know the liability of the Internet Service provider with regards to the copyright infringement.
4. Ask the intermediaries to block the infringing website.
5. Keep a check on the copyright violation.
6. Participate in the digital right management system to preserve your work.
7. Approach the court with injunction and compensation for copyright violation.
8. In case of copyright violation in cyberspace, Ashoka Order or John Doe Order can be instrumental in controlling the copyright work.

Answer 1(e)

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter- alia, rights of reproduction, communication to the public, adaptation and translation of the work. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever. Apart from remedies for infringement of copyright, the Copyright Act, 1957 expressly provides for the protection of special rights of the author known as moral rights. . Thus copyright has immense economic value.

According to Section 55 of the Copyright Act, 1957 if copyright in any work has been infringed, the owner of the copyright is entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right. However, if the defendant is able to prove that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable. Under Section 57 of the Copyright Act, 1957 an author of copyright work can restrain or claim damages in respect of any distortion or mutilation of the work or any other action in relation to the said work which would be prejudicial to his honour or reputation.

In the above given case Music no. 1 has the copyright over materials and it was infringed by share.com which profited from such infringement. Thus the copyright holder will be entitled to its claim or rendition of accounts/ profit.

Question 2

India is rich of biodiversity and the Indian culture and traditional knowledge acknowledge the medicinal value of the biodiversity and its best use. The case is with regard to the patenting of XYZ plant by the US Patent and Trademark Office by awarding at least four broad patents for use of XYZ plant, the good old sine qua non of Indian food and medicine. The patents, one of which has been awarded to an NRI scientist duo, Abhishek and Shayam, of the University of New York confer on the applicant's exclusive rights to specific formulations of powder as the wound-healer, the anti-inflammatory agent. These scientists on their visit to India to their native place have taken the samples of plant XYZ without information and permission of the appropriate State or National biodiversity board regarding their intention of research and development of the XYZ plant.

Indian activists protested to that as blatant example of biopiracy. They rightly raise the concern that how can anybody patent something that has been the collective wisdom of a people for centuries ?

Indian scientists, too, for a change, have woken up from their complacency. The head of the Council for Scientific and Industrial Research's Intellectual Property Management Division, says the Council will immediately challenge the patents as XYZ's medical uses have been well-documented in India's medical literature. Meanwhile, the Chandigarh-based Central Drug Research Institute, which has been working on XYZ for over a decade, has promptly applied for a patent on XYZ's wound-healing property.

The US patent office, defends the patents arguing that while XYZ as a wound-healing ointment has been in public use, its application in the powder form is not known. This argument was not well received by the Indian counterpart and they retorts that the above patent do not satisfy the two most important requisites of a patent claim in US i.e., novelty and non-obviousness. As per them under the US law, a new medicinal property of a known compound could be patented, but not the known property. To secure patent protection even for the new property, the applicant has to submit substantial medical evidence which is not very easy.

Questions :

- (a) Whether the US company is guilty of bio-piracy ? (10 marks)*
- (b) Is there violation of TRIPs provisions by granting patents in USA ? (10 marks)*
- (c) How traditional knowledge are protected under Indian IPR regime ? (10 marks)*

Answer 2(a)

Biopiracy is defined as the commercial development of naturally occurring biological materials, such as plant substances or genetic cell lines, by a technologically advanced country or organisation without fair compensation to the people or nations in whose territory the materials were originally discovered.

Biopiracy is an international problem. Often, in the search for new bio resources, researchers draw on local people's traditional knowledge about the properties of a particular plant, animal or chemical compound. When researchers use traditional knowledge without

permission, or exploits the cultures they're drawing from - it's called biopiracy. It happens when researchers or research organisations take biological resources without official sanction, largely from less affluent countries or marginalised people.

Biopiracy is not limited to drug development. It also occurs in agricultural and industrial contexts. Indian products such as the neem, tree, tamarind and turmeric etc. have all been patented by foreign firms for different lucrative purposes.

The piracy of the biodiversity from one state to another state without the permission of the authority is covered under the concept of biopiracy. Though there is no specific legislation with regards to the biopiracy which define the concept of biopiracy, but the Biodiversity Act, 2000 indirectly deals with the conservation, sustainable development and benefit sharing out of the biodiversity. The Act constitute two biodiversity board i.e., state biodiversity board and national biodiversity board. In case the foreigner applies for research of the biodiversity, they need to take the permission of national and state biodiversity board. They need to narrate the reasons of the research. With their permission they are only to explore and commercially use the biodiversity. If it is not as per the rules, it amounts to biopiracy.

In this case it is a clear case of biopiracy because there is no permission of research from any Government authority and the qualities that were granted IP rights by the US government were in the collective knowledge of the Indian society for centuries. In the given case exploitation of IP rights by the US Company.

Answer 2(b)

Trade Related aspects to Intellectual Property Rights (TRIPs) is the part of World Trade Organisation. The TRIPs deals with various aspects of Intellectual Property Rights. It recognised new Intellectual Property Rights subjects as Plant Varieties and Geographical indications. For the grant of patent rights on any invention, the specification has to be provided to the patent office with regards to the novelty, inventiveness and non-obviousness of the invention. If the information about the invention is already in public domain then it cannot be a invention. Therefore, every invention has to pass the test of prior art or knowledge. In this case the prior knowledge about the use of the product is already with the public as traditional knowledge and therefore any attempt to create any Intellectual Property right over it is in violation with the WTO rules.

The TRIPS Agreement requires Member countries to make patents available for any inventions, whether products or processes, in all fields of technology without discrimination, subject to the normal tests of novelty, inventiveness and industrial applicability. It is also required that patents be available and patent rights enjoyable without discrimination as to the place of invention and whether products are imported or locally produced (Article 27.1).

There are three permissible exceptions to the basic rule on patentability. One is for inventions contrary to order public or morality; this explicitly includes inventions dangerous to human, animal or plant life or health or seriously prejudicial to the environment. The use of this exception is subject to the condition that the commercial exploitation of the invention must also be prevented and this prevention must be necessary for the protection of public order or morality (Article 27.2). The second exception is that Members may exclude from patentability diagnostic, therapeutic and surgical methods for the

treatment of humans or animals (Article 27.3(a)). The third is that Members may exclude plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, any country excluding plant varieties from patent protection must provide an effective sui generis system of protection. Moreover, the whole provision is subject to review four years after entry into force of the Agreement (Article 27.3(b)).

Therefore, member States have adopted the sui generis system to enact national legislation to protect the new plant varieties or patent system.

Answer 2(c)

There is no specific legislation which protect the traditional knowledge under Intellectual Property Rights (IPR) system. However, certain Act maintain specific provision which deals with the traditional knowledge, like the Section 3 of the Patents Act does not allow any invention to be with relation to the traditional knowledge. The Indian Copyright Act deals with the copyright protection of traditional culture in the form of music (Folklore) or other form expression. Further, traditional knowledge of the farmers with regards to the seeds are preserved in the Protection of Plant Varieties and Farmers Rights Act, 2001. It recognises the contribution of breeders with regards to the new varieties of seeds and farmers rights with regards to the conservation and development of the seeds by traditional means. Apart from that to protect the traditional knowledge from bio piracy Traditional Knowledge Digital Library has been established which maintains the records of various traditional knowledge codified, recognised by the Indian civilisation from centuries. At the time of patent exploitation of the traditional knowledge the Traditional Knowledge Digital Library plays very important role in identifying the true nature of invention.

Question 3

A Scientist in CSIR genetically modify the seeds of the mango tree, making it possible to have fruits even dry geographical landscape and have two variety kinds of mango in one tree. The scientist wants to take the benefits of his invention. Please advise him about its IPR protection. (5 marks)

Answer 3

The Patents Act, 1970 provide the patent right to inventor. The conditions of Patentability are:

- Novelty
- Inventive step (non-obviousness) and
- Industrial applicability (utility).

However, certain inventions irrespective of the inventiveness of the product are not eligible for the grant of patents. Section 3 of the Patents Act, 1970 defines the number of issues on which patent cannot be issued. As per Section 3(j) of the Patents Act, 1970, plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals are not inventions. New plant varieties are protected under the Protection of Plant Verities and Farmer Rights Act, 2001 with limited rights.

Question 4

Mr. X claims to make an invention of a device which has twin purpose of serving as torch and radio. As per the choice of the user, the device can be used for one or the other use or both simultaneously. It has an option of electric charge or solar charge. Advise Mr. X about the patentability of the product. (5 marks)

Answer 4

The fundamental principle of the Patent Law is that a Patent is granted only for an invention which must be new and useful. That is to say, it must have novelty and utility. It is essential for the validity of a Patent that it must be the inventor's own discovery as opposed to mere verification of what was already known before the date of the Patent. It is important to bear in mind that in order to be Patentable an improvement on something known before or a combination of different matters already known should be something more than a mere workshop improvement; and must independently satisfy the test of invention or an 'inventive step'. To be Patentable the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before.

Section 3(f) of the Patents Act, 1970 deals with the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way is not an invention. In order to be patentable, an improvement of something known or a combination of different matters already known should be something more than a mere workshop improvement: and must independently satisfy the test of invention or an inventive step. To be patentable, the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before. A combination of old known integers may be so combined that by their working inter-relation, they produce a new process or an improved result. Mere collection of more than one integers or things, not involving the exercise of any inventive faculty, does not qualify for the grant of patents. (*Biswanath Prasad Radhey Shayam v. Hindustan Metal Industries* (1979) 2 SCC 511).

Question 5

M/S Nandhini Deluxe, the plaintiff is having business of series of restaurants which has been running since 1989 under the name of "NANDINI". It has moved an applications for registration of trade mark 'NANDHINI DELUXE WITH LOGO (Kannada)' in respect of meat, 32 fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, eggs, milk and milk products, edible oils and fats, salad dressings, preserves and all other goods being included in Class 29 and 30. The defendant also has registration of its trademark "NANDINI" in respect of milk and milk products falling under class 29 and 30 as per classification under Schedule IV to the Trade Marks Rules, 2002.

On the other hand M/s Karnataka Co-operative Milk Producers Federation Ltd. had already adopted the Mark 'NANDINI' in 1985 and they had been selling their milk and milk products under the same. The Party no. 2 has objected to the registration of the trademark on the ground of deceptive similarity to the mark of the Respondent "NANDINI" and likelihood of deception to the public or cause confusion.

What are the rights conferred by the registration ?

(5 marks)

Answer 5

The registration of a trade mark confers on the registered proprietor of the trade mark the exclusive right to use the trade mark in relation to the goods or services in respect of which the trade mark is registered. While registration of a trade mark is not compulsory, it offers better legal protection for an action for infringement. As per the Trade Marks Act, 1999 the registration of a trade mark confers the following rights on the registered proprietor :

- (i) It confers on the registered proprietor the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered.
- (ii) If the trade mark consists of several matters, there is an exclusive right to the use of the trade mark taken as a whole. If the trade mark contains matter common to trade or is not of a distinctive character, there shall be no exclusive right in such parts.
- (iii) It entitles the registered proprietor to obtain relief in respect of infringement of the trade mark in the manner provided by the Trade Marks Act, 1999 when a similar mark is used on (a) same goods or services, (b) similar goods or services, (c) in respect of dissimilar goods or services.
- (iv) Registration of a trade mark forbids every other person (except the registered or unregistered permitted user) to use or to obtain the registration of the same trade mark or a confusingly similar mark in relation to the same goods or services or the same description of goods or services in relation to which the trade mark is registered.
- (v) After registration of the trade mark for goods or services, there shall not be registered the same or confusingly similar trade mark not only for the same goods or services but also in respect of similar goods or services by virtue of Section 11(1) of Trade Marks Act, 1999.
- (vi) Moreover, after registration of the trade mark for goods or services, there shall not be registered the same or confusingly similar trade mark even in respect of dissimilar goods or services by virtue of Section 11(2) in case of well-known trade marks.
- (vii) Registered trade mark shall not be used by anyone else in business papers and in advertising. Use in comparative advertising should not take undue advantage of the trade mark. Such advertising should not be contrary to honest practices in industrial or commercial matters. The advertising should not be detrimental to the distinctive character or reputation of the trade mark.
- (viii) There is a right to restrict the import of goods or services marked with a trade mark similar to one's trade mark.
- (ix) There is a right to restrain use of the trade mark as trade name or part of trade name or name of business concern dealing in the same goods or services.

Question 6

If a company in India distorting or preventing competition in a given market then can you suggest the steps/action which can be taken by the Government in respect of anti-trust law. (5 marks)

Answer 6

The term restrictive practice signifies non-governmental measures used by companies to strengthen their position in a given market. In the context of Intellectual Property Rights, these practices can hamper or distort competition in given market. Competition and anti-trust laws deal with such business practices and prohibit them when it is established that they have the effect of distorting or preventing competition in a given market.

WTO agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) expressly recognises the role of competition policy in ensuring that IPRs promote economic growth and innovation. Article 40.2 of the TRIPS agreement provides that “Nothing in this Agreement shall prevent members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market”. It allows member countries “to adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices ... in the light of the relevant laws and regulations of that member ...”. The repression of anti-competitive practices associated with IPRs is therefore assigned to national competition laws and policies.

The concept of unfair competition has been also recognised under the Paris Convention for the Protection of Industrial property which comprises not only infringement of industrial property but also all other acts which adversely affect the business relations of a person. The provisions of the Paris Convention contain a broad stipulation that any act of competition contrary to honest practices in industrial and commercial matters constitutes an act of unfair competition. These provisions affirm the foundation of fair competition as being honest practices or good morals and set out three kinds of acts which are deemed typically unlawful in international trade and therefore, must be prohibited.

UNCTAD Code of Conduct on Transfer of Technology under Chapter IV has also recognised some practices as restrictive practices. In India, the Patents Act, 1970 and Competition Act, 2002 prohibit the use of restrictive practices in business agreements.

INTERNATIONAL BUSINESS – LAWS AND PRACTICES
(Elective Paper 9.5)

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

Question 1

Case Study :

GLOBAL STRATEGY AT TATA MOTORS

Introduction of the TATA Group :

Founded by Jamsetji Tata in 1868, the Tata group is a global enterprise, headquartered in India, comprising 30 companies across 10 verticals. The group operates in more than 100 countries across six continents, with a mission 'To improve the quality of life of the communities we serve globally, through long-term stakeholder value creation based on Leadership with Trust.' Tata Sons is the principal investment holding company and promoter of Tata companies. Sixty-six percent of the equity share capital of Tata Sons is held by philanthropic trusts, which support education, health, livelihood generation and art and culture.

In 2017-18, the revenue of Tata companies, taken together, was USD 110.7 billion. These companies collectively employ over 700,000 people. Each Tata company or enterprise operates independently under the guidance and supervision of its own Board of directors. There are 28 publicly-listed Tata enterprises with a combined market capitalisation of about USD 145.3 billion (as on March 31, 2018). Companies include Tata Consultancy Services, Tata Motors, Tata Steel, Tata Chemicals, Tata Global Beverages, Titan, Tata Capital, Tata Power, Tata Advanced Systems, Indian Hotels and Tata Communications.

Tata Motors :

Part of the USD 100 billion Tata Group, Tata Motors Limited (BSE:TATAMOTORS), a USD 45 billion organisation, is a leading global automobile manufacturer of cars, utility vehicles, buses, trucks and defence vehicles. It is India's largest-and the only (OEM) offering extensive range of integrated, smart and e-mobility solutions. Tata Motors strives to bring new products that fire the imagination of GenNext customers, fueled by state of the art design and R&D centers located in India, the UK, Italy and South Korea. It has operations in the UK, South Korea, Thailand, South Africa, and Indonesia through a strong global network of 109 subsidiary and associate companies, including Jaguar, Land Rover and Tata Daewoo. Internationally, Tata commercial and passenger vehicles are marketed in countries spread across Europe, Africa, the Middle East, South Asia, South East Asia, South America, Australia, CIS, and Russia.

In India, Tata Motors' presence cuts across the length and breadth of the country

with a manufacturing base spread across its biggest industrial hubs; Jamshedpur (Jharkhand), Pune (Maharashtra), Lucknow (Uttar Pradesh), Pantnagar (Uttarakhand), Sanand (Gujarat) and Dharwad (Karnataka). It is by far the leader in commercial vehicles and the second largest player in the passenger vehicles market with winning products in the compact, midsize car and utility vehicle segments. It became the first company from India's engineering sector to be listed in the NYSE in September 2004. The company's objective to expand its international business, both through organic and inorganic growth routes, has been pretty fast in the recent years.

Global Recognition

With a portfolio that covers a comprehensive range of cars, trucks, buses, defence vehicles and more, Tata Motors Limited is recognized as one of the leading automobile manufacturers in the world today. Commencing operations in 1954 with Commercial Vehicles (CVs) in India, the company's marque can now be found both on and off-road around the globe. Here's how Tata Motors went from being an Indian company to the globally recognized brand that we know today. Having a presence in over 46 countries around the globe, Tata Motors is without a doubt among the top 10 CV makers in the world today. Having recently made its debut in Sri Lanka, Tata Motors' Nexon is available in both petrol and diesel engine options. It is available in all variants in 6 colours/Dual Tone colours.

- 1991 — Tata Motors entered into a Joint Venture (JV) with Nitol Motors to set up NITA Company Ltd., the first assembly set up of the company outside India. In the years to come, Tata Motors grew its assembly operations in different forms across Myanmar, Vietnam, Bangladesh, Ukraine, South Africa, Kenya, Senegal, Nigeria & Tunisia.
- 1993 — Tata Motors sets up a JV with Cummins Engine Inc. The tie-up enables Tata to introduce powerful diesel engines with far lesser carbon emissions.
- 2004 — Tata Motors rings the opening bell at the New York Stock Exchange in this year, marking the listing of the company on the bourse. The company also acquires South Korean truck manufacturer Daewoo. Together, they unveil the Tata World Truck range for sale in South Korea, South Africa, SAARC nations and the Middle East.
- 2006— Tata Motors joins hands with the Brazil-based Marcopolo S.A. and launched the Tata Marcopolo Bus in the following years.
- 2008 — Tata Motors sets up Tata Motors Thailand, its first national sales company in markets around the globe.
- 2009 — Tata Motors acquires the Spanish bus and coach manufacturer Hispano Carrocera. Starbus and Globus range of buses, manufactured by this new venture, rolled out in the coming years.
- 2011 — Tata Motors Indonesia was established as a fully owned subsidiary of Tata Motors.
- 2012 — Tata Motors launches its next generation platform of heavy trucks, Tata Prima, in the markets around the world.

- 2014— Tata Motors launches its new platform for light trucks and buses, Tata Ultra, in the international markets.

Tata Motors began manufacturing Passenger Vehicles (PVs) in India in 1991. Just like its CV division, the PVs segment made its foray into nations around the world in the following years. Apart from India, the company's new as well as legacy cars are also available in many countries through exclusive dealerships. Variants of Tata vehicles like the Indica, Indigo, Vista, Manza, Aria, Bolt, Safari Storme, Tiago, GenX Nano, Sumo, Tigor, Zest, Nexon and Hexa can be purchased in various countries of Africa, APAC and Latin America, while those of Jaguar and Land Rover are available in Europe. Featured below are some of the most important milestones of the PV sector of Tata Motors that the company achieved in other regions (excluding India) :

- *Asia Pacific Region* — Tata Motors PVs make their entry in Nepal in 2003, followed by commencement of operations in Sri Lanka in 2004, Indonesia in 2011, Bangladesh in 2012, Myanmar in 2013, and Philippines in 2014.
- *Africa* — PVs of Tata Motors make their foray into Africa with South Africa in 2004, Tanzania in 2005, Ghana in 2006, followed by Algeria in 2014.
- *Latin America* — Tata Motors' PVs sector begins its operations in Latin America by venturing into Uruguay in 2014 and Bolivia in 2015.
- *Europe* — Tata Motors enters the European market after the acquisition of Jaguar and Land Rover from Ford Motor Co. in 2008.

Tata Motors' mission has enabled it to make its presence felt around the globe. Thanks to its commitment to excellence, the company has set its sights on expanding its CV and PV operations in several other countries around the world.

CV Production by 2020

Being India's leading automobile manufacturer, the company has witnessed its sales in commercial vehicles (CV) segment grow up to 44 percent in 2017-2018. In an attempt to further improve the productivity and profitability the company has shifted its strategy to focusing on the CV business to adjust with the transiting times.

FY 2017-2018

According to the Commercial Vehicles domestic sales data, in 2017-2018, 399, 317 units of CVs were sold as compared to 325,211 units in 2016-2017 (Growth of 23 percent in FY18 against industry growth of 21 percent). In terms of market share, it got increased to 44.2 percent in FY18 from 43.5 percent in FY17.

FY 2018-2020

The company has revealed that it will be investing ₹3,000 crores in the commercial vehicle business until over the next two years. This investment will be utilized to develop new products; to upgrade the existing ones that will meet the upcoming emission standards; to debottleneck the production processes so that the flow of product is not limited and increasing demands can be met.

BS-VI

With BS-VI coming soon, the capital expenditure will totally be used for meeting emission standards and is expected to consolidate the Commercial Vehicles business further. It is evident that key purchase criteria continue to be on payload and fuel

efficiency, with specific focus on total cost of ownership. To tackle this equation, the company is not only working on reducing the cost of diesel vehicles but are also considering alternate fuel options to satisfy the needs of the customers.

Fleet Telematics

In March 2015, Tata Motors became the first OEM to adopt Telematics — an efficient way for automobiles to be designed, driven and managed. It is a global trend that has been changing the International automobile market due to strong regulations on road safety, emissions and fuel efficiency. This year, it became the 1st vehicle manufacturer in India to install 1,00,000 advanced telematic systems on its commercial vehicles under the Tata Fleetman brand name.

With over 1,200 workshops, Tata Fleetman is gearing up for the next level of fleet telematics with advanced trip/journey management features that cater to the complex requirements of sectors like e-commerce.

Some of the features introduced to the Indian market through Tata Fleetman include:

- *Emergency SOS — A panic button in vehicles through which the driver can send an SOS message to the transport owner in an emergency.*
- *Trip Management — A versatile tool to track and evaluate individual vehicle trips in real time. Trip Management helps achieve significant improvements in fleet utilization and reduction in communication costs and idle times*
- *Driving Assessment — Since drivers are the most important resource factor of transport operations, the driving assessment solution continuously evaluates drivers on a range of parameters impacting safety and economy. Suitable consultancy and retraining is then employed to improve overall fleet economy and safety record.*
- *Vehicle health management — A solution which helps remotely monitor vehicle health, including quick fault detection and rectification before it can lead to consequential failures.*

This launch was done in response to growing market needs for better fleet control and greater fleet utilisation. Tata Fleetman generates rich fleet insights and goes on to collaborate with the customer to offer specific interventions towards improvement in the utilisation, performance and safety of the fleet. This has resulted in happy and satisfied customers who have benefited from these implementations. With all these technological advancements, company assumes that Telematics will allow their customers to manage their transport fleets efficiently and safely.

Sustainable Buses

Tata Motors has always led the Indian auto motor industry in terms of producing vehicles of exemplary design, integrating new technology into their offerings while capturing the needs of the Indian customer. But more importantly, as we continue to progress in creating cars of global standards, we also seriously consider and work towards 'sustainable transport.' Sustainability has grown in importance over the last decade owing to environmental changes that are gradually brought about by traffic congestion and pollution. Besides having detrimental effects on the environment, the congested, complex urban transport system poses as a problem to the development agenda of the nation. Hence, the Government of India has opened its

doors to the planning and development of 100 smart cities. This will promise a safer transport system, better mobility and also inch closer to a cleaner environment.

Given its low costs of operation and high passenger capacity, a majority of the population rely on buses to commute. Therefore, it is important that buses too, undergo a green makeover to be in line with India's plan of smart cities. Hence, the company is pushing towards electric buses with cleaner options for fuel while constantly designing and producing vehicles that cut CO₂ emissions that will in turn reduce our environmental footprint across all transport segments. Thus, the company offers a future ready range of buses and continues working with the government on the promise of sustainability to create cleaner options for mass public transportation.

Training India's Largest Driver Network

As India's leading truck manufacturer, Tata Motors has the largest fleet of small, medium and heavy trucks on road today. Making truck drivers an integral part of the Tata Motors ecosystem. Five years ago, in an endeavor to give back to the truck drivers, Tata Motors launched the Institute of Driving, Training and Research (IDTR) in Pune through a joint venture with the Central Institute of Road Transport. A part of Tata Motors' CSR initiatives, IDTR's main objective is to improve the quality of life for truck drivers. Its dedicated driver training programmes help to improve road safety and to enhance employment prospects for rural youth.

However, India's need for more skilled transporters means that it is necessary to increase the number of such training institutions. Keeping this in mind, the Ministry of Skill Development and Entrepreneurship plans to open an additional 500 small driving training institutes to skill more drivers across India. Tata Motors' Truck Driver Training Program is an initiative that also has strong sustainability aspects. Tata Motors will be able to build a larger pool of trained drivers to operate vehicles that are being sold every year. Sales of these vehicles would also increase if more drivers turn transport entrepreneurs. Vehicle performance will also be healthier with properly trained drivers at the helm. Most importantly, road safety will improve for all concerned.

Referring to the above case study, answer the following questions :

- (a) Present a commentary on the company's foray into the Global Market. (10 marks)
- (b) "SWOT Analysis is a powerful developmental tool". Elaborate the above statement with respect to the case study. (10 marks)
- (c) Can a Porter's structural analysis be attempted here for automobile industry? Comment. (10 marks)
- (d) Identify the different strategies adopted by Tata Motors to remain competitive in the years to come. (10 marks)
- (e) What conclusion you would suggest for this case study? (10 marks)

Answer 1 (a)

Tata Motors is among the top ten Commercial Vehicle (CV) makers in the world today. The decadal story is mentioned below:

1990s - Tata Motors entered into a Joint Venture (JV) with Nitol Motors to set up NITA Company Ltd., the first assembly set-up of the company outside India. In

the years to come, Tata Motors grew its assembly operations in different forms across Myanmar, Vietnam, Bangladesh, Ukraine, South Africa, Kenya, Senegal, Nigeria & Tunisia. Tata Motors sets-up a JV with Cummins Engine Inc. The tie-up enables Tata to introduce powerful diesel engines with far lesser carbon emissions.

2000s - Tata Motors rings the opening bell at the New York Stock Exchange in year 2004, marking the listing of the company on the bourse. The company also acquires South Korean truck manufacturer Daewoo. Together, they unveil the Tata World Truck range for sale in South Korea, South Africa, SAARC nations and the Middle East. Tata Motors joins hands with the Brazil-based Marcopolo SA and launched the Tata Marcopolo Bus in the following years.

2010s - Tata Motors Indonesia was established as a fully owned subsidiary of Tata Motors. Tata Motors launched its next generation platform of heavy trucks, Tata Prima, in the markets around the world. Tata Motors launches its new platform for light trucks and buses, Tata Ultra, in the international markets. Tata Motors launches SkillPro - a unique skill development programme that trains aspiring youth, transforms them into skilled technical professionals and makes them employment ready.

Just like its CV division, Tata Motors began manufacturing the Passenger Vehicles (PVs) segment and made its foray into nations around the world in the following years. Featured below are some of the most important milestones of the PV sector of Tata Motors that the company achieved in other regions (excluding India):

- *Asia Pacific Region* - Tata Motors PVs make their entry in Nepal in 2003, followed by commencement of operations in Sri Lanka in 2004, Indonesia in 2011, Bangladesh in 2012, Myanmar in 2013, and Philippines in 2014.
- *Africa* - PVs of Tata Motors make their foray into Africa with South Africa in 2004, Tanzania in 2005, Ghana in 2006, followed by Algeria in 2014.
- *Latin America* - Tata Motors' PVs sector begins its operations in Latin America by venturing into Uruguay in 2014 and Bolivia in 2015.
- *Europe* - Tata Motors enters the European market after the acquisition of Jaguar and Land Rover from Ford Motor Co. in 2008.

Tata Motors has shown great improvement in its sales in the years 2017 and 2018. The company has plans to invest Rs.3000 crore in CV business and is gearing to bring in BS-VI standard.

Answer 1(b)

SWOT Analysis is a powerful developmental tool for making strategic decision. By conducting an external analysis, an organization identifies the critical threats and opportunities prevailing in the competitive environment. It also examines how competition in this environment is likely to evolve and what implications that evolution has for the threats and opportunities an organization is facing. Based on SWOT Analysis, organizations can choose the appropriate strategy for any organization because unless and until we know about the organizations strength we cannot maximise the opportunities. Also if we do not know about our weaknesses we cannot minimize it to be converted into threats or we can say that those threats can be converted into challenges for any

organization in today's perspective because "SWOT" is today better known as "SWOC". SWOT Analysis of this case study is as under:

Strengths

- The company has a strategy in place for the next stage of its expansion. It is focusing upon new products and acquisitions.
- Only OEM offering extensive range of integrated, smart and e-mobility solutions.
- Tata Motors strives to bring new products that fire the imagination of GenNext customers, fueled by state of the art design and R&D centers located in India, the UK, Italy and South Korea.
- Global operations in the UK, South Korea, Thailand, South Africa, and Indonesia through a strong global network of 109 subsidiary and associate companies, including Jaguar Land Rover and Tata Daewoo.
- Internationally, Tata commercial and passenger vehicles are marketed in countries spread across Europe, Africa, the Middle East, South Asia, South East Asia, South America, Australia and Russia.

Weaknesses

- The company's passenger car products were for a long time based upon 3rd and 4th generation platforms, which put Tata Motors at a disadvantage with its competing car manufacturers.
- Despite buying the Jaguar and Land Rover brands it has not got a foothold in the luxury car segment in Indian market.

Opportunities

- In the summer of 2008 Tata Motor's announced that it had successfully purchased the Land Rover and Jaguar brands from Ford Motors for US \$2.3 billion which can provide global opportunities in the markets such as China.
- Tata motors has a great opportunity in the production of sustainable buses and sustainable transportation.

Threats

- Tata Motors has to catch up in terms of quality and lean production. Sustainability and environmentalism could mean extra costs for this low-cost producer. This could impact its underpinning competitive advantage. Obviously, as Tata globalizes and buys into other brands this problem could be alleviated. R&D expenditure is still very low compared to other global players. That will come into the play in developing sustainable global business player.
- Rising prices in the global economy could pose a threat to Tata Motors on a couple of fronts. The price of steel and aluminum is increasing putting pressure on the costs of production. Many of Tata's products run on diesel fuel which is becoming expensive globally and within its traditional home market.
- Without having substantial edge in EV technology, the threats loom large on current existing business model.

Answer 1(c)

Porter's structural analysis can be attempted for automobile industry since it has a large number of competitors. Below are the points discussed about all 5 forces of Porter's Model for automobile industry.

Industry Rivalry

When total costs are mostly fixed costs, the firm must produce to optimum capacity in order to attain the lowest unit costs. Since the firm must sell this large quantity of product, high levels of production lead to a fight for market share and results in increased rivalry. This is happening in the automobile industry as all are big players who put huge investment. Industry becomes unstable as the diversification increases. In this case the diversity of rivals is moderate as most offer products which are close to standard versions and the competitors are also mostly similar in strength. There is presence of many players of about the same size and little differentiation between them. Higher the competition in the industry lower would be the profit margin. To remain ahead in competition, auto-makers were tempted to offer value added services to the customers incurring more costs.

Barriers to Entry

Companies like Maruti are present in market from many years and have achieved the optimum level of production through which these companies are enjoying the economies of scale. But for a new player, it will not be easy to get benefit of these economies of scale due to high price competition from existing players. It is never easy to get the trust of the customer. New players will have to make place among the customers to beat the competition which will not be easy for them. Customers in automobile industry have high switching cost. Because after buying vehicle once they do not replace it before two or three years. It will be a barrier for a new player. Capital required to start an automobile company is very high. Land and machinery requirements and human resource requirement and after then there is high competition so it will be very risky for new company. In automobile industry or in any industry to capture the huge market one should have a big distribution network not only for sales of vehicles but also for the services, which is important feature for company. The race to improve on technology and features of cars at lower cost is also inhibiting to the new player. The power and cost of branding make entry barrier high.

Threat of Substitutes

If we talk about the substitute for automobile then there are mainly two substitutes i.e. Railways and Airlines. But both of these will not be substitutes for every customer and in every situation. Metro Rail, Mono Rail, efficient Tram System and public transport can inhibit faster growth of automobile industry.

Bargaining Power of Suppliers

To manufacture a vehicle number of inputs like steel, technology, auto components and tyres are used. There are roughly 2500 components in existing cars. Larger percentage come from the suppliers. Supplier of those inputs which add value to the vehicle always have bargaining power like tyres of MRF will add value to the final product so company using MRF tyres cannot change the supplier easily due to high switch cost.

When we talk about steel, major input for the automobile industry, Tata Steel is the biggest supplier to Maruti Suzuki in India, its bargaining power increases. In this case the bargaining power of supplier is high. But when we talk about the input like seat cover, plastic etc. which can easily be switched and cost of switching is nil so in such a case, bargaining power of supplier will be low. Company like 3M which supplies so many parts has got brand equity. In this case the bargaining power of supplier is high.

Bargaining Power of Buyers

The saturated automotive industry features a large number of competitors, which decreases switching costs. This increases the power of buyers. It is also difficult to go for backward integration. The costs would be monumental with no guarantee of a significant improvement in efficiency. This also increases buyer power. Brand identity can provide very dominant competitive advantages in the automotive industry. Consumers will often stay loyal to one brand (if they have an enjoyable experience), and this ultimately decreases the power of buyers. Overall, the bargaining power of buyers is high in the automotive industry. With an abundance of options to choose from and the individuality associated with cars, buyers have a lot of say in this industry.

Answer 1(d)

Tata Motors could adopt following strategies to remain competitive for many more years to come:

- Through adoption of better technology and BS-VI engines and becoming a first mover in the industry
- Thinking about alternate fuel options and green positioning
- Fleet Telematics and its benefits to be transferred to the customer
- Sustainable Buses
- Driver Training

In March 2015, Tata Motors became the first OEM to adopt Telematics - an efficient way for automobiles to be designed, driven and managed, Some of the features introduced to the Indian market include:

- *Emergency 808* - A panic button in vehicles through which the driver can send an SOS message to the transport owner in an emergency,
- *Trip Management* - A versatile tool to track and evaluate individual vehicle trips in real time. Trip Management helps achieve significant improvements in fleet utilization and reduction in communication costs and idle times.
- *Driving Assessment* - Since drivers are the most important resource factor of transport operations, the driving assessment solution continuously evaluates drivers on a range of parameters impacting safety and economy. Suitable consultancy and retraining is then employed to improve overall fleet economy and safety record.
- *Vehicle Health Management* - A solution which helps to remotely monitor vehicle health, including quick fault detection and rectification before it leads to consequential failures.

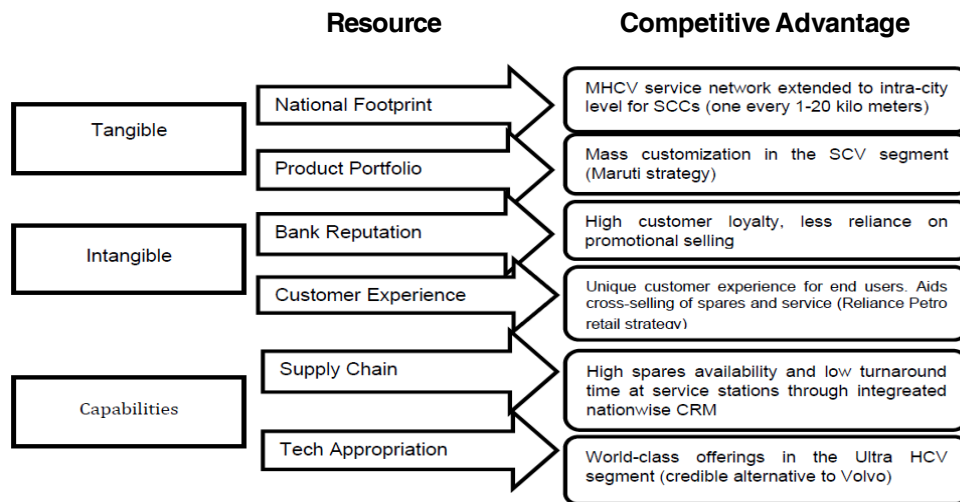
Tata Motors has always led the Indian auto motor industry in terms of producing vehicles of exemplary design, integrating new technology into their offerings while capturing the needs of the Indian customer. But more importantly, as Tata Motors continues to progress in creating cars of global standards, it is also seriously considering and working towards 'sustainable transport'. The company is pushing towards electric buses with cleaner options for fuel. Thus, the company offers a future ready range of buses and continues working with the government on the promise of sustainability to create cleaner options for mass public transportation.

In an endeavor to give back to the truck drivers, Tata Motors launched the Institute of Driving, Training and Research (IDTR) in Pune through a joint venture with the Central Institute of Road Transport. As part of Tata Motors' CSR initiatives, IDTR's main objective is to improve the quality of life for truck drivers. Its dedicated driver training programmes helps to improve road safety and to enhance employment prospects for rural youth.

Sustainable competitive advantage lies not in one, but a combination of multiple resources, each of which individually need not necessarily be the best, but in overall weighted average terms, presents the best solution. For Tata Motors, the combination of resources providing it competitive superiority on a weighted average basis includes Product Reliability, Service Network and Channel Reach. In terms of product reliability, Tata Motors offers products of reasonably high standards. However, foreign players like Volvo and even local competitors like Ashok Leyland arguably offer products that are far more refined. But this is more than compensated by a dependable service network and extensive channel reach. Tata's service and distributor network is by far the most extensive of any player in the trucks industry. Hence, in overall weighted average terms, Tata Motors still has a winning proposition. Internalization of business and collaboration with so many global companies will also help Tata Motors to diversify business and lower the risk.

Answer 1(e)

The suggested conclusion for this case study is to look into the broad dimensions of tangible advantages, intangible advantages, and capabilities. Three broad dimensions can be explained as given below:



Today Tata Motors is the undisputed market leader in the commercial vehicles category in India and is fast emerging as one of the major global players in automobile industry as a whole. It has been forging ahead on a number of fronts in an attempt to further establish its position as a market leader.

The company enjoys a number of key strengths that enable it to present a unique value proposition to its customers. The company must focus on combining its unique strengths as it endeavours to replicate its recent successes in new segments and across new market territories. Apart from product reliability, the most important determinant of future success would be the company's ability to reinforce its supply chain and service support framework even outside India. If the company gets it right, we can expect that what a giant can do. Not only will that shoot the company to the forefront of creating a unique customer experience, but also help it identify newer sources of revenue.

The future presents challenges and opportunities for the company in equal measure both domestically and internationally. Pitfalls will be many but Tata Motors looks well positioned to capitalize on the challenges globally. Internationalization of business and collaboration with several global companies, acquisition of premium brand of Land Rover and Jaguar in passenger vehicle segment will make Tata Motors a strong global automobile company.

Question 2

- (a) *The PESTEL Model of International Business Macro-environment is hinged around the political factor in most of the countries and in most of the occasions. Comment with reference to India. (5 marks)*
- (b) *"Health, technology and innovation are pillars for Global competitiveness." Comment. (5 marks)*
- (c) *"The SWOT seems to be transforming to Strengths, Weaknesses, Opportunities and Challenges (SWOC)." Explain how the threats perceived earlier are now taken up more seriously and positively in terms of challenges ? (5 marks)*
- (d) *How has India been a beneficiary to Globalisation ? What favourable conditions have emerged for our country in the new world order ? (5 marks)*
- (e) *Which are the sectors to have given green signal for total FDI (100%) either through the Automatic or through the Government route ? Do you expect these sectors to perform well with such a move ? (5 marks)*
- (f) *Discuss the relevance of IEC Number. What is Export License ? Explain canalization feature. (5 marks)*

Answer 2(a)

The PESTEL model is the basic model of Environmental scanning for any business entity. Actually in majority of countries, including India, all other environment factors (Macro) like Economic, Socio-cultural, Technological, Ecological and Legal follow the political environment. All economic policies are governed through the political environment. Political factors determine the extent to which a government may influence the economy or a certain industry. For example, a government may impose a new tax

or duty due to which entire revenue generating structures of organizations might change. It includes tax policies, fiscal policy, trade tariffs, etc. that a government may levy around the fiscal year and it may affect the business environment (economic environment) to a great extent.

The determinant of an economy's performance that directly impacts a company and has long term impact is studied through the economic environment. For example, a rise in the inflation rate of any economy would affect the way companies price their products and services. Adding to that, it would affect the purchasing power of a consumer and change demand/supply models for that economy. Economic environment includes inflation rate, interest rates, foreign exchange rates, economic growth patterns, etc.

Social factors dissect country's socio-cultural environment in the light of globalization and its aftermath. Factors like cultural trends, demographics population analytics, etc. play a crucial role in determining a business. The concept of shared mobility is affecting the growth rate of automobile in India. The young generation is comfortable in hiring taxi services like Uber and Ola rather than buying a new car.

Environmental factors include all those that influence or are determined by the surrounding environment. Rising level of air pollution will put more focus on the emission norms of automobile in India. This aspect of the PESTEL is crucial for certain industries particularly for tourism, farming, agriculture, etc. Environmental factors include climate, weather, geographical location, global changes in climate, environmental offsets, etc.

Answer 2(b)

It is correct to say that health, technology and innovation are pillars to global competitiveness. If one wants to compete in the global market we can say "a healthy mind in a healthy body". A healthy mind can think of innovation & competitive strategy with the help of technology. The above statement can be supported by following statistics:

The World Economic Forum (WEF) on October 16, 2018 released the Global Competitiveness Report 2018. The report publishes the Global Competitiveness Index, ranking 140 countries on the basis of 98 indicators organized into 12 pillars which are Institutions; Infrastructure; ICT adoption; Macroeconomic stability; Health; Skills; Product market; Labour market; Financial system; Market size; Business dynamism; and Innovation capability. India was ranked as the 58th most competitive economy with a score of 62.0 on the Global Competitiveness Index 2018. India jumped five spots from 2017, the largest gain among G20 economies.

Health has always been an area of concern for our Government and country as a whole. Education is the precursor to this. The PM-JAY Health Insurance Scheme could be an excellent tool toward the health measures which we need to take to become a developed nation.

Technology is yet another important pillar. To become more competitive, we need technological tools. The ICT initiative launched by the Government would bring the country a step closer to better competitiveness. Innovation is linked to technology. It could even be non-technological. In this year's ranking, India improved its position from 66 to 60.

Answer 2(c)

SWOT analysis is a two-by-two matrix, with horizontal pairings of internal (strengths

and weakness) and external (opportunities and threats) factors and vertical pairings of helpful (strengths and opportunities) and harmful (weaknesses and threats) factors in achieving an objective. Final results of the analysis will help the organization determine whether objectives, products, services, projects or goals are a strategic fit. The best strategic fits are when the internal environment (strengths and weaknesses) aligns with the external environment (opportunities and threats).

Users of a SWOT analysis often ask and answer questions to generate meaningful information for each category to make the tool useful and identify their competitive advantage. Strengths and weakness are inherent, while opportunities, and threats come from outside/external factors. The degree to which the internal environment of the firm matches with the external environment is expressed by the concept of strategic fit. Identification of SWOT (or TOWS) is important because they can predict planning to achieve the objective.

Over the years, the interpretation of 'T' or Threat has witnessed a change. Although conceptually similar in nature, T seems to have given way to C (or challenges), notable perceptible difference. This C appears to be more positive in redefining the business and industry pre-analysis in the wake of business trends across the globe. Organization are fast becoming multi-dimensional in terms of products and services. Diversification, although guarded, is showing signs of resurgence in India. Open market access always adds to the competency, be it industrial sector or a company there-in. Hence, the word challenges is more competitive in nature and far more acceptable psychologically for any business entity as compared to threat.

Answer 2(d)

Globalization means increasing integration of economics around the world particularly through the movement of goods, services and capital across borders. The term also refers to movement of people (Labour) knowledge (technology) across international borders.

Following are the notable benefits of globalization for India:-

- Increase in trade volume
- India's overall competitive index is improving
- Consumers have a variety of choices for product or service
- There is a focus on improving Infrastructure and Logistics
- Implementation of GST has made market more attractive in various industrial sectors
- R&D, patents, other IPRs have gained prominence
- New Business Opportunities are appearing in the ITES related sectors etc.
- Efficient business environment
- Increased inflow of FDI has led to an increase in the economic development and growth which in turn led to an increase in mergers, acquisitions and strategic alliances
- Globalisation has contributed in improving the availability of technology and better man power

Below mentioned points are the conditions favourable for globalization are as follows:

- A more stable and investor friendly political environment
- One of the largest pools of qualified and trained work force
- Young workforce with newer skills
- Affinity of the new generation towards entrepreneurship and start-ups
- Dismantling of trade barriers although slowly
- Plugging of leakages in subsidy management
- Involvement of the tertiary sector being increased
- Certain core sectors intend to perform better
- Better global image of the country
- More international tie-ups bringing more business opportunities
- Expanding market size
- Energy sector has become an attraction proposition etc.

Answer 2(e)

The sectors with 100% of FDI cap either through the Automatic (A) or the Government (G) route include:

- (a) Agriculture and Animal husbandry (A)
- (b) Tea plantation (G)
- (c) Mining (A & G)
- (d) Petroleum and Natural Gas (A)
- (e) Civil aviation-greenfield and existing projects/helicopter and seaplane services/ flying training institutes/maintenance and repair organizations (A & G)
- (f) Courier Services (G)
- (g) Construction (A)
- (h) Industrial Parks (A)
- (i) Trading and E-commerce, single brand retail (A & G)
- (j) Pharmaceuticals (A & G)

India has recently taken a lot of initiatives, especially in infrastructure and aviation sectors. The country is witnessing development in the airports and air service, e-commerce, IT, and construction sectors. The demand in the service sectors has improved consistently as a result of the change in consumer behaviour. This has happened primarily because of increased competition due to globalization. The future has a lot of opportunities for international business in India. There has been a consistent increase in the FDI limits in various sectors. This will further lead to a business integration with the rest of the world.

Answer 2(f)

IEC (Importer-Exporter Code) number is a unique 10 digit code issued by the Directorate General of Foreign Trade, Ministry of Commerce, Government of India to Indian companies. No import/export can be done without the IEC number. An export license is a document issued by the appropriate licensing agency after which an exporter is allowed to transport his product in a foreign market. Canalization feature in Export License ensures import of certain goods only by designated agencies for example Gold in bulk can be imported by specific banks or designated agencies only.

Question 3

“Anti-dumping measures are injurious to the interest of consumers.” Explain and discuss WTO provisions for Anti-dumping. (5 marks)

Answer 3

Dumping occurs when goods are exported by one country to another country at a price lower than the normal value of the goods. Anti-dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. It is permitted by WTO. It is in fact an instrument to ensure free trade. It is a trade remedial measure to counteract the trade distortion caused by dumping and the consequential injury to domestic industry. A country can complain about unfair trade practices of another country to Dispute Settlement Body of WTO and after the order therefrom, it gets every right to put anti-dumping duties.

GATT (Article 6) allows countries to take action against dumping.

The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another :-

- (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
- (b) in the absence of such domestic price, is less than either
 - (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product.

Question 4

“Alliances are reshaping the industries.” Explain this concept with respect to Strategic Alliances. (5 marks)

Answer 4

Strategic alliance is a strategic co-operation between two or more organizations, with the aim to achieve a result, one of the parties cannot easily achieve alone.

Strategic alliance among international business is very common. Internalization can be very expensive process, particularly where a firm must co-ordinate research & development, production, marketing, human resources & financial decisions to succeed.

There is generally a shortfall of all these resources, therefore a company may seek a partner to share these cost for e.g. a firm may develop a new technology but lacks resources for its marketing. So it can enter into the strategic alliance with some other company which is good at marketing or other functions. Such alliance is a strategic alliance. It could be formed through Joint Ventures, Licensing, Franchising and simple alliance to develop technology or dealership. Tata- Starbucks Joint Venture in India. Mcdonald's franchising operations around the world are successful examples of Strategic alliances..

Specifically, alliances are formed between two or more corporations each based on their home country for a specified period of time, their purpose is to share ownership of a newly formed venture & maximize competitive advantage in their combine territories.

Strategic Alliances have increasing the trend towards multi company alliances e.g. a six company strategic alliance was formed between Apple, Sony, Motorola , Philips, AT&T and Matsushita to form General Magic Corporation to develop Telescript Communication Software.

Question 5

What do you understand by Third and Fourth party logistics ? Are there any roadblocks to its fast development in India ? (5 marks)

Answer 5

Third party logistics or 3PL refers to outsourcing transportation, warehousing and other logistics related activities to a third party service provider that were originally performed in-house. Fourth party logistics or 4PL is a novel concept in Supply Chain management (or outsourcing). It is a further movement to next level in logistics and helps in further cost reductions and asset transfers-of a traditional outsourcing arrangement.

India is a vast country depicting huge differences in cultures and businesses. It has not been a very outgoing society in India, people are still wary of others as far as trust and awareness are considered. The poor infrastructure in India, although it appears to be growing at a very fast pace, is still one of the reasons for its slow growth. Value-added services are missing related to different aspects of logistics however, bringing in GST may help curbing the problem and may help in speeding up the system.

Despite various problems 3PL market in India is expected to grow. Some of the large Indian corporates such as Reliance, Tata, Mahindra and Mahindra, TVS Group and Essar Shipping have forayed into logistic business. Initially these corporates formed

divisions to handle internal logistics but by sensing the potential of the market they have started offering logistic solutions to other Indian corporates and have already turned these logistics divisions into profit centres.

4PL responds effectively to the broad complicated needs of today's organizations by delivering a comprehensive supply chain solution. This solution is focused on all elements of supply chain management (SCM). Continuously updated and optimized technology is tailored to specific client needs. Information technology can greatly influence and enhance the effectiveness of 4PL, implementing systems at levels of ERP, DSS, etc.

Question 6

What is a foreign collaboration ? What are the different types of foreign collaborations? What are the important points to be kept in mind while drafting a foreign collaboration agreement ? (5 marks)

Answer 6

A foreign collaboration is an alliance incorporated to carry on the agreed task collectively with the participation of resident and non-resident entities. It is an alliance of domestic and foreign entities like individuals, firms, companies, organizations, governments etc. that come together with an intention to finalize a contract on some tasks or jobs or projects. It includes the ongoing business activities of sharing information related to financing, technology, engineering, management consultancy, logistic marketing etc. which are generally offered by non- resident foreign entity to a resident / domestic/ native entity in exchange of cheap skilled and semi-skilled labour, inexpensive high quality raw materials, low-cost hi-tech infrastructure facilities, strategic geographical location etc. with an approval from a Government authority. It is thus an alliance formed for mutual benefit of collaborating parties.

The types of foreign collaborations include financial, technical, marketing and management collaborations. Financial collaboration talks about ownership, shares, long term loans, credit facilities, etc. Technical collaboration includes integration of foreign technology with domestic technology. In marketing collaboration, integration of foreign and domestic markets takes place wherein a foreign company agrees to sell goods produced by the domestic company. Under management consultancy, foreign company provides management skills to domestic company, i.e., management skills related to different functional areas are taught.

While drafting a foreign collaboration agreement, the following factors should be kept in mind:

- Capability of the collaborator
- Clear definition of technical terms
- Specification about the product
- Technical knowhow
- Quality control mechanism
- IPRs
