

GUIDELINE ANSWERS
JUNE 2024 EXAMINATION
ECONOMIC, COMMERCIAL AND INTELLECTUAL PROPERTY LAWS
GROUP 2 PAPER 6
EXECUTIVE PROGRAMME
(SYLLABUS 2022)

Question Paper Weblink	https://www.icsi.edu/media/webmodules/examination/june2024/526.pdf
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PART-I

Answer to Question No. 1 (i)

"Recognised Consumer Association" means any voluntary consumer association registered under any law for the time being in force. (Explanation to section 35(1) of the Consumer Protection Act, 2019)

Answer to Question No. 1 (ii)

Yes, Shardha Heights, being a duly registered welfare society, is a "Recognised Consumer Association as per Consumer Protection Act, 2019.

In the case of *Sobha Hibiscus Condominium vs. MW Soshha Developer's Ltd.* judgement dated February 2020, Hon'ble Supreme Court observed that in essence voluntary consumer association will be a body formed by group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law.

Answer to Question No. 1 (iii)

Section 35 Consumer Protection Act 2019 provides that provides that a complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District commission by

(a) the consumer: -

- (i) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or
- (ii) who alleges unfair trade practice in respect of such goods or service.

(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not,

- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of or for the benefit of, all consumers so interested; or
- (d) The Central Government, the Central Authority or the State Government, as the case may be.

It may be noted that the complaint may be filed electronically in such manner as may be prescribed. Every complaint filed under Section 35, sub-section (1) shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

Answer to Question No. 1 (iv)

Yes, the complaint be filed before Consumer Commission online in the prescribed manner at <http://edaakhil.nic.in/>.

A complaint:

- Should be in writing
- Can be filed in a regular way (offline)
- Can be filed online – <http://edaakhil.nic.in/>

Answer to Question No. 1 (v)

According to Section 41 of the Consumer Protection Act, 2019 any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed. It may be noted that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period.

Shradha Heights may appeal to the State Commission.

Answer to Question No. 1 (vi)

There are certain restrictions on filing an appeal against the order of District Consumer Disputes Redressal Commission, unless the person fulfils the following conditions namely-

- No appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.
- No appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

Answer to Question No. 1 (vii)

Section 28 of the Consumer Protection Act, 2019 empowers the State Government to establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State. State Government may also, if it deems fit,

establish more than one District Commission in a district. Each District Consumer Disputes Redressal Commission shall consist of -

- (a) a President; and
- (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

Answer to Question No. 2 (a)

According to Section 2(c) of the Competition Act, 2002, "Cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.

An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country.

In the Competition Act, cartels meant exclusively for exports have been excluded from the provisions relating to anti- competitive agreements. This is because such cartels do not adversely affect markets in India and are hence outside the purview of the Competition Act. If there is effective competition in the market, cartels would find it difficult to be formed and sustained.

Competition Commission of India in the matter of *ABC Bearing Ltd., dated June 05, 2020* held that where key Competitors in bearings market discussed amongst themselves to decide on revision of prices to be quoted to Original Equipment Manufacturers (OEMs), thereby their independence is compromised, facilitating them to quote price revisions to OEMs different than what they would have quoted independently, will amount to Cartel as defined under Section 2(c) of the Competition Act, 2002.

Competition Commission of India in the case of *All India Tyre Dealers Federation Vs. Tyre Manufacturers* observed that no explicit agreement is required in order to prove cartelisation, it may be proved even through the intention or conduct of parties.

So, in the light of the above case, this Act of ABC Bearing Limited amounts to Cartelisation.

Answer to Question No. 2 (b)

According to Section 6(5) of the Foreign Exchange and Management Act, 1999, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

A Branch or office or any other place of business in India, other than a Liaison office, established by a person resident outside India, may acquire immovable property in India

which is necessary for or incidental to the activity carried on in India by such branch or office.

Such a person is required to file with the Reserve bank a declaration in the form IPI (as given in the Master direction on Reporting), not later than 90 days from the date of such acquisition. The immovable property so acquired can be mortgaged to an Authorised Dealer as a security for any borrowing.

In the given case, Mr. Vinesh can do so and he has to file above compliance.

Answer to Question No. 2 (c)

Yes, it is an offence under the Legal Metrology Act, 2009.

Section 18(1) of the Legal Metrology Act, 2009 specifies that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.

Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

Under Section 36 of the Legal Metrology Act, 2009, whoever manufactures, packs imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

Whoever manufactures or packs or imports or causes to be manufactured or packed or imported, any pre-packaged commodity, with error in net quantity as may be prescribed shall be punished with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees and for the second and subsequent offence, with fine which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

No, answer will not be different if Mukesh mentions the wrong quantity on Pre-Packaged 'Jaggry Powder'.

Answer to Question No. 3 (a)

Section 18(1) of the Real Estate Regulation and Development Act, 2016 provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building -

- a. in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, or

b. due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

In the light of above provision Rajeev can withdraw from the Project. If he does not wish to withdraw from the project, he shall be paid Interest for every month of delay, till the possession is handed over to him. He shall also be compensated for any loss caused to him as stated above.

Answer to Question No. 3 (b)

Section 10 of the Special Economic Zones Act, 2005 empowers the Board of Approval to suspend the letter of approval granted to the Developer (XYZ Ltd. in this case) for a whole or part of his area established as Special Economic Zone for a period not exceeding one year and appoint an Administrator to discharge the functions of the developer in accordance with the terms and conditions of the letter of approval and manage the Special Economic Zone accordingly. The suspension may be ordered by the Board, if in its opinion following circumstances exist:

- The developer is unable to discharge the function for performing the duties imposed on him.
- The developer has persistently defaulted in complying with the directions of the Board.
- The developer has violated the terms and conditions of the letter of approval.
- The financial position of the developer is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by the letter of approval and
- the circumstances exist which render it necessary for it in public interest so to do, the Board may, on application, or with the consent of the Developer, or otherwise, for reasons to be recorded in writing, suspend the letter of approval, granted to the Developer for a whole or part of his area established as Special Economic Zone, for a period not exceeding one year and appoint an Administrator to discharge the functions of the Developer in accordance with the terms and conditions of the letter of approval and manage the Special Economic Zone accordingly.

Consequent upon appointment of an Administrator, the management of the Special Economic Zone of the Developer shall vest in the Administrator.

However, no letter of approval can be suspended unless the Board has given to the Developer not less than three months' notice, in writing, stating the grounds on which it proposes to suspend the letter of approval, and has considered any cause shown by the Developer within the period of that notice, against the proposed suspension. It has been further provided that the Board may, instead of suspending the letter of approval, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose.

Section 10(4) makes any further terms or conditions so imposed binding upon the Developer. These terms and conditions have the force and effect as if they were contained in the letter of approval. Where the Board has given notice for suspension of letter of approval the Developer may, after prior approval of the Board, transfer his letter of approval to any person who is found eligible by the Board for grant of such approval.

Answer to Question No. 3(c)

According to Section 2(1)(h) the Foreign Contribution (Regulation) Act, 2010, Foreign Contribution means the donation, delivery or transfer made by any foreign source-

(a) Of any article, not being an article given to a person as a gift for his personal use, if market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf.

(b) Of any currency, whether Indian or Foreign currency.

(c) Of any security as defined u/s 2 (h) of the Securities Contracts (Regulations) Act, 1956 and includes any foreign security as defined u/s 2(o) of FEMA, 1999.

Conditions to receive Foreign Contribution:

Any person can receive foreign contribution subject to the following conditions:

- It must have a definite cultural, economic, educational, religious or social programme
- It must obtain the FCRA registration/prior permission from the Central Government.
- It must not be prohibited under section 3 of FCRA, 2010.

It may be noted that "Person" includes-

- i) An individual;
- ii) A Hindu undivided family;
- iii) An association;
- iv) A company registered under section 25/8 of the companies Act [Section 2(1)(m)]

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

Answer to Question No. 4(a)

According to Fugitive Economic Offenders Act, 2018 where a director or any other officer authorised by the Director, on the basis of material in his possession, has reason to believe (the reason for such belief to be recorded in writing), that an individual may be fugitive economic offender, he may enter any place:

- i) within the limit of the area assigned to him, or
- ii) in respect of which he is authorised for the purposes of this section, by such other authority, who is assigned the area within which such place is situated.

Where the director or any officer authorised by the Director, on the basis of material in his possession, has reason to believe (the reason for such belief to be recorded in writing), that an individual may be fugitive economic offender and it is necessary to enter any place, he may request any proprietor, employee or any other person who may be present at that time, to-

- a) afford him the necessary facility to inspect such records as he may require and which may be available at such place:
- b) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein: and
- c) Furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings.

The Director, or any other officer acting under this section may:

- i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom:
- ii) make any inventory of any property checked or verified by him; and
- iii) record the statement of any person at the property which may be useful for or relevant to, any proceeding

Answer to Question No. 4(b)

Deemed Exports for the purposed of foreign Trade Policy (FTP) and Good and Services Tax (GST) are given below:

- "Deemed Exports" for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Foreign Trade Policy shall be regarded as "Deemed Exports" provided goods are manufactured in India.
- "Deemed Exports" for the purpose of Goods and Service Tax would include only the supplies notified under Section 147 of the CGST/SGST Act, 2017 on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

Benefits for Deemed Exports are as follow:

Deemed exports shall be eligible for any/all of following benefits, in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions as given in Hand Book & Procedure and ANF-7A:

- (a) Advance Authorisation/Advance Authorisation for annual requirement/ DFIA.
- (b) Deemed Export Drawback for BCD (Basic Custom Duty).
- (c) Refund of terminal excise duty for excisable goods.

Answer to Question No. 4(c)

The "Regulated Entities" (REs) under the protection of Money-Laundering Act, 2002 means:

- a) all Scheduled Commercial Banks (SCBs), Regional Rural Banks (RRBs)/ Local Area Banks (LABs)/ All Primary (Urban) Co-operative Banks (UCBs)/ State and Central Co-operative Banks (StCBs/CCBs) and any other entity which has been licenced under Section 22 of Banking Regulation Act, 1949, which as a group shall be referred as 'banks'.
- b) All India Financial Institutions (AIFIs).
- c) All Non-Banking Finance Companies (NBFCs), Miscellaneous Non- Banking Companies (MNBCs) and Residuary Non-Banking Companies (RNBCs).
- d) All Payment System Providers (PSPs), System Participants (SPs) and Prepaid Payment Instrument Issuers (PPI Issuers).
- e) All authorised persons (APs) including those who are agents of Money Transfer Service Scheme (MTSS), regulated by the Regulator.

OR (Alternate question to Q. No.4)

Answer to Question No. 4A (i)

According to Foreign Exchange Management (Overseas Investment) Rules, 2022, Overseas Direct Investment (ODI) means:

- (a) Acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or
- (b) Investment in 10% or more of the paid-up equity capital of a listed foreign entity, or
- (c) Investment with control where investment is less than 10% of the paid- up equity capital of a listed foreign entity.

Overseas Portfolio Investment (OPI) means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an International a Financial Service Centre (IFSC).

Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity. Debt instruments are:

- i) Government bonds:
- ii) corporate bonds:
- iii) all tranches of securitisation structure which are not equity tranche:
- iv) borrowings by firms through loans, and
- v) depository receipts whose underlying securities are debt securities.

Answer to Question No. 4A (ii)

Section 28 of the Benami Transactions (Prohibition) Act, 1988 relates to management of properties confiscated under this Act. Sub-section (1) of this section provides that the Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-section (1) of section 27 has been made, in such manner and subject to such conditions, as may be prescribed.

Sub-section (2) of this section provides that the Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.

Sub-section (3) of this section provides that the Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under subsection (2) of section 27 in such manner and subject to such conditions as may be prescribed.

Answer to Question No. 4A (iii)

Foreign Investment in Limited Liability Partnerships (LLPs) is permitted subject to the following conditions:

- i) Foreign Investment is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.
- ii) An Indian company or an LLP having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions. Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into an LLP is permitted under automatic route.
- iii) Foreign Investment in LLP is subject to the compliance of the conditions of LLP Act, 2008.

PART-II

Answer to Question No. 5 (a) (i)

The word "Darjeeling" -as precious tea as it may be as champagne to sparkling wines of that province in France - cannot be exclusively claimed by the plaintiff by virtue of its registration as a geographical indication or as a certification trade mark. Even for a case of passing-off, the use of "Darjeeling" by a person other than the plaintiff can be complained of if the word or the geographical indication has any nexus with the product with which it is exclusively associated upon the registration. It is not necessary to consider whether a "Darjeeling Tea Stall" selling only hot cups of tea can entitle the plaintiff to carry a complaint in respect thereof or a "Darjeeling Tea House" selling all varieties of packaged tea can be said to be in derogation of the plaintiff's rights. The defendant's "Darjeeling Lounge" is an exclusive area within the confines of its hotel which is accessible only to its high-end customers. The lounge is a place where such customers and accompanying visitors may frequent, and even sip Darjeeling tea or any other beverage or drink, but there is scarcely any likelihood of deception or confusion in the lounge being named "Darjeeling" for the plaintiff to be granted to any order that it seeks. In light of above the contention of India Tea Board that the ITC Ltd. is using Passing-off, is not correct.

Answer to Question No. 5 (a) (ii)

Different between Geographical Indication and trade mark are as follow:

- A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.
- Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

Answer to Question No. 5 (a) (iii)

It is not necessary to consider whether a "Darjeeling Tea Stall" selling only hot cups of tea can entitle the plaintiff to carry a complaint in respect thereof or a "Darjeeling Tea House" selling all varieties of packaged tea can be said to be in derogation of the plaintiff's rights. The defendant's "Darjeeling Lounge" is an exclusive area within the confines of its hotel which is accessible only to its high-end customers. The lounge is a place where such customers and accompanying visitors may frequent, and even sip Darjeeling tea or any other beverage or drink, but there is scarcely any likelihood of deception or confusion in the lounge being named "Darjeeling" for the plaintiff to be granted to any order that it seeks.

So "Darjeeling Tea Stall" can sell all/multiple tea varieties and it cannot be said to be in the derogation of the plaintiff's rights.

Answer to Question No. 5 (a) (iv)

ITC Limited running and using the "Darjeeling Lounge" before the enactment of Geographical Indications of Goods (Registration and Protection) Act, 1999, as to the case of dilution, the name "Darjeeling" has been extensively used in many trading and commercial circles for decades before the GI Act was enacted. In a case of dilution by blurring, it is the uniqueness of a mark which is protected even in a case where there is no likelihood of confusion. But the word "Darjeeling" has been and continues to be so widely used as a business name or for like purpose for so long that the plaintiff's recent plea would, prima facie, not entitle them to enjoy the kind of exclusivity that they asserts/claim.

Answer to Question No. 5 (a) (v)

According to Section 39 of the Geographical Indication of Goods (Registration and Protection) Act, 1999, any person who apply false Geographical Indications shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. It is also provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Answer to Question No. 5 (b) (i)

An invention relating either to a product or process is patentable subject matter if it meets the following criteria-

- It should be novel.
- It should have inventive step or it must be non-obvious.
- It should be capable of Industrial application.

It should not attract the provisions of section 3 and 4 of the Patents Act. 1970.

Answer to Question No. 5 (b) (ii)

Section 3 of the Patent Act 1970 provides a list in which certain inventions are not patentable. Mathematical or business methods, computer programs per se, or algorithms is not considered an invention as per Section 3(k) of the Act and thus, not patentable.

Answer to Question No. 5 (b) (iii)

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However, it must not fall into the categories of inventions that are non- patentable under sections 3 and 4 of the Act.

Answer to Question No. 5 (b) (iv)

Advantages of Patents are as given below:

- Patentee have the complete rights to restrict outsider from making, operating, providing accessibility to be bought, providing or putting in the product generated by him, without his consent. He has absolute prerogative to utilize his invention and his rights that are very much ensured under the Act.
- The patentee has a privilege to file the suit for encroachment of his patent and can ask for remedies like. Injunction, compensation and a settlement of profit against the individual who encroached his patent.
- Patentee can commercially exploit or pitch his creation to any skilled individual and concede permit to him to abuse his item and in this way the patentee can likewise wins benefit along these lines.
- The holder of the exclusive permit can also avail the rights given to the patentee and can bring a suit if there should arise an occurrence of any encroachment of Patent.
- A patentee gets the privilege to make changes in or alterations of an invention depicted or uncovered in the total determination of the primary innovation and get the particular right of a patent by the substantial change or patent as a matter of addition certain adjustment.

Answer to Question No. 5 (b) (v)

Section 6(1) (c) of the Patents Act, 1970 provides that an application for a patent for an invention may be made by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

Therefore, legal representative of Ramchand can apply for the patent.

Attempt all parts of either Q. No6 or Q. No. 6A

Answer to Question No. 6 (a)

Section 39 of the Patents Act, 1970 provides that no person resident in India shall, except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless—

- (a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and
- (b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

The Controller shall dispose of every such application within such period as may be prescribed:

It may be noted that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government.

Section 39 (3) of the Patent Act clarifies that the provisions of section 39 shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.

In this case, yes, Amit can apply outside India subject to above conditions.

Answer to Question No. 6 (b)

No, Priya will not succeed in registering such a Trade Mark under the Trade Marks Act, 1999.

According to Section 9(2) of the Trade Marks Act, 1999 the following trademark shall not be registered:

1. If the trademark tends to deceive the public or cause any confusion,
2. In any instance if the trademark hurts any religious sentiment of any demographic section of Indian citizens,
3. It comprises or contains scandalous or obscene matter,
4. Its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

In the case of *Amritpal Singh vs. Lal Babu Priyadarshi 2005 (30) PTC 94*, Intellectual Property Appellate Board (IPAB) the word RAMAYAN was refused registration on the grounds that: Firstly, it was not capable of distinguishing the goods of the applicant and secondly, that it was likely to hurt religious sentiments of a class of society.

Answer to Question No. 6 (c)

The following are some of the commonly known acts involving infringement of copyright:

- Making infringing copies for sale or hire or selling or letting them for hire,
- Permitting any place for the performance of works in public where such performance constitutes infringement of copyright,
- Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright,
- Public exhibition of infringing copies by way of trade, and
- Importation of infringing copies into India.

Section 63 deals with offences of infringement of copyright or other rights conferred by the Copyright Act, 1957. This section states that any person who knowingly infringes or abates the infringement of the copyright in a work or any other right conferred under the Act (except for resale share right in original copies), liable to imprisonment for a minimum period of six months which may extend to three years and with minimum fine of fifty thousand rupees which may extend up to rupees two lakh. However, the Court has been empowered to impose a sentence less than six months or a fine less than fifty thousand, if the infringement had not been made for gain in the course of trade or business. In such situations, the section requires the courts to mention adequate and special reason in the judgement.

Answer to Question No. 6 (d)

Section 9(1) of the Trade Mark Act 1999 containing provisions relating to absolute grounds for refusal for registration prohibit the registration of those trademarks,

- (a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;
- (b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;
- (c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered.

It may be noted that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

OR (Alternate question to Q. No.6)

Answer to Question No. 6 A (i)

Duration of the registration of a design

The duration of the registration of a design is initially ten years from the date of registration, but in cases where claim to priority has been allowed the duration is ten years from the priority date. This initial period of registration may be extended by further

period of 5 years on an application made to the Controller before the expiry of the said initial period of ten years.

Cancellation of Registration

According to Section 19 of the Design Act 2000, the registration of a design may be cancelled at any time after the registration of design on a petition for cancellation in prescribed form with fee to the Controller of Designs on the following grounds:

- That the design has been previously registered in India; or
- That it has been published in India or elsewhere prior to date of registration, or
- The design is not new or original; or
- Design is not registrable; or
- It is not a design under Clause (d) of Section 2.

Answer to Question No. 6 A (ii)

The term trade mark has been defined under Section 2(1) (zb) of the Trade Marks Act, 1999 as to mean a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.

A trademark acts as an effective form of advertising for the goods and their quality since it denotes the relationship between the merchant and the items during the course of commerce. The goal of trademark law is to give businesses the ability to acquire an exclusive right to use, share, or assign a mark by registering their mark. Similar to this, service marks set one company's services apart from those of other companies. Various combinations of words, letters, numbers, symbols, drawings, images, and even sounds can be used as a trademark. These are typically registered for seven years, but by reapplying they can be renewed indefinitely. It guarantees the owner of the mark the sole right to use it to distinguish products or services, or to grant another person permission to use it in exchange for payment. Because of the nature and quality of the goods or service, which are denoted by its distinctive trademark, it aids consumers in recognising and purchasing it.

Answer to Question No. 6 A (iii)

Section 9 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 prohibits registration of certain geographical indications. They are as follows: -

- (a) the use of which would be likely to deceive or cause confusion, or
 - (b) the use of which would be contrary to any law for the time being in force, or
 - (c) which comprises or contains scandalous or obscene matter, or
 - (d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India, or
 - (e) which would otherwise be disentitled to protection in a court, or
 - (f) which are determined to be generic names or indications of goods and are therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country, or
 - (g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be,
- shall not be registered as a geographical indication.

Answer to Question No. 6 A (iv)

As per Section 74 of the Copyright Act, 1957, the Registrar of Copyrights shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, 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 any document;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning any public record or copy thereof from any court or office;
- (f) any other matter which may be prescribed.
