

**Q.1 Attempt any TWO question of the following :** [10]

**Q.1(a) List the main features of Copyright Act of 1957.** [5]

- Ans.:** (1) Creation of copyright office and a copyright board to facilitate registration of copyright and to settle certain binds of a disputes arising under the act and for compulsory licensing of copyright.
- (2) Definition of various categories of work in which copyright sublists and the scope of the rights conferred on the author under the act.
- (3) Provisions to determine the first ownership of copyright in various categories of works.
- (4) Term of copyright for different categories.
- (5) Provisions relating to assignment of ownership and licensing of copyright including compulsory licensing.
- (6) Provision relating to performing rights.
- (7) Broadcasting rights.
- (8) International copyright.
- (9) Definition of infringement of copyright.
- (10) Exception to the exclusive rights conferred on the author or acts, which do not constitute infringement.

**Q.1(b) What do you understand by Design Rights? Explain in short.** [5]

**Ans.:** A registered design protects the visual appearance of a product or item & gives you exclusive rights for that appearance to the extent that, if necessary, there is a legal right to stop can unauthorized party from producing or using your design.

Design rights protect the way a product looks. If the design has a technical function or the appearance of the product comes naturally as a result of the function that it perform, then a design right may not be suitable.

In order for a registered design to be valid it must.

Be new (no similar or identical designs registered)

Have individual character (the appearance of the design is different to any existing designs)

Be already registered in an approved overseas jurisdiction.

If a registered design is granted it will last for upto 25 years but need to be renewed every 5 years.

**Q.1(c) Write a short note on trademark.** [5]

**Ans.:** A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise.

It may be one or a combination of words, letters & numerals. They may consist of drawings, symbols, three dimensional signs such as the shape packaging of goods, audible, signs such as the shape & packaging of goods audible signs, such as music or vocal sound, fragrances or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services or to authorize another to use it in return for payment.

These are some images depicting trademarks.



It helps consumers identity and purchase a product or service because its nature & quality, indicated by its unique trademark, meets their needs.

**Q.1(d) What is Intellectual Property? What are Intellectual Property Rights? Explain. [5]**

**Ans.:** **Intellectual property (IP)** refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

**Intellectual property rights** are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. Tools of Intellectual Property rights are:

- **Patent:** A patent is an exclusive right granted for an invention - a product or process that provides a new way of doing something, or that offers a new technical solution to a problem. A patent provides patent owners with protection for their inventions.
- **Trademark:** A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Trademarks may be one or combination of words, letters and numerals. They may consist of drawings, symbols or three dimensional signs such as shape and packaging of goods. In some countries, non-traditional marks may be registered for distinguishing features such as holograms, motion, color and non-visible signs (sound, smell or taste)
- **Copyright:** Copyright laws grant authors, artists and other creators protection for their literary and artistic creations, generally referred to as "works". Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design.
- **Geographical Indication:** A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods.
- **Industrial Design:** An industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines or color.

**Q.2 Attempt any TWO question of the following : [10]**

**Q.2(a) Explain the concept of Semi-Conductors. State and explain Semiconductor IC layout design act. [5]**

**Ans.:** A semiconductor integrated circuit is a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

#### **Need for Protection of IC designs:**

Product life cycles in many industries are shortening. The length of time and amount of investment required, to obtain intellectual property rights, especially patents, can be disproportionate to the life of such product. Requirements such as the need to mark products with "patent pending" also become impracticable when products have short life cycles and use many different technologies subject to different patents, especially when these products are miniaturized.

#### **SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT DESIGN**

The semiconductor Integrated Circuits Layout Design Act, 2000, provides protection for semiconductor IC layout designs. SICLD Act is a sui-generis (one of its kind) specifically meant for protecting IPR relating to Layout-Design (Topographies) of Semiconductor Integrated Circuit.

The subject of Semiconductor Integrated Circuits Layout Design has two parts, namely:

**(1) Semiconductor Integrated Circuit:** Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

**(2) Layout-design:** The layout-design of a semiconductor integrated circuit means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in semiconductor integrated circuits.

**Criteria for Registration of a Chip Layout Design**

- Original,
- Distinctive and
- Capable of distinguishing from any other lay-out design.

**Note:** " Only the Layout-Design " - which essentially is the mask layout- floor planning of the integrated circuits can be registered under the SICLD Act 2000 and not the other information like any idea, procedure, process, system, programme stored in the integrated circuit, method of operation etc.

Layout-designs are prohibited from registration under the Act if they are as follows:

- Not original;
- Have been commercially exploited anywhere in India or in a Convention country i.e. any country that the Government of India notifies in the Official Gazette for the fulfillment of a treaty, convention or an arrangement with any country outside India and which affords to citizens of India similar privileges as are granted to its own citizens;
- Not inherently distinctive;
- Not inherently capable of being distinguishable from any other registered layout-design.

Term of protection: This registration is valid for a term of ten years from the date of filing an application for registration or from the date of first commercial exploitation anywhere in the world, whichever is earlier.

**Q.2(b) What do you mean by Domain name and disputes in domain name? [5]**

**Ans.:** The original role of having a domain name was to provide an internet address for computers. With the increasing rate of commercial activities on the web, a domain name is now seen as a way of identifying the business of the company. A potential consumer is always lured to the company after he/she goes through their website. Hence, a company keeps it in mind to obtain such domain names which are easily identifiable & related to their established trade marks. One of the raging crimes in the recent years committed on the web is 'cyber squatting'. It is identified as malpractice where individuals use a domain name reflecting the name of a prior existing company, intending to attain profit from the good will of a trade mark already belonging to someone else.

**Q.2(c) Write a short note on TRIPS agreement. [5]**

**Ans.:** TRIPS: The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.

The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all." Specifically, TRIPS requires WTO members to provide copyright rights, covering content producers including performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents; new plant varieties; trademarks; trade dress; and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

**Q.2(d) What is software piracy? How can software be protected? [5]**

**Ans.:** It is the illegal copying, distribution or use of software. It is such a profitable "business" that it has caught the attention of organized crime groups in a number of countries.

Type of software piracy includes,

- (i) Softlifting: Borrowing & installing a copy of a software application from a colleague.
- (ii) Client server over use: Installing more copies of the software than you have licenses for.
- (iii) Hard disk loading: Installing & selling unauthorized copies of software on refurbished or new computer.
- (iv) Counterfeiting: Duplicating & selling copyrighted programs.
- (v) Online piracy: Typically involves downloading illegal software from peer to peer network internet auction or to blog.

When you purchase a commercial software package, an end user license agreement (EULA) is included to protect that software program from copyright infringement. Typically, the license states that you can install the original copy of software you bought on one computer and that you can make a backup copy in case the original is lost or damaged.

**Q.3 Attempt any TWO question of the following : [10]**

**Q.3(a) What are the rights of patentee? Explain. [5]**

**Ans.:** **Rights of Patentee**

**The right to exploit the patent :** Section 48 confers the right to exploit the patent on the patentee or his licensee or his assignee or his agent when such a right is exercised within the condition imposed by section 47 of the Act.

**Right to licence :** Section 70 of the Act confers, inter.alia, the right on a grantee or proprietor of a patent to grant licence(s). for instance, a patentee of invention of new sound system has a right to license his right to another party to make and sell the system in a particular territory.

**Right to assign :** Section 70 also confers on the patentee the right to fully or partially assign his patent to another or others.

Such assignment and licensing should always be in writing in express agreements. Such agreement should be registered to avoid litigation later.

**The right to surrender the patent :** A patentee is not under an obligation to maintain his monopoly right on the patent for the entire term of the patent. He may surrender the patent any time.

Section 63 provides that a patentee may, at any time by giving notice to the Controller, offer to surrender his patent. The Controller, before accepting the offer of surrender, publishes the offer in India to give opportunity to the parties having any interest, for instance licensees, to oppose the offer of surrender.

**Right to sue for infringement :** The exclusive right conferred by a patent can be meaningful and lasting only when the statute confers a right on the patentee to take legal action for protection of his patent rights. Patentee, his assignee, licensee or agent has the right to institute a civil suit in a court not lower than the District Court in case of any infringement.

**Q.3(b) Define the terms assignee, Assignor. Discuss different types of assignment. [5]**

**Ans.:** **Assignment :** Assignment, as defined in Black's Law Dictionary, means the transfer by a party of all of its rights or interest in the property.

**The difference between assignment and licence**

A licence merely confers a personal privilege to do some particular act(s) which the licensee can perform. There is no transfer of interest in licence. On the contrary, assignment means the transfer of interest in the patent: whole or in part of the patent rights, e.g. for the whole of India or a part thereof.

**Assignee :** The person in whose favour a right has been assigned is the assignee and the person who assigns the right (patentee himself or his agent) is the assignor. In case an assignment has been made in

favour of a person who has since died, the term assignee would denote the legal representative, that is the person who in law represents the estate of the deceased person. Where assignment is made in favour of two or more persons, they become owners of such interest in the patent.

### **Kinds of assignment**

There can be three kinds of assignments:

- (i) Legal assignment
- (ii) Equitable assignment
- (iii) Mortgage.

**(i) Legal assignment :** An assignment of an existing patent through an agreement which has been duly registered is a legal assignment. A legal assignee has the right to have his name entered in the Register of patents maintained in the Controller's Office as proprietor of the patent and can thereafter exercise all the rights conferred on him by the proprietor of patent.

For instance, a patentee A in respect of a machine useful in the automobile industry assigns his right in the patent to B through an agreement which is written and duly registered in the Patent Office. Thereupon, B becomes the proprietor of the patent.

**(ii) Equitable assignment :** Any document such as letter but not being an agreement, which is duly registered with the Controller in which patentee agrees to give another person certain defined right in the patent with immediate effect, is an equitable assignment. An assignee in such a case cannot have his name entered in the Register as the proprietor of patent. He can only have a notice of his interest entered in the register. He can convert the equitable assignment to legal assignment by getting a written agreement to this effect and having it duly registered.

For instance, a patentee D writes a letter to E whereby he assigns to E the right to make and sell the invention within the territory of Delhi. D has transferred his proprietary right through equitable assignment of E to the extent mentioned in his letter.

**(iii) Mortgage :** A mortgage is also a form of assignment. A mortgage is a document transferring the patent rights either wholly or partly to the mortgagee with a view to secure the payment of a specified sum of money. The mortgagor (patentee) is entitled to have the patent re-transferred to his on refund of the money to the mortgagee. The mortgagee (a person in whose favour a mortgage is made is not entitled to have his name entered in the Register as the proprietor, but he can get his name entered in the Register as a mortgagee.

**Q.3(c) What are the defences available in case of infringement of trademarks and design? [5]**

**Ans. :** The defendant may set up any of the following defenses :

- (1) The plaintiff in the suit has no title to sue questioning the proprietorship of the trademark owner may do this.
- (2) That the use of the mark by the defendant is not an infringement or is protected by the provisions of section 30 which lists out the acts which do not constitute infringement.
- (3) That the defendant's right to use the contested mark issues by virtue of concurrent registration.
- (4) That the defendant is the prior user of the disputed mark.
- (5) That the defendant has been an honest concurrent user.
- (6) That the use complained of is merely the defendant's bona fide use of his own name, address and description of goods which are protected by the act.
- (7) That the defendant can attack the validity of registration of the plaintiff.

**Q.3(d) What are the rights granted for registration of design? [5]**

**Ans. : Rights Granted In Case Of Industrial Design**

- (i) A person has the right for exclusive use of the design which is subject to the provision of Design Act, 2000. Hence the Design registered under this act can be used from the date of registration.

- (ii) If the design provision gets expired then the applicant can extend the period of design by paying the prescribed fees.
- (iii) Every person has a right to protect the design from piracy. Any person responsible for infringing the registered design then he is liable to pay a fine of a sum not exceeding 25,000.
- (iv) Under section 20 of the design Act, 2000. There are exceptions in case of using the design related to the government. Hence the government can use the registered design which prohibits other person to use this design under certain circumstances
- (v) Section 11 of the Design Act, 2000 has provided extension period if the registered design gets expired. Hence the maximum period of extending the registered design is for 15 years.

**Q.4 Attempt any TWO question of the following :**

**[10]**

**Q.4(a) Write any five civil remedies in enforcement of IPR.**

**[5]**

**Ans. : Injunction**

An injunction is an order of a court prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury. Generally it is a preventive and protective remedy aimed at preventing future wrongs. Injunctions are of two kinds:

**Temporary / interlocutory injunctions**

These are the Court orders which are in force for a specified time or until further orders of the Court. An interlocutory injunction may be granted at any time during the proceedings of the suit.

**Final injunction**

Such injunction is granted at the termination of the trial. The time for which the final injunction is in force is the remaining term of the patent at the time of grant of the final injunction.

**Damages**

The damages are awarded to compensate for the loss or injury suffered by the plaintiff due to the action of the defendant.

The amount of damages awarded is proportionate to the injury suffered by the part and shall be such sum of money which will put the injured party in the same position as he would have been in, if he had not encountered the wrong.

**Account of Profits**

Section 108 provides that the Court may either award damages or account of profits but both of them cannot be claimed together. The plaintiff has to prefer either of the two.

The account of profits are determined on the basis of actual use of the patentee's invention by the infringers during the period of commission of the act of infringement. Account of profits is the part of profits which can be attributed to the use of the patentee's invention by the infringer.

**Q.4(b) What is licensing agreement? List its different types.**

**[5]**

**Ans. :** A licensing agreement is a partnership between an IP owner (licensor) & someone who is authorized to use such rights in exchange for an agreed payment. A variety of such licensing agreements are available which may be broadly categorized as follows: Tech: license, joint venture license, franchising or trademark license, copy right license.

In practice, sometimes all IP rights from the part of one agreement. These types of agreements are often observed in mergers & acquisitions, joint ventures or take overs. A formal licensing agreement is possible only if the IPR licensor, who wishes to licensee, is also protected in the other country or countries of internet. If IP is not protected in other country or countries then licensing is that country is not possible as licensor would have no legal right to put any restrictions on its use by any other party.

**Q.4(c) What are advantages and disadvantages of IP licensing?**

**[5]**

**Ans. : Advantages :** Licensing is part of the overall business strategy, but it is associated with advantages and disadvantages both for the licensor & licensee. To the licensor, in addition to one time payment, he may get regular payment on the ongoing sales by way of license fees and royalties.

In case the owner does not have the money or resources to use or commercialize his inventions or IPR, he may transfer the licensing rights to someone, who is willing to commercialize & market the product. The greatest advantage of licensing is that it increases the profit by using an available technology to make a new improved product to sell in the market at an appropriate time.

For the licensee the greatest advantage is that he need not have to spend money & time in the rigorous process of R & D. This is a cost-effective process to get in to the market with new product at a greater speed. The new technology/product will help the licensee enhance his reputation & goodwill in the market. The valuable technology will make it easier for the licensee to get finance & finally cash the market opportunities by timely commercializing the product.

**Disadvantages :**

Though IP licensing is beneficial to both licensor & licensee, sometimes through licensing, the owner may lose his control on the technology & there may be great risk of piracy & exploitation by unauthorized parties. It may so happen that the licensee develops technology around the product, he has the license for & make the original licensor to lose his superiority. The revenue from the licensee depends on his performance. Hence the licensor loses the revenue to that extent. For the licensee, the technology may become redundant in short span of time & he may have to go in for a new one at a higher price. In case the technology is not tested, the licensee will be at great risk of losing the money if relevant risk aversion clauses are not stipulated in the agreement. Hence, in IPR licenses agreement, the terms & conditions need careful drafting.

**Q.4(d) What are different types of IP licensing formats?**

[5]

**Ans.:** There are basically 3 types of IP licensing formats:

**Sole License:** No person other than the licensee and the owner has the rights to perform the activities stipulated in the agreement. The owner may reserve certain rights for himself. For example: the patent holder may keep certain product features for him to manufacture while to licensee he may allow to manufacture similar product with limited features to mark the product differentiation in the market.

**Exclusive license:** No one other than the licensee (even the licensor) can perform the activities stipulated in the agreement. Such a license could be worthwhile when an IP owner does not want to exploit the IP themselves, as it may be possible to seek a higher royalty payment than for a non-exclusive license. But IP owner should be certain that they do not want to use the IP themselves before agreeing to exclusive license.

**Non-exclusive license:** The owner of the IP is interested in making multiple copies of his creation and sell it to end users who is licensed to use it. This happens in case of software, wherein the user who is licensee to use the product, is restricted to make multiple copies of the same for selling or distributing.

**Q.5 Attempt any TWO question of the following :**

[10]

**Q.5(a) Write the different roles of Certifying Authorities.**

[5]

**Ans.:** **The Role and Function of Certifying Authorities**

- Certificate Authority (CA) is a trusted entity that issues Digital Certificates and public-private key pairs. The role of the Certificate Authority (CA) is to guarantee that the individual granted the unique certificate is, in fact, who he or she claims to be.
- The Certificate Authority (CA) verifies that the owner of the certificate is who he says he is. A Certificate Authority (CA) can be a trusted third party which is responsible for physically verifying the legitimacy of the identity of an individual or organization before issuing a digital certificate.
- A Certificate Authority (CA) can be an external (public) Certificate Authority (CA) like verisign, thawte or comodo, or an internal (private) Certificate Authority (CA) configured inside our network.

- Certificate Authority (CA) is a critical security service in a network. A Certificate Authority (CA) performs the following functions.
- Certificate Authority (CA) Verifies the identity: The Certificate Authority (CA) must validate the identity of the entity who requested a digital certificate before issuing it.
- Certificate Authority (CA) issues digital certificates: Once the validation process is over, the Certificate Authority (CA) issues the digital certificate to the entity who requested it. Digital certificates can be used for encryption (Example: Encrypting web traffic), code signing, authentication etc.
- Certificate Authority (CA) maintains Certificate Revocation List (CRL): The Certificate Authority (CA) maintains Certificate Revocation List (CRL). A certificate revocation list (CRL) is a list of digital certificates which are no longer valid and have been revoked and therefore should not be relied by anyone.

**Q.5(b) Explain the conditions for applying digital signature.**

**[5]**

**Ans.:** Private companies and governments agencies all around the world make huge investments for the automation of their processes and in the management of the electronic documentation.

The main requirement in the management of digital documentation is its equivalence, from a legal perspective, to paperwork, affixing a signature on a digital document is the fundamental principle on which are based the main processes of authorization and validation, apart from the specific area of application.

Main benefits for the introduction of digital signing processes are cost reduction and complete automation of documental workflow, including authorization and validation phases.

In essence, digital signatures allow you to replace the approval process on paper, slow and expensive, with a fully digital system, faster and cheaper.

The digital signature is simply a procedure which guarantees the authenticity and integrity of messages and documents exchanged and stored with computer tools, just as in traditional handwritten signature for documents.

**Conditions:**

Essentially The digital signature of an electronic document aims to fulfill the following requirements:

- that the recipient can verify the identity of the sender (authenticity)
- that the sender cannot deny that he signed a document (non-repudiation)

**A typical digital signature scheme consists of three algorithms:**

- (i) An algorithm for generating the key that produces a key pair (PK, SK): PK (public key, public key) is the public key signature verification while SK (Secret Key) is the private key held by the petitioner, used to sign the document.
- (ii) A signature algorithm which, taken as input a message m and a private key SK produces a signature
- (iii) A verification algorithm which, taken as input the message m, public key PK and a signature accepts or rejects the signature.

To generate a digital signature is necessary to use the digital asymmetric key pair, attributed unequivocally to a person, called holder of the key pair:

The private key is known only by the owner, it is used to generate the digital signature for a specific document;

The public key is used to verify the authenticity of the signature.

Once the document is signed with the private key, the signature can be verified successfully only with the corresponding public key. Security is guaranteed by the impossibility to reconstruct the private key (secret) from the public, even if the two keys are uniquely connected.

**Q.5(c) Explain the scope of cyber laws.**

**[5]**

**Ans.:** **Scope of Cyber Laws**

- (a) **E-commerce Law** : E-commerce defined simply, is the commercial transaction of services in an electronic format. Any dispute involving any e-commerce activity, whether at buyer or seller's end, would mean dispute happening in the cyberspace.
- (b) **Online Contracts**: Online contracts represent the formation of series of contractual obligations in an online environment. From a legal perspective, an online contract follows the same pre-requisite as being followed in offline (physical) contract.
- (c) **Copyright**: Copyright protects "original works of authorship" that are fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine or device.
- (d) **Trademark**
- (e) **Business Software Patenting**: With the advent of worldwide web and e-commerce coming of age, the debate of software patenting acquired a new platform in the form of 'business software patents'.  
Big e-commerce retailers, like Amazon, Priceline and Ebay are going for patenting the backend software technologies of their front-end operations.
- (f) **E-taxation**
- (g) **E-governance**: E-governance is a kind of 'window of opportunity' facilitating a much faster, convenient, transparent and dynamic interaction between the government and its people.
- (h) **Cyber Crimes**: Cybercrime is a collective term encompassing both 'cyber contraventions' and 'cyber offences'
- (i) **Electronic signatures** are used to authenticate electronic records. Digital signatures are one type of electronic signature.
- (j) **Data protection and privacy** laws aim to achieve a fair balance between the privacy rights of the individual and the interests of data controllers such as banks, hospitals, email service providers etc.

**Q.5(d) Explain cyber jurisprudence.**

**[5]**

- Ans.:**
- The primary source of cyber law in India is the Information Technology Act, 2000 (IT Act) which came into force on 17 October 2000. The primary purpose of the Act is to provide legal recognition to electronic commerce and to facilitate filing of electronic records with the Government.
  - The IT Act also penalizes various cyber crimes and provides strict punishments (imprisonment terms upto 10 years and compensation up to Rs 1 crore). An Executive Order dated 12 September 2002 contained instructions relating provisions of the Act with regard to protected systems and application for the issue of a Digital Signature Certificate. Minor errors in the Act were rectified by the Information Technology (Removal of Difficulties) Order, 2002 which was passed on 19 September 2002.
  - The IT Act was amended by the Negotiable Instruments (Amendments and Miscellaneous Provisions) Act, 2002. This introduced the concept of electronic cheques and truncated cheques. Information Technology (Use of Electronic Records and Digital Signatures) Rules, 2004 has provided the necessary legal framework for filing of documents with the Government as well as issue of licenses by the Government.
  - It also provides for payment and receipt of fees in relation to the Government bodies. On the same day, the Information Technology (Certifying Authorities) Rules, 2000 also came into force. These rules prescribe the eligibility, appointment and working of Certifying Authorities (CA). These rules also lay down the technical standards, procedures and security methods to be used by a CA. These rules were amended in 2003, 2004 and 2006.
  - Information Technology (Certifying Authority) Regulations, 2001 came into force on 9 July 2001. They provide further technical standards and procedures to be used by a CA. Two important guidelines relating to CAs were issued.

- The Cyber Regulations Appellate Tribunal (Procedure) Rules, 2000 also came into force on 17<sup>th</sup> October 2000. These rules prescribe the appointment and working of the Cyber Regulations Appellate Tribunal (CRAT) whose primary role is to hear appeals against orders of the Adjudicating Officers.
- On 17<sup>th</sup> March 2003, the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003 were passed. These rules prescribe the qualifications required for Adjudicating Officers. Their chief responsibility under the IT Act is to adjudicate on cases such as unauthorized access, unauthorized copying of data, spread of viruses, denial of service attacks, disruption of computers, computer manipulation etc. These rules also prescribe the manner and mode of inquiry and adjudication by these officers.
- The Information Technology (Security Procedure) Rules, 2004 came into force on 29<sup>th</sup> October 2004. They prescribe provisions relating to secure digital signatures and secure electronic records. Also relevant are the Information Technology (Other Standards) Rules, 2003. An important order relating to blocking of websites was passed on 27<sup>th</sup> February, 2003. Computer Emergency Response Team (CERT-IND) can instruct Department of Telecommunications (DOT) to block a website. The Indian Penal Code (as amended by the IT Act) penalizes several cyber crimes. These include forgery of electronic records, cyber frauds, destroying electronic evidence etc. Digital Evidence is to be collected and proven in court as per the provisions of the Indian Evidence Act (as amended by the IT Act).
- In case of bank records, the provisions of the Bankers' Book Evidence Act (as amended by the IT Act) are relevant. Investigation and adjudication of cyber crimes is done in accordance with the provisions of the Code of Criminal Procedure and the IT Act. The Reserve Bank of India Act was also amended by the IT Act.

**Q.6 Attempt any TWO question of the following :** [10]

**Q.6(a) What are the objectives of IT Act, 2000?** [5]

**Ans.:** The following are its main objectives and scope:

- (1) It is objective of I.T. Act 2000 to give legal recognition to any transaction which is done by electronic way or use of internet.
- (2) To give legal recognition to digital signature for accepting any agreement via computer.
- (3) To provide facility of filling document online relating to school admission or registration is employment exchange.
- (4) According to I.T. Act 2000, any company can store their data in electronic storage.
- (5) To stop computer crime and protect privacy of internet users.
- (6) To give legal recognition for keeping books of accounts by bankers and other companies in electronic form.
- (7) To make more power to IPO, RBI and Indian Evidence act for restricting electronic crime.

**Q.6(b) What does a Certifying Authority certify, while issuing the Digital Signature Certificate?** [5]

**Ans.:** Certifying authority to issue Digital Signature Certificate:

- (i) Any person may make an application to the Certifying Authority for the issue of a Digital Signature Certificate in such form as may be prescribed by the Central Government.
- (ii) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applications;
- (iii) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.
- (iv) On receipt of an application under sub-section (1), the Certifying Authority may, after consideration of the Certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Digital Signature Certificate or for reasons to be recorded in writing, reject the application :

- (v) Provided that no Digital Certificate shall be granted unless the Certifying Authority is satisfied that-
- (a) the application holds the private key corresponding to the public key to be listed in the Digital Signature Certificate;
  - (b) the applicant holds a private key, which is capable of creating a digital signature;
  - (c) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the applicant: Provided further that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

**Q.6(c) Explain the chapter 3 of IT Act, 2000, "Electronic Governance".**

**[5]**

- Ans.:** Sec 4: Legal recognition of electronic records  
 Sec 5: Legal recognition of electronic signature.  
 Sec 6: Use of electronic records & electronics signature in government and its agencies.  
 Sec 6A: Delivery of services by service provider  
 Sec 7: Retention of electronic records  
 Sec 7A: Audit of documents etc in electronic form  
 Sec 8: Publication of rules, regulation etc., in electronic Gazette.  
 Sec 9: Sections 6, 7 & 8 not to confer right to insist document should be accepted is electronic form.  
 Sec 10: Power to make rules by Central Government in respect of electronic signature.  
 Sec 10A: Validity of contracts formed through electronic means.

**Q.6(d) What is 'Cyber Appellate Tribunal? What are its powers?**

**[5]**

- Ans.:** Cyber Appellate Tribunal has been established under the Information Technology Act under the aegis of Controller of Certifying Authorities (C.C.A.). The first and the only Cyber Appellate Tribunal in the country has been established by the Central Government in accordance with the provisions contained under Section 48(1) of the Information Technology Act, 2000.

The first Cyber Appellate Tribunal has been established by the central government under the Information Technology Act, 2000. The motive of Cyber Appellate Tribunal is to stop the cyber crimes and frauds over a period of time. These tribunal discharge their power as the same as Supreme Court under the code of civil procedure, 1908. The duties of Cyber Appellate Tribunal are discharged by one person, who is known as Presiding Officer. He acts and discharges his duties as Supreme Court judge.

#### **Procedure and powers of the Cyber Appellate Tribunal**

- (1) The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.
- (2) The Cyber Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:
  - a. summoning and enforcing the attendance of any person and examining him on oath;
  - b. requiring the discovery and production of documents or other electronic records;
  - c. receiving evidence on affidavits;
  - d. issuing commissions for the examination of witnesses or documents;

- e. reviewing its decisions;
- f. dismissing an application for default or deciding it *ex parte*;
- g. any other matter which may be prescribed.

Every proceeding before the Cyber Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Cyber Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

**Q.7 Attempt any THREE question of the following :** [15]

**Q.7(a) What is the objective behind Patent Law? Explain.** [5]

**Ans.:** The patent law recognize the exclusive right of a patentee to gain commercial advantage out of his invention. This is to encourage the inventors to invest their creative faculties, knowing that then inventions would be protected by law & no one else would be able to copy their inventions for certain period of time.

It has been held by the supreme court that, "the object of patent law is to encourage scientific research, new tech, and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial utility."

The purpose of an inventions is to protect & encourage fair competition in the field of technology so as to transform invention or creation into real productive forces as quickly as possible.

**Q.7(b) List out seven US safe labour principles.** [5]

**Ans.:** US-EU Safe Harbor is a streamlined process for US companies to comply with the EU Directive 95/46/EC on the protection of personal data.

Intended for organizations within the EU or US that store customer data, the **Safe Harbor Principles** are designed to prevent accidental information disclosure or loss. US companies can opt into the program as long as they adhere to the 7 principles outlined in the Directive.

The process was developed by the US Department of Commerce in consultation with the EU.

#### **Principles**

These principles must provide:

- **Notice** - Individuals must be informed that their data is being collected and about how it will be used.
- **Choice** - Individuals must have the ability to opt out of the collection and forward transfer of the data to third parties.
- **Onward Transfer** - Transfers of data to third parties may only occur to other organizations that follow adequate data protection principles.
- **Security** - Reasonable efforts must be made to prevent loss of collected information.
- **Data Integrity** - Data must be relevant and reliable for the purpose it was collected for.
- **Access** - Individuals must be able to access information held about them, and correct or delete it if it is inaccurate.
- **Enforcement** - There must be effective means of enforcing these rules.

**Q.7(c) Explain "Copyright is protection in form & not in idea".** [5]

**Ans.:** • Copyright is a bundle of exclusive rights granted by law to the creators of literary, dramatic, musical and artistic works and the producers of cinematography films, sound recordings and computer software to do or authorized the doing of certain acts with the regard to them creations. It is kind of protection against unauthorized use of a work.

- Copyright is usually defined as the legal rights granted to an author composer, playwright, publisher or distributor to exclusive publication, production, distribution or a literary, musical, dramatic or artistic or original commercial design work.
- A person may have a brilliant idea for a story or for a picture but if he communicates that idea to an artistic or play writer then the production which is the result of the communication of the idea is the copyright of a person who has clothed the idea in a form.
- Since there is no copyright in idea or information, it is no infringement of copyright to adopt the ideas of another or to publish information derived from another provided there is no copying of the language in which those ideas have or that information has been embodied.

**Q.7(d) What are general obligations for enforcement of Intellectual property rights? [5]**

- Ans.:** (1) Member countries shall ensure that enforcement procedures are available under their national law so as to permit effective action against any act of infringement of IPR covered under TRIPS agreement.
- (2) Procedures concerning the enforcement of IPR shall be fair and equitable.
- (3) Decisions on the merits of a case shall preferably be in writing and reasoned and shall be based only on evidence.
- (4) Parties to the proceeding shall have an opportunity for review by a judicial authority of final decision or if at least the legal aspects of initial judicial decision on the merits of a case.

**Q.7(e) What are cybercrimes? Explain few cybercrimes. [5]**

**Ans.:** Cybercrime is a generic term that refers to all criminal activities done using the medium of computers, the Internet, cyber space and the worldwide web.

#### **Examples of Cybercrimes**

- **Harassment via E-Mails** : It is very common type of harassment through sending letters, attachments of files & folders i.e. via e-mails. At present harassment is common as usage of social sites i.e. Facebook, Twitter etc. increasing day by day.
- **Cyber-Stalking** : It means expressed or implied a physical threat that creates fear through the use of computer technology such as internet, e-mail, phones, text messages, webcam, websites or videos.
- **Hacking** : It means unauthorized control/access over computer system and act of hacking completely destroys the whole data as well as computer programmes. Hackers usually hack telecommunication and mobile network.
- **Cracking** : It is amongst the gravest cyber crimes known till date. It is a dreadful feeling to know that a stranger has broken into your computer systems without your knowledge and consent and has tampered with precious confidential data and information.
- **E-Mail Spoofing** : A spoofed e-mail may be said to be one, which misrepresents its origin. It shows its origin to be different from which actually it originates.
- **Cyber Squatting** : It means where two persons claim for the same Domain Name either by claiming that they had registered the name first or by right of using it before the other or using something similar to that previously. For example two similar names i.e. www.yahoo.com and www.yaahoo.com.

**Q.7(f) What does chapter 4 of IT Act, 2000, "Attribution, Acknowledgement and Dispatch of Electronic records" cover? [5]**

**Ans.:** Attribution of electronic records is dealt with under Sec. 11 of the IT Act, 2000.

- (a) An electronic record will be attributed to the originator – if sent by the originator himself; by a person who had the authority to act on behalf of the originator in respect of that electronic records; or by an information system programmed by or on behalf of the originator to operate automatically
- (b) According to Section 12, the addressee may acknowledge the receipt of the electronic record either in a particular manner or form as desired by the originator and in the absence of such

requirement, by communication of the acknowledgement to the addresses or by any conduct that would sufficiently constitute acknowledgement.

- (c) Normally if the originator has stated that the electronic record will be binding only on receipt of the acknowledgement, than unless such acknowledgement is received, the record is not binding. However, if the acknowledgement is not received within the stipulated time period or in the absence of the time period, within a reasonable time, the originator may notify the addressee to send the acknowledgement, failing which the electronic record will be treated as never been sent.
- (d) Time and place of dispatch and receipt of electronic record is covered under Sec. 13 of the IT Act, 2000. The dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic record will be determined
- (e) If the originator or the addressee has more than one place of business, the principal place of business will be the place of business.. If the originator or the addressee does not have a place of business, his usual place of residence will be deemed to be the place of business. "Usual Place of Residence", in relation of a body corporate, means the place where it is registered.

