

**Q.1 Attempt any THREE question of the following :**

[15]

**Q.1(a) Distinguish between Cognizable and Non-Cognizable Offence.**

[5]

**Ans. :**

Basis for Comparison	Cognizable Offence	Non-Cognizable Offence
Meaning	Cognizable offence is one in which the police is authorized to take cognizance of the crime at its own.	Non-cognizable offences refers to the offences in which the police has no authority to apprehend a person for crime on its own.
Arrest	Without warrant	Requires warrant
Approval of Court	Not required to begin investigation.	Prior approval of court is required to begin investigation.
Offence	Heinous	Comparatively less heinous
Includes	Murder, rape, theft, kidnapping, etc.	Forgery, cheating, assault, defamation etc.
Petition	FIR and complaint	Complaint only.

**Q.1(b) Why there is necessity of arrest without warrant from any place, public or otherwise**

[5]

- Ans. :**
- There are so many anomalies in Section 80, so there is a debate that whether the power of arrest without warrant is justified or is it harsh in nature.
  - The power of arrest without warrant only from a public place should be scrapped; there should not be any such type of limitations. So there is a need to remove the anomalies in Section 80 in the present form.
  - The power of arrest without warrant from any place is justified. Otherwise, fabric criminality there should be penalty under the IT Act.
  - If the offence is non-cognizable, then it put a big burden on prosecution upon the complainant.
  - As we are aware that cybercrimes have no border distance and cyber criminals are invisible then it is unreasonable the victim to undergo a complaint procedure and to wait for years or for a long time to appear and face trial.
  - By looking the nature of cybercriminal it is a very difficult task for the complainant, it discourage them from taking action against cybercrime and as a result many cybercrime remains unpublished.
  - The investigation of the cybercrime is done by the police officer so it is important to vest power of arrest without warrant in the specified police officer and government officer as in Section 80 regardless of the accused place.
  - In non-cognizable cases court ask the police officer to do the investigation but the investigation of many cybercrime is tiresome. The power of court direct and investigation is not equal to the investigation initiated by the police in cognizable cases. The power of police is more powerful appreciate that the procedure of moving the cold and get an or<kr for investigation.
  - Some amendments in Section 80 to remove the anomaly 'public place 'and make it effective against offences under the IT Act, 2000.
    - (i) Delete the word 'public' from subsection (1).
    - (ii) Remove the explanation.
    - (iii) Instead of using the words like 'Any offence under this act' use the word 'Any cognizable offence under this act'.

**Q.1(c) Section 80 of the IT Act, 2000. Is it a weapon or a Farce? Justify.**

[5]

**Ans. :** Section 80 in The Information Technology Act, 2000 states that "80 Power of police officer and other officers to enter, search, etc."

- Not withstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer, not below the rank of a Deputy Superintendent of Police, or any other officer of

the Central Government or a State Government authorized by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing Or of being about to commit any offence under this Act.

**Explanation:** For the purposes of this sub-section, the expression "public place" includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public.

- Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer-in-charge of a police station.
- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.
- Section 80 is applied to only those offences which are defined under the IT Act, 2000. It is not applied to the cyber crimes which are under other laws, for example, defamation via Email is no offence under the IT Act, 2000. Section 80 is not applied to such cases. The following are the ingredients of Subsection (1) of Section 80.
- The power to enter any public place and search and arrest without warrant any person found therein, is vested only in a Police Officer not below the rank of Deputy Superintendent of Police (DSP) or any other officer of the Central Government or a State Government who is authorized by a Central Government.
- The power can be exercised only in a "public place" which as per the Explanation to Section 80 includes any public conveyance any hotel, any shop or any other place intended for use by or accessible to the public;
- This power to enter any public place and search and arrest without warrant any person from there it can be exercised only on the ground that such person is reasonably suspected of having committed or committed or of being about to commit any offence under the IT Act, 2000.
- Example 1 A is alleged to have hacked the defense systems installed in the computer network in the Defense Ministry at Delhi, under section 66 of the IT Act from a cyber cafe in Mumbai, he can be arrested without warrant under section 80 only if he is found in the cyber cafe itself or in some other public place. But if he (A) goes home and stays there, after committing the cyber-crime in the cyber cafe, then he cannot be arrested without warrant.

It give rise to few questions:

- Would the accused wait there in the cyber cafe or any other public place for being arrested, till the Defense Ministry comes to know of the hacking, then complaints to the police who registers the case, investigates the offence, tracks down the hacking to the cyber cafe and sends a team to Mumbai for arrest under section 80?
- Is the investigation so fast that accused would be arrested within short time span and would be found in the cyber cafe itself?
- It is clear in Section 80 of IT Act, 2000 that the accused can be arrested without warrant only from the public place not from any other place.
- Accused can be arrested for committing or having, committed or about to commit any offence under IT Act 2000.

**Q.1(d) Write a short note on Hacking with Computer System.**

**[5]**

- Ans.:**
- Hacking refers to "breaking into computer systems".
  - It also says "destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means.
  - Hackers can also be classified as Code Hackers, Phreakers, Cyber-punks and Crackers.

- Cods Hackers have knowledge of the intricacies of computer systems and their operations. Phreakers have deep knowledge of the Internet and telecommunication systems. Cyber-Punks specialize in cryptography. Crackers are breakers into computer security systems.
- Out of all cyber-crimes, criminal hacking is amongst the biggest threats to the Internet and e-commerce. Cyber break-ins caused losses of US \$42 million in 1999.
- If hacking remains unchecked, it would seriously affect the futur of c-commerce. Hacking also makes e-commerce costlier because o huge investments required to install systems to guard against hackers.
- Hacking has already become a major problem in India. There ave been major instances of Indian websites allegedly being hacked b> Pakistani hackers. Some time hack, hackers inserted a link to a pornographic website from a website of SEBI (Stock Exchange Board of India).
- In terms of motivating factors and causes for hacking, there are four types of hacking which arc most prevalent today:
  - For fun as a hobby, mostly by teenagers obsessed with the Internet.
  - To damage the business of competitors.
  - With the intention of committing a further offence such t 14 fraud and misappropriation.
  - By Internet security companies to test their clients systems and win their confidence.
- The IT Act, 2000 defines and punishes "hacking' as follows:
 

"66 Hacking with Computer system

  - (1) Whoever with the intent of cause or knowing that is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.
  - (2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.
- Like all criminal offences, hacking also requires knowledge and the act of commission to be covered under section 66 (1) of the IT Act, 2000.
- Damages for hacking can also be claimed by the victims from the hacker, under the general civil law.

**Q.1(e) What are the penalties and compensation for damage to computer, computer system or computer network? [5]**

**Ans.:** This section states that if a person commits any of the following prohibited acts, he shall be liable to pay damages by way of compensation not exceeding 1 crore to the affected party :

- 1) Access without authority** . If he accesses or secures access to such computer, computer system or computer network
- 2) Downloading, copying or extracting any data without authority**  
If he downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network
- 3) Introduction of computer contaminant/virus** : If he introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network including information or data held or stored in any removable storage medium
- 4) Damage to computer database** : If he damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network.
- 5) Disruption of computer, computer system or computer network**  
If he disrupts or causes disruption to the stated computer resources.
- 6) Denial of acces:** If he denies or causes to denial of access to any person authorized to access any computer, computer system or computer network by any means.
- 7) Providing assistance to facilitate access:** If the provides any assistance to any person to facilitate access to a computer, computer system or compute network in contravention of the provision of this Act, rules or regulations made thereunder.

**8) Charging the services to the account of another:**

If he charges the services availed of by a person to the account of another person by tempering with or manipulating any computer CS or CNW.

**9) Destruction deletion or alteration of Information:** If the destroys, deletes or alters any information residing in computer resource or diminishes its value or utility or affects it injuriously by any means.

**10) Stealing, concealing or destroying computer source code:**

If is steals, conceals, destroys or alters or causes any person to conceal, destroy, or alter any computer source code used for computer resource with an intention to cause damage.

**Q.1(f) Write a short note on Cyber Fraud and Cyber Cheating.**

**[5]**

**Ans.: Cyber Fraud**

- A fraud is deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right.
- Fraud on the Internet constitutes about one-third of all cyber crimes. Infarct, most cyber frauds are not disclosed by the victims because of the fear of loss of public trust, confidence, image and business.
- Some of the major areas of fraud and cleating on the Internet include - misuse of credit cards by obtaining passwords by hacking, bogus investment/get rich schemes, deceptive investment, newsletters containing false information about companies, non-delivery of goods purchased from online auctions and web-sites, misappropriation and transfer of funds, etc
- As per Section 25 of Indian Penal Code, 1860 a person is said to do things fraudulently if he does that thing with the intent to defraud but not otherwise. The word "defraud" involves deceit and injury a person deceived.
- As per section 17 of the Indian Contract Act, 1872 :  
Fraud' means and includes any of the following acts committed a party to a contract, or with his connivance, or by his agent, with, intent to deceive another party thereto or his agent, or to induce him to enter into the contract :
  - (i) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
  - (ii) the active concealment of a fact by one having knowledge or belief of the fact;
  - (iii) a promise made without any intention of performing it;
  - (iv) any other act fitted to deceive;
  - (v) any such act or omission as the law specially declares to be fraudulent.
- All act which amount to cheating would be fraud but the vice-versa may not be true in all cases.

**Cyber Cheating**

- The offence of 'cheating' which is particularly called '420' in India is closest to fraud
- 'Cheating' him been defined as follow in the Indian Penal Code under section 415

**Cheating**

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'

Explanation A dishonest concealment of facts is a deception within the meaning of this section.

The offence of cheating has been explained with the help of following illustration to sec 415 of IPC, 1860

- A by exhibition to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats,

- A by tendering a cheque of a bank with which he keeps no money, expects that the cheque will be dishonoured, and thus intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats,
- A, intentionally deceives Z into believing that A means to repay money that Z may lend to him and thereby dishonestly induces Z to lend him money, while not intending to repay it. A cheats.
- A. intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards break

**Q.2 Attempt any THREE question of the following :**

**[15]**

**Q.2(a) Explain click-wrap and shrink-wrap contracts.**

**[5]**

**Ans.:** There are two common types of agreements used in Electronic Commerce.

They are shrink-wrap and click-wrap.

- A click-wrap agreement is mostly found as part of the installation processor software packages. It is also called a 'click through' agreement or click-wrap licence. The name "click wrap" comes from the use of "shrink wrap contracts" in boxed software purchases.
- click-wrap agreements can be of the following types :
  - (i) 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.
  - (ii) 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. The terms of service or license may not always appear on the same web page or window, but they must always be accessible before acceptance.
    - The mechanism of a click-wrap agreement is legally permissible as a mode of contract formation; it should not be taken as if the agreement itself is valid. For instance, an agreement opposed to public policy is void.
    - Click-wrap agreement must be properly structured so as to enhance the credibility and maximize the likelihood of the same being upheld. Care should be taken in the following matters:
      - The user should be expressly notified of the terms and conditions contained in the click-wrap agreement.
      - The click-wrap agreement should be stated in a manner such that it can be viewed before the option of acceptance or rejection is exercised. The click options of "I agree" or "I accept", etc. should be placed at the end of the terms of agreement.
      - A user may by mistake click the "I accept" / "I agree" icon and to avoid such mistaken acceptance, a confirmatory acceptance mechanism should be prescribed. This implies a two -step process, i.e. first the consumer would click "I accept" and then the program should provide another icon such as "I confirm" as a confirmation of the acceptance. To avoid doubts, it should be specifically stated that for contract formation, the confirmation/second click would be considered.
      - A user should be allowed to exit the process easily at any point of time.
- shrink-wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product. The term describes the shrink wrap plastic wrapping used to coat software boxes, though these contracts are not limited to the software industry.
- It has been a long-standing practice to enclose warranty cards and contract terms inside boxes containing products other than software. These terms are generally

available for review only after the product has been bought, and opened usually in a location distant from the point of sale.

Various debates/controversies/ disputes in the US pertaining to legality of shrink wrap software license agreement are as follows:

- The main argument against the validity of a shrink-wrap agreement is that the consumer does not get an opportunity to know and consent to the terms and conditions of the software license before its purchase and until he tears upon the shrink-wrap.
- The terms found in the license agreements are not really consented to the hence are unenforceable under the law of contract
- It is argued in favour of a shrink-wrap agreement that the law has never required manufactures of products, distributors, retailers and buyers to negotiate contracts at a round table and reach an explicit agreement on individual basis and terms.
- It is argued that usually the manufacturer sets fixed terms that go along with the product.
- Unless these terms are void as being opposed by public policy, they are enforced if they are assented to by any expression.
- It is also argued that Contracts of sale on the basis of "pay now, terms later" have been common and, till the IT revolution, did not pose a crisis for the law of contracts.
- Legislative measures have been initiated inter-alia to protect shrink-wrap licenses in the US through amendments in the Uniform Commercial Code (UCC) by introducing Article 2B therein.

**Q.2(b) State the few terms and conditions of contract declared by the Indian Contract Act, 1872. [5]**

**Ans.:** **Governing law and jurisdiction clauses**

- Since e-commerce transactions easily cross geographical borders, clauses pertaining to governing law and jurisdiction assume significance and should therefore be incorporated in the online contracts.
- The only limitation of this rule is that the intention of the parties must be expressed bona fide and it should not be opposed to public policy.
- Section 28 of the Indian Contract Act, 1872 provides that agreements in restraint of legal proceedings are void to that extent. This is subject to the exception of a contract to refer the dispute for arbitration. Also, where several courts have jurisdiction over a subject and the parties have agreed to submit their disputes to only one of those jurisdictions and not to the others, such a clause is legally valid. But where a place of the jurisdiction agreed upon does not otherwise have jurisdiction under the law, such a clause would be void.
- For example, if places A, B and C have jurisdiction in a dispute, but as per the agreement between parties, the disputes can be adjudicated only at place D, such a clause would be void. But if the parties agree that only place A shall have jurisdiction, such a clause would be valid. An ouster clause must be clear, unambiguous and specific so as to bind the parties to a particular jurisdiction.

**Limitation of liabilities**

- Since the Internet is a global network which facilities consumers from anywhere and everywhere to purchase goods or hire services, web-sites having their place of business or services in India should have clauses for limited liabilities so as to avoid potentially huge and harsh liabilities that may otherwise be awarded against them in other countries where the goods are sold or seizures rendered.
- There are places for sample, certain States in the US, where limitation of liability is not permissible and hence in such places a limited liability clause would not be applicable.

- Web-sites and other IT businesses should be aware of these aspects. Also, it is advised that a limited liability clause should be reasonable.  
For example, refund of the price paid by the consumer or a warranty of repairs, could be provided as a cap on liability.
- If the vendor completely excludes his liability, i.e. does not even provide for a refund, the clause may in many cases appear unconscionable and opposed to public policy. In high valued items such as automobiles, a refund of the price need not be provided and instead of a limited warranty of repairs should be adequate.

**Warranties**

- In a transaction of sale of goods, the Sale of Goods Act, 1930 provides for certain implied conditions and warranties.
- (Section 12(2) of Sale of Goods Act, 1930)  
A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
- (Section 12(3) of Sale of Goods Act, 1930)  
A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
- (Section 12(4) of Sale of Goods Act, 1930)  
Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract.
- (Section 12(4) of Sale of Goods Act, 1930)  
A stipulation may be a condition, though called a warranty in the contract.
- Sections 14 to 17 of the Sale of Goods Act, 1930 provides various implied conditions and warranties in any transaction of sale of goods.
- Section 14 says that in a contract of sale, unless the circumstances of the contract are such as to show a different intention.

**Q.2(c) The time and place of dispatch and receipt of information through e-records have a [5] significant impact upon legal matters. Justify**

**Ans. :** Example

1.10.2000	A posts a letter to B proposing to sell a house to him (B) at a certain price.
10.10.2000	The aforesaid proposal letter is received by B.
14.10.2000	B posts the letter of acceptance to A.
23.10.2000	A receives the letter of acceptance from B.

As per the principles laid down in section 4, the communication of the proposal is complete on 10.10.2000, i.e. when the letter is received by B. Regarding acceptance, as against A, it is complete when posts the letter to him (A), i.e. on 14.10.2000. As against B, acceptance is complete when the letter is received by A, i.e. on 23.10.2000. If A wants to revoke his proposal, he can do so at any time before or at the moment when B posts his letter of acceptance, but not afterwards. B may revoke his acceptance at any time before or at the moment when his (B's) letter of acceptance reaches A, but not afterwards.

The Contract Act does not expressly deal with the place where a contract is formed.

**CONTRACT FORMATION ON THE INTERNET**

- Contract Formation creates a relationship of rights and obligations between the parties. Sections 12 and 13 of the IT Act 2000 have a significant effect on contract formation over the Internet.
- For the cyber world, Section 11 of the IT Act, 2000 provides that an e- record would be attributed to the originator, if it was sent by :
  - The originator himself

- A person who had the authority to act on behalf of the originator in respect of that electronic record.
- An information system programmed by or on behalf of the originator to operate automatically.
- The time and place of dispatch and receipt of information through e- records have a significant impact upon legal matters especially in the following areas:

**Place :**

- Creation and termination of legal relations, rights and duties/ such as contracts, etc.
- Territorial jurisdiction of courts
- Applicability of laws of a land
- Evidentiary consequences

**Time :**

- Determination of the period of limitation for initiating litigation.
- Timely compliance of legal obligations and procedures.
- Evidentiary consequences.
- "Electronic record" has been defined in the IT Act as data, record or data generated, image or sound stored, received or sent in an electronic form or micro-film or computer generated micro-fiche.
- The Internet presents certain characteristic problems which are as follows:
  - (i) Ascertaining the time and place of dispatch and receipt of electronic records.
  - (ii) Disregard for geographical borders.

The Internet enables cross-border communication and transactions with luxurious ease. Moreover, it is common for Internet users in distant places to interact and transact without knowing the location of the Information Systems / Computer Resources through which communication takes place.
- The power to communicate and transact from anywhere and everywhere presents its own share of legal problems.
- Innumerable situations would arise, especially with the advancement of mobile technology and laptop computers. So, to take care of the above problems, Section 13 of the IT Act, 2000 has been legislated which disregards where the parties are physically present while transacting and also where the computer resource is located.
- Section 13 lays down a more objective criterion, i.e. the place of business of the parties as the place of dispatch and receipt of e- records, as the case may be.

**Q.2(d) What is the law in case of immovable property as per the code of Civil Procedure? [5]**

**Ans.:** As per the Code of Civil Procedure, 1908, a suit regarding immovable property (i.e. land, building, etc.) is required to be instituted in the court within whose jurisdiction the property is situated. As per the proviso to section 16 of the Codes of Civil Procedure, 1908, a suit for relief or compensation for wrong to immovable property, held by or on behalf of the defendant, where the relief sought can be obtained entirely through his personal obedience, can be filed in the court having jurisdiction over the place where the property is situated or where the defendant actually and voluntarily resides, or carries on business, or personally works for gain. Where the immovable property is situated within the jurisdiction of different courts, the suit may be instituted in either of the said courts. Where it is uncertain as to within whose jurisdiction out of two or more courts any immovable property is situated, any of the said courts, if satisfied that there is ground for uncertainty, may adjudicate the same. Therefore, disputes between the parties pertaining to immovable property whether arising through the Internet or otherwise, do not present any difficulty as to the jurisdiction of the civil court to entertain and adjudicate the suit which as aforesaid depends upon the location of the immovable property, subject to only exception stated above.

**Q.2(e) What is misuse of a law of jurisdiction? Explain with the help of a case study. [5]**

**Ans.:** The respondent company had its registered office in Calcutta (West Bengal) and owned certain lands on the outskirts of Jaipur City (Rajasthan). The Special Officer, Town Planning, Jaipur issued a notice under the Rajasthan Urban Improvement Act, 1959 for acquisition of that land for the public purpose of a development scheme. The notice was duly served on the company at its registered office at Calcutta. In response, the representative of the company appeared before the Special Officer at Jaipur in several hearings. The Special Officer on being satisfied that the land was not needed by the respondents' bonafide rejected their prayer for its release and recommended that the entire land be acquired by the State Government. An application seeking exemption of the said land was also rejected. The State Government then issued the impugned notification and the land thus vested in the State Government free from all encumbrances.

- A writ petition was filed by the respondents in the Calcutta High Court challenging the said notification, which was entertained by the High Court.
- The Court held that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court. The mere service of notice on the respondents at their registered office within the territorial limits of the State of West Bengal, could not give rise to a cause of action culminating in the acquisition of the land arose within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench.
- The Supreme Court has not spared litigants for maliciously and illegally moving courts which do not have jurisdiction so as to harass the defendants and has even passed strictures against one of the High Courts of the country.
- In all fairness to the law, misuse of the law or its erroneous application is no ground to reject the law itself.
- To solve such problems, the courts all over the world will have to be very cautious. Before issuing a notice to the defendant to appear, the courts concerned should thoroughly examine the issue of jurisdiction so that the defendant may not be harassed.
- The courts can also impose heavy and deterrent costs and penalties upon the plaintiff if it is found later that the suit was filed in a wrong jurisdiction, either carelessly or deliberately so as to harass the defendant.

**Q.2(f) What are the Jurisdictional Disputes with respect to the Internet in the United States of America? [5]**

**Ans.:** **Jurisdictional Disputes W.R.T the internet in the united states of America**

- The IT and the legal communities are redundant in the borderless world of the internet, and their application to the disputes pertaining to the virtual world has led to harsh and inconsistent results.
- The plaintiff in American Network, Inc. v. Access America/ Connect Atlanta, Inc., filed a suit for trademark infringement in New York against the Georgia based defendant on the allegation that the defendant by using the trademark 'America.net' had infringed the plaintiff's mark 'American.net'. The court in New York found that though the mere existence of a web page alone would not give jurisdiction, the additional contacts between the defendant and six New York subscribers showed that the defendant had purposefully availed itself of New York jurisdiction. These contacts were an evidence of the defendant's efforts to market its services in New York. The court held that since the defendant could reasonably expect that his offending mark on the Internet would result in harm being suffered in New York and the plaintiff's business was located in New York, therefore the court in New York had Jurisdiction. The court also relied upon New York's long-arm legislation to uphold and assume jurisdiction in New York.
- Legal problems have always existed and therefore are not enough to discard the present law of jurisdiction.
- Law is not static but is dynamic and will mould itself to suit the needs of the situation, when it is confronted with peculiar problems of jurisdiction concerning the cyber world.

- Web server is only a technological instrument for web-sites to operate on the Internet. Therefore, the location of a web server by itself has nothing to do with the nature of the transaction between the parties which may be either business or personal in nature.
- It is reiterated that global actions of the Internet would invite global implications in terms of efforts and costs.
- Jurisdiction follows the acts. If acts are global, jurisdiction also accordingly becomes global.
- Therefore, the law of jurisdiction at present is fair and equitable and a few doubtful decisions cannot dismiss the law of jurisdiction itself.
- The IT and the legal communities are redundant in the borderless world of the Internet, and their application to the disputes pertaining to the virtual world has led to harsh and inconsistent results.

**Q.3 Attempt any THREE question of the following :** [15]

**Q.3(a) Explain the concept and domain-name and cyber-squatting.** [5]

**Ans. : Domain Name**

- Every computer on the Internet is assigned a unique address called an Internet Protocol Address (IP Address). A typical IP address looks like this : 192.168.10.20
- The above IP address belongs to a web server on which the google.com website is hosted. If you use an Internet browser and type in http://192.168.10.20 in the address bar, you will reach the google.com website. However, it is very inconvenient to remember such numbers.
- It is much easier for humans to remember names (google.com is a domain name). This is why the domain name system (DNS) was developed. It is the DNS that enables you to type in http://www.google.com instead of http://192.168.10.20.

#### **Cyber-Squatting**

- One of the crimes related to web in the recent years is called 'cyber-squatting'.
- Cyber Squatting is registering, selling or using a domain name with the intent of profiting from the goodwill of someone else's well known trademark.
- Cyber Squatting is defined as a malpractice where individuals use a domain name reflecting the name of a prior existing company, intending to attain profit from the goodwill of a Trademark already belonging to someone else.
- A cyber squatter identifies popular trade names, brand names, trademarks or even names of celebrities, and registers one or more of them in his name with the malicious intent of extorting money from those who are legitimately interested or associated with such domain names.
- Other motives for cybersquatting include appropriation of goodwill, attraction of web traffic, selling the domain names for a profit in the market, etc.
- Another cause of frequent domain name disputes is the first-come-first serve principle adopted for registration of domain names. At the time when a domain name is registered, no inquiry is made as to whether it is in conflict with others' rights under the Intellectual Property law.

There are numerous ways of cyber-squatting. It can be done by obtaining a Second- Level Domain (SLD) name registration of a well known company or a brand within a Top Level Domain (TLD).

- **Example:** A cyber squatter has registered 'radiff.com' (misspelling/ slight variation of 'rediff.com'). Registration of slight variations/misspelling of others' marks or company names have become frequent.
- Another method of cyber-squatting is to register a Second-Level Domain (SLD) of a well-known company or brand with the TLD being different.
- The Internet Corporation for Assigned Names and Numbers (ICANN) administers the policy for domain name system.
- Realizing the problem of cyber-squatting, on October 24, 1999, ICANN approved its Uniform Domain Name Dispute Resolution Policy (UDRP) and the accompanying Rules of Procedure, for the purposes of resolving domain name disputes.
- The dispute resolution service providers have their respective panels for dispute resolution, called Administrative Panel or Arbitration Panel. An Administrative Panel is composed of one or three

independent and impartial persons appointed by the dispute resolution service provider that is selected to administer the dispute in accordance with the UDRP Policy and Rules of ICANN.

- The procedure for appointment of the Administrative Panel is fair and equitable.
- The procedure of appointment of the Panel by WIPO :
  - If both the complainant and respondent indicate that they would like the dispute to be decided by a single Panelist, the Panelist will be appointed by the WIPO Centre from its list of Domain Name Panelists;
  - If the complainant designates three Panelists and the respondent designates one Panelist, or vice versa, then the WIPO Centre will appoint a three-person Administrative Panel. In doing so, the WIPO Centre will try to appoint one of the candidates nominated by the complainant and one of the candidates nominated by the respondent. If it is unable to do so, the Centre will make an appropriate appointment from its list of Domain Name Panelists.

**Q.3(b) What are the salient features of domain name dispute resolution under the Uniform [5] Domain Name Dispute Resolution Policy (UDRP)?**

**Ans. :** The following are the salient features of the mechanism of domain name dispute resolution under the Uniform Domain Name Dispute Resolution Policy:

- Administrative proceedings are very expeditious. These proceedings are usually concluded within two months;
- The UDRP, Rules of Procedure and the Supplemental Rules are very simple to understand and apply. There is no standard form of complaint or reply / response to be filed before the approved domain name dispute resolution provider. Paragraph 3 of the ICANN Rules of Procedure prescribes the information to be included in the complaint. Under paragraph 3(c) of the ICANN rules, the complaint may relate to more than one domain name, so long as the person or entity that is the registrant of the domain names specified in the complaint is the same. Unless the issues are complex, lawyers may not be necessary to represent the parties;
- Proceedings are conducted online. Rule 13 of the Rules for UDRP stipulates that there shall be no in-person hearings, unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint;
- The fees for dispute resolution under the UDRP are very nominal;
- The dispute resolution mechanism does not seek to bypass legal remedies, rather gives due respect to the decisions of the competent courts;
- The UDRP mechanism is judicious, fair, independent, equitable and competent to decide domain name disputes.

**Q.3(c) Define Copyright. Explain different rights conferred by copyright. [5]**

**Ans. :** Section 14 in the Copyright Act, 1957

Meaning of copyright.—For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely :—

- (a) In the case of a literary, dramatic or musical work, not being a computer programme, :
  - (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
  - (ii) to issue copies of the work to the public not being copies already in circulation;
  - (iii) to perform the work in public, or communicate it to the public;
  - (iv) to make any cinematograph film or sound recording in respect of the work;
  - (v) to make any translation of the work;
  - (vi) to make any adaptation of the work;
  - (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);
- (b) In the case of a computer programme,—
  - (i) to do any of the acts specified in clause (a);
  - (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme

- (c) In the case of an artistic work,—
- (i) to produce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
  - (ii) to communicate the work to the public;
  - (iii) to issue copies of the work to the public not being copies already in circulation;
  - (iv) to include the work in any cinematograph film;
  - (v) to make any adaptation of the work;
  - (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);
- (d) In the case of a cinematograph film,—
- (i) to make a copy of the film including a photograph of any image forming part thereof;
  - (ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
  - (iii) to communicate the film to the public;
- (e) In the case of a sound recording,—
- (i) to make any other sound recording embodying it;
  - (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;
  - (iii) to communicate the sound recording to the public.
- Copyright subsists in published as well as unpublished works.

**Q.3(d) Write a note on Copyright Infringement.**

**[5]**

**Ans.:** The various acts which amount to copyright infringement under the Copyright Act are stated in section 51 which is as follows :

**51 When copyright infringed.** (Section 51 in the Copyright Act, 1957)

Copyright in a work shall be deemed to be infringed :

- (a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act
- (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or
  - (ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or
- (b) When any person
- (i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
  - (ii) Distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
  - (iii) By way of trade exhibits in public, or
  - (iv) Imports into India, any infringing copies of the work. Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work, for the private and domestic use of the importer.

Explanation: For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

- A copyright is said to be infringed when a person does anything that the owner of the copyright has an exclusive right to do under section 14. or it such person violates the licence, or it he does any of the other acts stipulated in the aforesaid provision.
- The Supreme Court has summarized some of the important principles pertaining to infringement of copyright, which as follows:
  - There can be no copyright in an idea, principle, subject-matter, themes, plots, or historical or legendary facts and violation of the copyright is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

- Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case, the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there, it would amount to violation of the copyright.
- The surest and safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.
- Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.
- Where, however, apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negate the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.
- As a violation of the copyright amounts to an act of piracy, it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law.

The courts while deciding cases of copyright infringement have stated various important factors for deciding whether there is fair use or not

**Q.3(e) Does downloading the content for viewing on the Internet amount to Copyright Infringement? Justify [5]**

- Ans.:**
- When a webpage is downloaded for the purposes of only viewing the same, it does not amount to copyright infringement. Since the intent and purpose of the user is to only view the webpage and since downloading only takes place out of technical necessity, no question of infringement of copyright arises.
  - Downloading out of technical necessity for viewing / accessing a webpage is technically distinguishable from storage on a hard disk or on a floppy.
  - Whenever material is posted on to the Internet, it is done with the intention that such material is read and viewed.
  - Hence, the legislature should clarify in the Copyright Act, 1957 that the downloading which takes place out of technical necessity while viewing a web page on the Internet, would not amount to copyright infringement.

**Hyper - Linking**

- Linking is one of the primary means through which Internet users can quickly and conveniently navigate through the numerous web sites on the Internet.
- Linking is a system which permits the user, who clicks on a specified location on the linking site, to be automatically connected to the linked site.
- In simple words, Hyperlink is a reference to a webpage or document on the Internet.
- Linking can be categorized into surface-linking and deep-linking.
- Surface-linking automatically and directly takes the user from the linking site to the first / home page of the linked site.
- Deep-linking implies that the user is linked directly into the interior pages of the linked site and not the home page which is by passed.
- Illustration : Consider the main page of the Mumbai University website.

**Q.3(f) Write a note on Computer Software Piracy. [5]**

- Ans.:**
- Computer software piracy is a global problem. It is generally misunderstood that software piracy, i.e. the unauthorized copying, installation, redistribution or sale of software programs, is a major problem only for the software industry consisting of manufacturers and authorized sellers.

- Infact, piracy is costly for the society at large.
- Besides badly affecting the revenues of software manufacturers and authorized distribution channels, these are some of the major losses caused by software piracy to the community.
  - Loss of jobs;
  - Higher costs to the software industry and hence higher prices of software for legitimate consumers;
  - Loss of taxes;
  - Dampens the spirit to innovate and invest in the development of new software.
- According to information released by the Business Software Alliance, the worldwide loss due to software piracy was a staggering US \$11.4 billion in 1997, up from 11.2 billion in 1996.
- Steve Ballmer, President of Microsoft Corporation said, "You might think software theft hurts only those of us who create software, but the truth is, the damage goes much further, impacting jobs, wages, taxes and retail sales right in your community".
- Software piracy cannot be effectively checked merely by severe laws and their enforcement.
- Software piracy is the result of a serious contradiction, which makes it very lucrative business the contradiction between the commercial value and profitability of software on one side, and the following features on the other.
  - Software piracy is committed with luxurious ease. Making copies of software is a very simple exercise. Even where direct copying possible, computer programmers and engineers can often reverse, engineer the programs;
  - The illegal / pirated copy is as good as the original;
  - The costs of software piracy are negligible;
  - Software piracy can be easily concealed and hence lies the difficulty for the law enforcement agencies to tackle the menace.

Illegal software in most cases is hidden in the hard disk's of computers, which on demand by a consumer is copied on a floppy or a CD and given to him. Even otherwise, floppies and CDs consume negligible space and thus are easily concealed from the law enforcement agencies.

- The problem of software piracy is mainly facilitated by the aforesaid characteristics and nature of software.
- Software piracy can only be controlled to a certain level and not be eradicated.
- The following are the strategies adopted in India in the last six years which have resulted in the decline of software piracy:
  - Removal of import duty on software;
  - Reduction in prices of software;
  - Awareness and training programs for law enforcement agencies (i.e. the police) concerned with the investigation and prosecution of software piracy cases;
  - Extensive media campaign against software piracy;
  - Strict implementation of the Code of Conduct for member companies of NASSCOM;
  - Knowing use of an infringing copy of a computer program has been made an offence, punishable with imprisonment for a term which shall not be less than 7 days but which may extend to 3 years and with fine of not less than ₹ 50000 but which may extend to rupees two lakh, by the amendment to the Copyright Act, 1994. This and the other offences of knowing copyright infringement are non-bailable and hence scare many pirates and end-users.

**Q.4 Attempt any THREE question of the following : [15]**

**Q.4(a) Is the PE concept relevant and appropriate to cross border e-commerce or should it be rejected? [5]**

- Ans. :**
- There are two conflicting views as to the relevance and applicability of the OECD's Permanent Establishment principle to e-commerce.
  - It is been argued that it was formulated in, and for, the non-digital era where transactions across borders were primarily in tangible goods and when business in another country generally required, as a matter of expediency, permanent physical presence in that country.
  - It is argued that e-commerce defies the underlying premise on which the Permanent Establishment principle was developed. The nature of the Internet permits large scale business

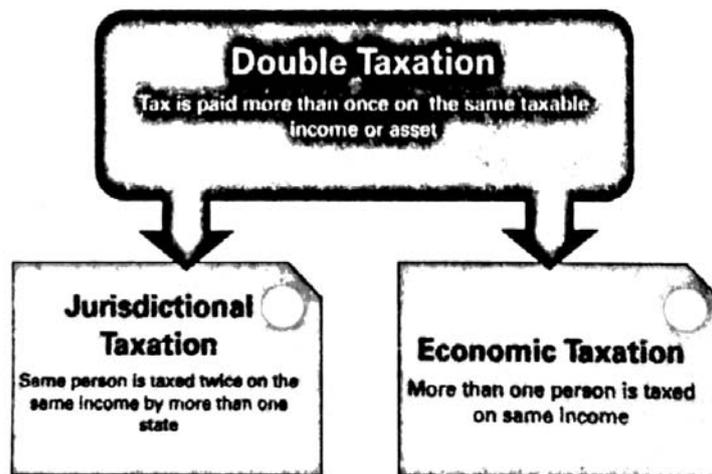
activity in another country without any physical presence. For example, a website based in country X can do its entire business of trading in goods or securities or render services in country Y, without any physical presence in the country Y. Banks, retailers, wholesalers, brokers and even professionals such as doctors, lawyers and architects based in country X, are free to do their regular business or professional activities as the case may be in country Y, without any physical presence there. It is therefore argued that the concept of Permanent Establishment is irrelevant today because business can be done at any place, without any PE or physical presence in such a place.

- It is argued that the PE concept should therefore not be extended to e-commerce; an argument mainly on behalf of the developing countries. It is apprehended by them that the application of the concept of e-commerce would result in revenue losses to them. It is felt that many foreign enterprises based in the developed part of the world would be able to engage in full-scale business activities in the third-world countries without a permanent establishment there, which would result in loss of income tax revenues to them.
- Therefore, it is advocated that the concept of PE should be abandoned for e-commerce and DTAA's should accordingly be reviewed and amended.

**Q.4(b) State the double taxation avoidance agreement.** [5]

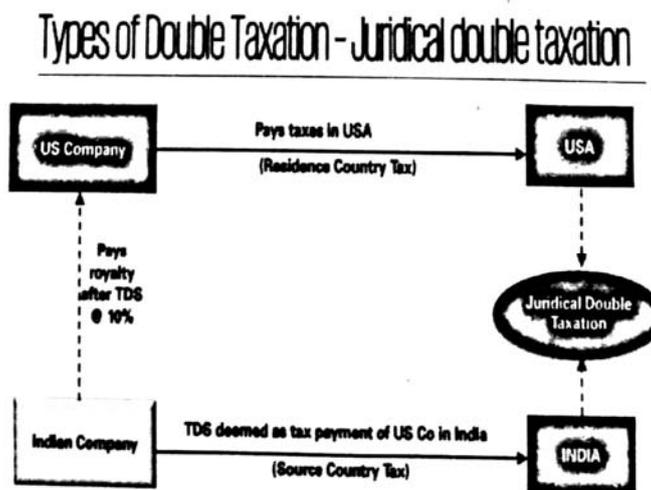
**Ans.:** The Internet encourages global business. It provides the most efficient, easiest and cost-friendly mode of communication between a business and a consumer.

**Double Taxation**



Two types of double Taxation

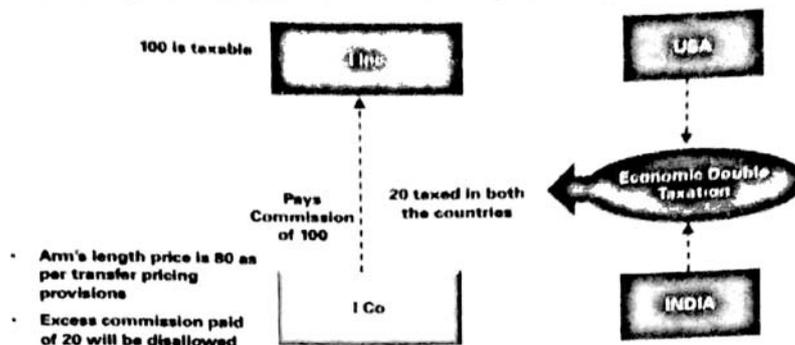
**1. Jurisdictional Double Taxation**



US Co (same company) getting taxed in US and India (different jurisdictions)

## 2. Economic Double Taxation

### Types of Double Taxation - Economic double taxation



I Co and I Inc (different persons) taxed in US and India (different jurisdictions) for same income

### Q.4(c) What is the Impact of Internet on Customs Duties? [5]

- Ans.:
- The nature of the Internet has the effect of defeating the law governing customs duties, because it disregards imports and exports by land, sea or air. The Internet does not recognize land customs barriers and check-posts on borders, sea-ports and airports. The customs authorities all over the globe have been rendered virtually impotent by the Internet.
  - The problem lies in the regulation of import and export of electronic transmissions delivered through the Internet. Several countries realizing the inherent and practical difficulties of the task and accepting the power of the Internet, have declared a moratorium on imposition of customs duties on electronic transmissions.
  - Electronic transmissions are also not chargeable to customs duties in India.
  - The European Union has been making serious efforts to tax sales of digital products.
  - The OECD is also working on ways and guidelines to tax Internet download. Technological means are being developed to tax e- deliverables. It is proposed that taxes should be deducted from the payment to the suppliers. Imposition of customs duties on electronic transmissions is a challenge to the global community which raises the following issues of significance:
    - Administration of the regime of customs duties on electronic transmissions;
    - Impact imposing such customs duties, upon the Internet, and
    - Classification of goods and services from electronic transmissions/ deliverables.
  - The reason, due to which several countries have decided not to impose customs duties on cross-border e-transmissions, is the difficulty in the classification between goods and services.
  - The issue of classification between goods and services out of e- transmissions is important since it would determine the applicability of GATT or GATS. Countries have different commitments under these two agreements. Under the Sale of Goods Act, 1930, "goods" means every kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. "Movable property" means property of every description except immovable property.
  - The Internet has made innumerable e-transmissions of the information society. If a person downloads software into the hard-disc of his computer or on a CD, the software assumes the character of goods whereas if the same software is used online, it changes into a service.
  - It would be practically impossible to investigate and verify as to whether the e- transmission has been downloaded as a product or was merely a service.
  - Moreover, to impose custom duties on the multitude of e- transmissions on the basis of the wide definitions of "goods" and "movable property" as aforesaid would be obnoxious and have the effect of undermining the Internet as a medium.

- The Internet also mocks at the definition of "import" which means bringing into India from a place outside India. The basis of imposing customs duties is the import into India, which is defeated by the Internet.
- Today, the transaction is characterized as a simple service which does not require any online transmission of software.
- Customs duties on e-deliverables can be imposed and administered successfully provided the following principles are followed in letter and spirit:
- A very careful selection should be made out of the electronic deliverables for the imposition of customs duties. The selection must ensure that the ordinary netizens consumers at large who purchase e-deliverables for private use of consumption at the end of the chain of production or hire e-services are not labelled with the status of importers under the law thereby requiring compliance of imports and customs procedures. In the opinion, only cross-border technology transfer and online import of software by the business sector could be selected for imposition on customs duties.
- The customs and import-export procedures should be very simple and convenient for the assessee so as to encourage compliance of the same.
- The rates of customs duties should be very reasonable for encouraging compliance. Parity in customs duties between e-imports and physical imports of the same product is desirable. In any event, e-imports should not attract higher customs duties than p-imports because such a system would discourage e-commerce and the Internet as a medium.
- The OECD has advocated that the system of taxing e-commerce should be equitable, i.e. taxpayers similarly placed should be taxed similarly; it should be simple in terms of administration and compliance costs, it should be certain so that the tax implications can be ascertained in advance; it should be effective so that the potential for tax evasion and avoidance are minimized, economic distortions should be avoided; and the system should be sufficiently flexible and dynamic so that taxation and technology keep pace with one another. Low rates of duties, coupled with easy procedures and effective enforcement would ensure legal compliance. One of the possible ways of enforcement of the customs laws upon cross-border e-commerce is to monitor the remittances involved in the transaction. For instance, presently in India, importers of software are located through foreign exchange controls and procedures for remittances.

**Q.4(d) Write a note on Digital Signature Certificate.**

**[5]**

- Ans.:**
- A Digital Signature Certificate contains public key as certified by certifying Authority.
  - Digital Certificates serve as an identity of an individual for a certain purpose, Example driving license identifies someone who can legally drive in a particular country.
  - A Certificate Authority or Certification Authority (CA) is an entity that issues digital certificate.
  - It is a grant of a right by certifying authorities who have the licence to issue digital signature certificate in favour of the subscribers for which a procedure has to be followed.
  - The Digital Signature Certificate application form would be as provided by the Certifying Authority.
  - The application form must be accompanied by fees not exceeding Rs 25000 as may be prescribed by the Central Government, to be paid to the Certifying Authority. Different fees may be prescribed for different classes of applicants by the Central Government.
  - A "Certification practice statement" has been defined in the IT Act, 2000 as a statement issued by the CA to specify the practices that the CA employs in issuing Digital Signature Certificates.
  - On receipt of an application for issuance of a Digital Signature Certificate, the Certifying Authority may after consideration of the certification practice statement or the other statement and after making such inquiries as may be deemed fit, grant a Digital Signature Certificate to the applicant, or may reject the application for reasons to be recorded in writing.

- No application for issuance of a Digital Signature Certificate can be rejected unless the applicant is given a reasonable opportunity of showing cause against the proposed rejection.
- Before the issuance of a Digital Signature Certificate, the Certifying Authority must
  - Confirm that the user's name does not appear in its list of compromised users.
  - Comply with the procedure as defined in his Certification Practice Statement including verification of identification and/or employment.
  - Comply with all privacy requirements.
  - Obtain consent of the person requesting the Digital Signature Certificate that the details of such Digital Signature Certificate can be published on a directory service.
- A Digital Signature Certificate cannot be suspended for a period exceeding 15 days unless a subscriber has been given an opportunity of being heard in the matter. The suspension of a Digital Signature Certificate is required to be communicated to the subscriber by the Certifying Authority.
- A Certifying Authority also has been empowered to revoke a Digital Signature Certificate issued by it:
  - Where the subscriber or any other person authorized by him makes a request to that effect.
  - Upon the death of the subscriber.
  - Upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.
- On suspension or revocation of a Digital Signature Certificate, as the case may be, the Certifying Authority is required to publish a notice of the same in the repository specified in the Digital Signature Certificate for publication of such notice.

**Q.4(e) What are the functions performed by the Controller of Certifying authorities? [5]**

**Ans.:** The Controller of Certifying authorities is empowered to perform all or any of the following functions (Section 18 of the IT Act, 2000) :

- Exercising supervision over the activities of the Certifying Authorities;
- Certifying public keys of the Certifying Authorities;
- Laying down the standards to be maintained by the Certifying Authorities;
- Specifying the qualifications and experience which employees of the Certifying Authority should possess;
- Specifying the conditions subject to which the Certifying Authorities shall conduct their business;
- Specifying the contents of written, printed or visual materials and advertisements that may be distributed or used in respect of an Electronic Signature Certificate and the public key;
- Specifying the form and content of an Electronic Signature Certificate and the key;
- Specifying the form and manner in which accounts shall be maintained by the Certifying Authorities;
- Specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them;
- Facilitating the establishment of any electronic system by a Certifying authority either solely or jointly with other Certifying Authorities and regulation of such systems;
- Specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers;
- Resolving any conflict of interests between the Certifying Authorities and the subscribers;
- Laying down the duties of the Certifying Authorities;
- Maintaining a database containing the disclosure record of every certifying Authority containing such particulars as may be specified by regulations, which shall be accessible to public.

**Q.4(f) Write a short note on E-Governance in India.****[5]**

**Ans.:** • Section 4 of the IT Act, 2000– Legal recognition of electronic records:

Electronic records and digital signatures have been granted legal recognition. Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is rendered or made available in an electronic form; and is accessible so as to be usable for a subsequent reference.

- Similarly, Section 5 of IT Act, 2000 says - Where any law requires that any matter is authenticated by affixing the signature, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if the matter is authenticated by means of electronic signature affixed in such manner as prescribed by the Central Government.
- As per section 6, where any law provides for
  - the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner.
  - the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
  - the receipt or payment of money in a particular manner,
 then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

As per Section 7, where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if-

- the information contained therein remains accessible so as to be usable for a subsequent reference;
- the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
- the details which will facilitate the identification of the origin destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

However, this clause does not apply to any information, which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received. Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

- Section 8 of the IT Act, 2000 enables publication of rule, regulation, order, bye-law, notification or any other matter to be published in the Official Gazette,
- Section 9 of the IT Act says, that the provisions of sections 6, 7 and 8 do not confer right to insist that any government authority should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

**Q.5 Attempt any THREE question of the following :****[15]****Q.5(a) Explain the concept of electronic record, data and computer system.****[5]**

- Ans.:**
- 'Electronic record' means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated micro fiche.
  - 'Data' means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and are intended to be processed, and being processed or have been processed in a computer system or computer network, and maybe in any form (including computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.
  - 'Computer system' means a device or collection of devices, including input and output support devices and excluding calculators which are non-programmable and capable of being used in conjunction with external files which contain computer programmes, electronic instructions,

input data and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions.

- An electronic record, on a plain reading of the definition of 'document', satisfied all the necessary requirements and thus enjoyed the status of evidence even before the so called 'amendments' made by the IT Act, 2000 the definition of 'evidence'.

**Q.5(b) How to prove and verify the digital signature?**

**[5]**

- Ans.:**
- The Indian Evidence Act, 1872 as amended by the IT Act, 2000, says that except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record, the fact that such a digital signature is of the subscriber ought to be proved. (Sec. 67A of the Indian Evidence Act, 1872 and as stated in clause 10 of the Second Schedule of the IT Act, 2000).
  - Section 73 A. Proof as to verification of digital signature -  
In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct—
    - (i) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;
    - (ii) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Explanation : For the purposes of this section, "Controller" means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000.

- When the Court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which had issued the Digital Signature Certificate, is a relevant fact. (Sec. 47A of the Indian Evidence Act, 1872 and as stated in clause 7 of the Second Schedule of the IT Act, 2000).
- Example : In a suit filed by A against B, A relies upon an electronic record and alleges that he (A) had affixed his (A) digital signatures on the same, which is disputed by B. If A is to prove his own digital signatures, he should produce before the Court his Digital Signature Certificate which states the public key and request the court to direct any person to apply that public key upon the said electronic record. A should also prove that the Digital Signature Certificate has been issued to him (A), by making the Certifying Authority concerned as a witness to confirm the said fact in the Court.

**Q.5(c) What are the amendments made to the Bankers' Books Evidence Act, 1891 and Reserve Bank of India, 1934?**

**[5]**

**Ans.:** The IT Act has amended The Banker's Books Evidence Act to confer equal status on electronic records as compared to paper based documents. If a "certified copy" of printouts of bankers' books has to represent correctly, or is appropriately derived from, the relevant data.

- By the amendment made to section 58 of the Reserve Bank of India Act, 1934 through the IT Act, 2000 the Central Board of the Reserve Bank of India has also been granted the power for: "the regulation of fund transfer through electronic means between the banks or between the banks and other financial institutions referred to in clause (c) of section 45-I, including the laying down of the conditions subject to which banks and other financial institutions shall participate in such fund transfers, the manner of such fund transfers and the rights and obligations of the participants in such fund transfers."

**Q.5(d) How Consumer Protection Act protects the customers?**

**[5]**

- Ans.:**
- Consumer Foras have the power to grant the following reliefs to aggrieved consumers against the opposite party.
    - To remove the defects from the goods in question.
    - To replace the goods with new goods of similar description this shall be free from any defects.

- To return to the complainant the price paid by him and to pay such amount as may be awarded as compensation to the consumer of any loss or injury suffered by the consumer due to the negligence of the opposite party.
- To remove the defects or deficiencies in the services in question.
- To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.
- Not to offer hazardous goods for sale.
- To withdraw the hazardous goods from being offered for sale and to provide adequate costs to the parties.
- If the consumer forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint are proved, it has the power to order the opposite party to inter-alia pay compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
- Therefore, the following ingredients need to be proved by an aggrieved consumer before successfully claiming compensation against the opposite party:
  - The allegations in the complaint of the aggrieved consumer have been proved against the opposite party.
  - The opposite party has been negligent.
  - A loss or injury has been suffered by the aggrieved consumer as a consequence of the negligence of the opposite party.
- Compensation under CPA is only for any loss or injury suffered by the consumer as a consequence of the negligence of the opposite party.
- Loss means some determent or deprivation or damage or injury.
- Example : In a case where due to a strike by the employees, the bank could not function thereby causing hardships to the customers, the Supreme Court held that firstly there was no deficiency in the services since the shortcomings were not due to the failure in the performance of the bank's duties or discharging its obligations under the law, and moreover even otherwise no loss or damage was caused to any depositor due to the negligence of the bank and hence no claim for damages under CPA was maintainable.
- Only the loss can be compensated which is suffered by the consumer as a consequence of the negligence and no more.
- Compensation means indemnification or in other words that which is necessary to restore an injured party to its former position.
- Usually the consumer foras in India have been extremely conservative in granting compensation towards mental agony suffered by consumers. It is only in those cases where death has occurred on account of medical negligence or otherwise that consumer foras in India are a little more liberal but still are nowhere near their counterparts in the USA or the European Countries.
- Every claim for compensation must be supported by evidence and material in support thereof without which no compensation can be granted.
- Where a person fails or omits to comply with any order passed by the District Forum, the State Commission or the National Commission, section 27 of CPA provides that such person shall be liable to be punished with imprisonment of a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than rupees two thousand but which may extend to rupees ten thousand, or with both.

**Q.5(e) Explain 'Defect in Goods' and 'Deficiency in Services' in law?**

**[5]**

**Ans.:** Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law of the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods.

**Example:** Certain defects were found in the construction of a flat after use but the opposite party i.e. Tamil Nadu Housing Board denied its liability on the ground that it was provided in the

agreement that the occupation of the flat by the purchaser would be with full knowledge of its nature of construction and its condition and neither the purchaser nor anybody on his behalf would have any right or claim for compensation in any manner whatsoever from the vendor for defects in construction or otherwise. It was held by the National Commission that the complainant consumer could not be debarred by such a clause, to bring to the notice of the Board defects which were not patent at the time of taking the possession of the flat and which had been found later on only after the flat was used by the consumer.

**"Deficiency"** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

**Example :** The appellant consumer booked a tractor with the respondent and deposited an amount of Rs 500/- as an advance in December 1990. The price of the tractor was quoted at ₹ 1, 86,975/-. The said respondent went on supplying tractors to others who were below the appellant in the said list. In the meantime, there was an increase in the price of the tractor and ultimately the tractor was supplied to the appellant in September 91, the appellant had to pay Rs. 2,27,664/-. In this process, the appellant suffered a loss of Rs. 40,690/- for no fault of his and due to the conduct and practice adopted by the respondent. A complaint under the Consumer Protection Act was filed on behalf of the appellant-consumer before the District Forum. The District Forum on consideration of the materials produced on behalf of the parties came to the conclusion that the respondent intentionally did not deliver the tractor to the appellant. It was also held that the respondent supplied the tractors to others who were below the appellant in the list of bookings and because of the delay the appellant had to pay an extra amount of Rs 40,690/-. A direction was given to the respondent to refund Rs 40,690/- along with interest @ 18% per annum with effect from September 91.

A compensation of Rs 2,000/- was also directed to be paid to the appellants for the harassment and mental agony cause to him due to the unfair trade practice indulged by the respondent. The matter travelled to the Supreme Court which held that the conduct of the respondent in delaying the delivery of the tractor amounted to deficiency in service.

- Cause of action for defect in the product, deficiency in service, unfair trade practice for restrictive trade practice, cannot in all cases be avoided by the manufacturer, trader or service provider as the case may be, merely on placing reliance on a document containing the statement of the consumer to the effect that he is completely satisfied by the product or service. The mere execution of the discharge voucher would not always deprive the consumer from preferring his claim with respect to the deficiency in service. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, undue influence, coercive bargaining compelled by circumstances or the like, the authority before which the complaint is made would be justified in granting appropriate relief.

**Q.5(f) What are the reliefs under CPA?**

**[5]**

- Ans. :**
- Consumer Foras have the power to grant the following reliefs to aggrieved consumers against the opposite party.
    - To remove the defects from the goods in question.
    - To replace the goods with new goods of similar description this shall be free any defects.
    - To return to the complainant the price by him and to pay such amount as may be awarded as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
    - To remove the defects or deficiencies in the services in question.
    - To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.
    - Not to offer hazardous goods for sale.
    - To withdraw the hazardous goods from being offered for sale and to provide adequate costs to the parties.

- If the consumer forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint are proved, it has the power to order the opposite party to inter-lia pay compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
- Therefore, the following ingredients need to be proved by an aggrieved consumer before successfully claiming compensation against the party:
  - The allegations in the complaint of the aggrieved consumer have been proved against the opposite party.
  - The opposite party has been negligent.
  - A loss or injury has been suffered by the aggrieved consumer as a consequence of the negligence of the opposite party.
- Compensation under CPA is only for any loss or injury suffered by the consumer as a consequence of the negligence of the opposite party.
- Loss means some detriment or deprivation or damage or injury.
- Example: In a case where due to a strike by the employees, the bank could not function thereby causing hardships to the customers, the Supreme Court held that firstly there was no deficiency in the services since the shortcomings were not due to failure in the performance of the bank's duties or discharging its obligations under the law, and moreover even otherwise no loss or damage was caused to any depositor due the negligence of the bank and hence no claim for damages under CPA was maintainable.
- Only the loss can be compensated which is suffered by the consumer as a consequence of the negligence and no more. .
- Compensation means indemnification or in other words that which is necessary to restore an injured party to its former position.
- Usually the consumer foras in India have been extremely conservative in granting compensation towards mental agony suffered by consumers. It is only in those cases where death has occurred on account of medical negligence or otherwise that consumer foras in India are a little more liberal but still are nowhere near their counterparts in the USA or the European countries
- Every claim for compensation must be supported by evidence and material in support thereof without which no compensation can be granted.
- Where a person fails or omits to comply with any order passed by the District Forum, the State Commission or the National Commission, section 27 of CPA provides that such person shall be liable to be punished with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than rupees two thousand but which may extend to rupees ten thousand, or with both.

