

JUNE 24 SOLVED PAPER**Q.1**

XYZ Ltd., a multinational conglomerate operating across various sectors, faces a critical decision regarding a strategic partnership proposal with a promising tech start-up. With 12 directors on the board, the urgency of the matter, coupled with the diverse locations of its board members, poses a challenge in convening an in-person meeting. Consequently, the company seeks an alternative method to pass the resolution.

W acted as a director on the Board of Directors of XYZ Ltd. between 2016 and 2018.

He is also a shareholder in the said company, owning approximately 25.66% equity shares, and drew a salary of ` 2.50 lakh per month. The Commissioner of Central

Goods and Service Taxes, based on the information received indicating that **XYZ Ltd.** was availing **Input Tax Credit (ITC)** against fake/ineligible invoices, commenced an investigation under section 67 of the **Central Goods and Services Tax Act, 2017**, against **XYZ Ltd. W**, as per the commissioner's statement, admitted to the fact that he had acted as a director of the company between 2016 and 2018, and since then, he has been working in the company in the capacity of a mentor/advisor. Furthermore, **W** also stated to the **CGST Department** that, in his capacity as the mentor/advisor to the company, he received ` 30 Lakh in the concerned FY i.e., 2019-2020, from the company. According to **W**, this money was given as he had been providing "strategic guidance" to the Company. The bank accounts of **W** have also been attached to the **CGST Department**.

XYZ Ltd. enters into a contract with **B**, a logistics provides, to deliver a shipment of newly manufactured electronic gadgets to various retail stores across the country. The contract specifies a delivery deadline crucial for the upcoming Deepawali

season sales. However, due to B's negligence, the delivery is delayed by two weeks, causing significant financial losses to XYZ Ltd. As a result of the delay, XYZ Ltd. misses the peak sales window, leading to decreased revenue and tarnished brand reputation. The company is contemplating seeking legal remedy for the loss caused.

The Ministry of Road Transport and Highways of India has announced a significant infrastructure project for the construction of Megha Highway. This highway project aims to connect various cities and towns, boosting transportation and economic development in the region. To execute this project, the ministry has initiated a tendering process inviting bids from qualified construction firms. XYZ Ltd., which is also engaged in construction activity, is contemplating participating in the tendering process for construction of the Megha Highway. As a major player in the construction industry, XYZ Ltd. sees this project as lucrative opportunity to showcase its expertise, expand its portfolio, and contribute to the nation's infrastructure development.

XYZ Ltd. wants to enter into e-contracts across the country for the sale of their various products. The company's counsel is considering the fact that conventional contract law may not be sufficient to address all the issues arising in electronic contracts. The Information Technology Act (IT Act) addresses some of the peculiar issues arising in the formation and authentication of electronic contracts. The Indian Evidence Act, 1872, deals with the presumption as to e-records, providing electronic records as evidence in disputed matters (Sections : 85A, 85B, 88A, 85C).

Based on the facts of above case study, answer following questions :

- (a) You are required to guide XYZ Ltd. on the alternative method under the Companies Act, 2013, to pass the resolution for the strategic partnership with the tech start-up. What requirements will the company have to fulfil?**

- (b) **W** has approached you to seek your opinion on the matter of attaching his bank accounts. Write an opinion.
- (c) Advise **XYZ Ltd.** on the remedies available to them under the Indian Contract Act, 1872 for the loss caused.
- (d) What considerations **XYZ Ltd.** should take into account, while preparing a tender document for the Megha Highway project?
- (e) What prohibitions must specifically be included in e-contracts? Furthermore, how shall the limitation of liability of **XYZ Ltd.** be addressed under e-contracts?

Ans:

- a. For a company to approve of a proposal as per Companies Act, 2013, approval of the BOD is required since in case of **XYZ Ltd.**, as the 12 directors of the company are at different locations and there is a challenge in convening a meeting in person, the meeting could be held through VC to pass the necessary resolution. The Chairman or the CS of the company

has to ensure that proper notice of such meeting was duly served to all the directors 7 days in advance. Throughout the BM, it must be ensured that all the directors were connected & everyone was able to hear and see each other for the resolution to be valid.

b. In the present case, W was acting as a director on the Board of XYZ Ltd. between 2016 to 2018 and he was also holding shares in the company to the extent of 26.56%. For the year 2019-20 as per him, he was acting in the capacity of advisor. Since the company defaulted in payment of GST if the notice pertains to a period from 2016 to 2018 where he was acting in the capacity of director, he will be held liable since its the responsibility of Board as well if there is no officer dedicated to look after these. However, if the notice relates to the period of 2019-20, he was acting in the capacity of advisor, which is a contract for employment i.e. he is acting in his independent capacity and therefore he will not be held liable unless he has been specifically authorized and be held responsible for the same.

c. The aggrieved party can claim compensation for indirect loss or loss of profit, only where it is expressly made known to the other party or contemplated by contract that breach of non-performance of the contract would result in some indirect loss or loss of profit to the party. The remoteness of damage refers to the legal test used for deciding which type of loss caused by the breach of contract may be compensated by the award of damage. It explains that the means which existed of remedying the inconvenience caused by the non-performance of the contract must be considered while calculating the damage or loss for breach of the contract.

d. Considerations for preparing a document for tendering process:

I. Name and address of the organisation: The name and address of the organisation be mentioned on the initial page of the document.

- 2. Subject of the document:** The subject of the tender documents to be mentioned in clear and comprehensive manner in order to attract the attention of the Bidder.
- 3. Index of the tender document:** The index of the documents can make the document convenient for the prospective bidder.
- 4. Important dates and necessary information:** The information such as Tender Publication Date, Last date and time for sending Pre-Bid Queries in writing, Cost of Tender, Earnest Money Deposit, Pre-Bid Meeting date, time & venue, Last Date & address of Submission of Bids, Date, time & Venue of opening of Technical Bids and Financial Bids, contact details etc. should be provided in the tender document.
- 5. Disclaimer Clause:** A disclaimer clause with respect to reservations or observation on the tender documents should be placed in the tender document.
- 6. Job Description:** The job description in details should be mentioned in the tender document in order to acquaint prospective bidders with the requirements attached with the Job and evaluate and prepare their bids accordingly.

7.Division of tender documents in parts: The tender document be preferably prepared asking for Bid submissions in two parts i.e. Technical Bid and Financial Bids.

8.Fees and Deposits: The tender document should mention the fees and deposits commensurating the nature and quantum of work. The cost of the tender document may be required from the prospective bidder. Further, the provisions relating to Earned Money Deposit (EMD) and Security Deposit are also to be placed in the tender document.

9.Conditions for forfeitures of EMD: The clause providing for the circumstances in which EMD may be forfeited to be mentioned in the tender document. The general conditions in which EMD be forfeited are as under:

- i. If the bidder withdraws its bid;
- ii. the selected bidder delays or does not accept the Purchase / Work Order;
- iii. the selected bidder fails to supply goods / services as per the terms of the Tender or fails to execute Purchase / Work Order.

- 10. Pre Bid Meeting:** Pre Bid Meetings be conducted in order to provide any clarification sought on the tender.
- 11. Scope of Work:** The scope of work in details be mentioned in the tender documents.
- 12. Mention of Technical and administrative requirements:** The technical and administrative requirement be mentioned comprehensively in order to prevent the halt in the Job at the later stage. The document should be clear and specific with respect to technical and administrative requirements for performing the Job.
- 13. Eligibility Criteria:** Essential Requirements are to be mentioned in the tender document.
- 14. Necessary forms and documents:** Formats such as of Technical Bids, Financial bids, past experience of the bidder, Tender Acceptance Letter, Standard Terms and Condition of Agreement may be mentioned in the tender document. Further, a list of document required to be attached in the tender document may also be provided in the document.

e.Prohibitions

The contract must specifically prohibit the following:

1. Using “deep-link”, “page-scrape”, “robot”, “spider” etc. to access, acquire, copy or monitor any portion of the service.
2. Reproducing the navigational structure or presentation of the service.
3. Circumventing the navigational structure or presentation of the service.
4. Attempting to gain unauthorized access to any portion or feature of the service.
5. Harvesting or collecting user names, email addresses or other member identification information.
6. Probing, scanning or testing the vulnerability of the service.
7. Tracing information relating to other users.
8. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person’s use of the service.
9. Using the service for any unlawful purpose.

Limitation of liability

The contract must clearly mention that XYZ Ltd (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

1. Access delays or interruptions to the 'X' web site.
2. The loss of registration or processing of an order.
3. The unauthorized use of the customer's account with Y.
4. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to 'X' staff.
5. Errors taking place with regard to the processing of the customer's orders.
6. Any direct, indirect, incidental, special consequential or exemplary damages incurred by the customer pursuant of his use of the 'X' website.
7. Any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the 'X's services.

8. Any loss or damage incurred by the customer as a result of relationship or transactions with advertisers using the Y website.
9. Changes in or cessation of the 'X' services.
10. Customer's failure to keep his account information, passwords etc secure and confidential.

Q.2(a)

Bharathi, by a deed of gift made over certain property to her daughter, Narmadha, and directing her to pay an annuity to the donor's brother, Ram, as she had promised her brother Ram before gifting the said property. On the same day, Narmadha executed a deed, in writing, in favour of the donor's brother (Uncle) agreeing to pay the annuity.

Afterwards, Narmadha declined to fulfil her promise to pay her uncle saying that no consideration had moved from him. Is the contention of Narmadha tenable? (5 marks)

Ans:

1. Gift is transfer of Interest in certain movable on Immovable property by one person called the donor to any other person called the donee.
2. An onerous gift means a gift of certain property with certain conditions attached to it by way of certain liability.
3. In the present case, Bharti by way of a gift deed gifted certain property to her daughter named Narmada on a condition that Narmada will pay annuity to Bharti's brother Ram.
4. In this case, since Narmada accepted this condition she was obligated to pay annuity to Ram even though nothing by way of consideration has moved from Ram towards Narmada as payment of annuity was a pre-condition of the gift deed & hence no further consideration is required.

5. So gift without consideration is yet a valid contract & therefore the contention of Narmada is not tenable.

Q.2(b)

In a simple mortgage, the security for the debt is two-fold. Elucidate and cite case law, if any. (5 marks)

Ans:

1. A simple mortgage is a mortgage transaction in which the mortgagor undertakes the personal liability to repay the amount of loan as agreed by and between the parties.
2. In case of a simple mortgage, neither the possession nor the ownership of the property is transferred to the mortgagee.
3. However, in case if there is a default in repayment of loan, the mortgagee has a right to obtain a decree from the court and recover the money thereof.

4. Therefore, the liability of the mortgagor is two-fold in case of a simple mortgage i.e. personal obligation as well as the property.

5. The same fact was also highlighted in the case of 'Ram Narayan Singh v/s Adindranath.'

Q.2(c)

Amalgamation is basically a merger of two or more companies into one another company and the shareholders of each merging company becomes the shareholders in that another company. It may be either by:

- (i) the transfer of two or more companies into one another new company, or**
- (ii) the transfer of one or more companies into one existing company**

In light of the above, when a transferor company stands dissolved due to amalgamation, explain the status of legal proceedings pending before the court, in which the transferor company was a party. (5 marks)

Ans:

1. In terms of the provisions of provisions of Companies Act, 2013, in case of amalgamation, all the assets as well as liabilities of the transferor co. are transferred to the transferee company.
2. It implies that any pending case of the transferor co. is either due to its assets or may be the liabilities.
3. Since all the assets and liabilities are transferred to the transferee co, so are the pending cases.
4. With effect from the effective date, all such cases before the Court/Tribunal are then argued upon by the transferee co.

Q.3(a)

A competent jurisdictional authority has issued a show cause notice to Abdul Rehman. He has sought your advice for replying the same. What are the points that he must consider while replying to the show cause notice? (5 marks)

Ans:

1. SCN should contain the name of the issuer.
2. It should be issued in writing.
3. It should be written in clear language in order to avoid ambiguity.
4. It should mention the correct and brief facts.
5. If there is a violation of Law, it should be specifically mentioned.
6. Charges should be levelled specifically and they should be vague or in contradiction with the information contained in SCN.
7. Proposed action should also be mentioned in the SCN. For eg. Penalty, Legal action, Suspension etc.
8. The time limits that have been provided to the receiver should be mentioned in the notice.
9. Adequate time limit should be given for the reply, unless otherwise specifically provided by any law.
10. References and Annexures should be provided, wherever required.

11. The mode of representation warranted should be mentioned in SCN i.e. in person, Meeting (Online or face to face).
12. The address of the authority should be mentioned in SCN.
13. SCN should be dated.

Q.3(b)

X, with the intention of disposing of his old stock of outdated machines, requested Y to place them in his shop for sale. Y handed over a blank cheque to X to be used only upon his instructions, after sold out of all those machines. However, since the machines were outdated and faulty, they could not be sold. Despite this, X lodged the cheque in the bank, which was subsequently dishonoured. Y received a notice under section 138 of the Negotiable Instruments Act, 1881, from X's advocate, demanding payment. You are required to draft a reply to the above notice, assuming the necessary facts. (5 marks)

Ans:

Name of the Advocate

Address

Telephone _____ Fax _____ Email

22 Nov 2024

Shri _____

Advocate

Address

Subject: Reply to legal notice under section 138 Negotiable Instruments Act, 1881

Dear Sir,

They says reference to the legal notice served upon us dated _____ on behalf of Shri _____ my client based upon whose instructions, I have been advised to submit as under:

That the notice served by you to my client contains false allegations, basis of which is explained below. In furtherance, we call for an apology letter for disreputing my client as no allegations made by you have any valid grounds.

The para 2 of your notice states that the goods are offered to my client on credit period and the credit period expired and no money was paid by my client to yours. However, in reality, your client requested my client to keep certain goods at my client's showroom and pay the necessary amount against it only when these goods were sold from my client's showroom.

That in addition to above, when my client tried selling these goods, goods were found to be defective and out dated and hence no question of payment arises to your client.

That if by mistake, based upon my client's reputation, if these goods were sold, it would have badly affected my client's reputation and hence you should be charged for cheating.

That para 4 of your notice states that we were served a couple of legal notices, they were not replied to. Since the goods were never sold, the question of payment does not arise.

That my client as a token of security handed over a blank cheque to you in trust that it will only be deposited with my client's permission and you deposited the same without it. Also, the handwriting on the cheque is not that of my client.

That we accordingly deny all the allegations said upon us on the ground stated above and you are further advised to withdraw the said Legal Notice in order to avoid any further litigations on grounds of defamation.

Sd/-

Advocate

Q.3(c)

Draft a resolution for approval and adoption of CSR policy. (5 marks)

Ans:

“RESOLVED THAT pursuant to section 135 of the Companies Act, 2013 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR committee, the Board of Directors of the company do and hereby approve and adopt a CSR Policy.

RESOLVED FURTHER THAT the CSR Policy be and is hereby approved and signed by Mr./Ms. _____, Director.

RESOLVED FURTHER THAT the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of policy on the website of the company.”

Q.4(a)

Explain the conditions which are required to be fulfilled under section 70 of the Indian Contract Act, 1872 for a court to allow compensation under the principle of Quantum meruit. (5 marks)

Ans:

Quantum meruit principle means as much as earned and it also for any past act done by the claimant, he always has a right to claim compensation for the same at some future date as the act was done to derive some benefit. In order to claim compensation under quantum meruit, following conditions must be fulfilled:

- (a) The claimant must have done some act in the past for the benefit of other party
- (b) While performing such act, he must have acted non-gratuitously
- (c) The other party must have earned certain benefits from that past act/performance.

Q.4(b)

What do you understand by Alternate Dispute Resolution (ADR) Mechanisms? Elucidate its different types. (5 marks)

Ans:

I. ADR is a mechanism to settle the dispute without approaching the court such ADR's gained tremendous importance over a period of time considering the burden on the Indian judicial system. Such ADR's are:

(a) Arbitration:

In case of arbitration, both the parties together appoint a person known as arbitrator who after hearing both the parties passes an order called as award which is applicable and binding upon both the parties to the dispute.

(b) Mediation:

In case of mediation a third party intervenes, hears both the parties and presents a view informally which is not binding on either of parties as mediation proceedings are usually informal in nature.

(c) Conciliation:

In such proceedings both the parties mutually appoint a person known as conciliator who hears both the parties and enters into a settlement agreement obtains the signature of both the parties

& thereafter obtains a decree from the court having jurisdiction over such matter. The order of conciliator becomes binding as it is backed by decree from the court.

Q.4(c)

As per The Company Secretaries Auditing Standard (CSAS-3), how the auditor should deal, if, after accepting the audit engagement, the appointing authority imposes a limitation on the scope of the audit. (5 marks)

Ans:

1. In case if the Appointing Authority poses certain limitations upon the auditor or scope of audit which may materially or immaterially affect the opinion of the auditor, the auditor may either submit the same opinion with a disclaimer if the Appointing Authority is ready to rectify the audit findings or report the same to the management.
2. It is practically possible in certain cases to carry out an alternate method to obtain necessary audit evidence.

3. Based upon the collected audit evidence, the auditor may either modify his opinion if the audit evidence is non-material or else he may disclaim his opinion, if the audit evidence is material.

Q.4 A (i)

Whether the licence as defined under The Indian Easements Act, 1882, is transferable? (5 marks)

Ans:

1. Licence is a right to use certain specified immovable property by one party called as licencor to another party called as the licensee.
2. In case of licence the interest in the property is not transferred and hence the licence itself is not transferable since its only the right to use, which is transferred to the other party.
3. Like in case of lease, the possession of the property alongwith the right to use is transferred, hence interest in lease is transferable however same does not apply to a licence.

Q.4 A (ii)

While forming an opinion, comment on “reliance put by opinion giver on the certificates of public official” while understanding the facts of a case. (5 marks)

Ans:

1. The record of public officials is an authentic form of verified information which can be used by the opinion giver to its client.
2. Normally certain opinions require usage of certain public record or data which substantiates the value of the opinion.
3. For example, while deciding whether to purchase the property or not, it is important to verify the search history of alienation, which can be obtained from property Registrar office. Such search report adds a lot of weight to the opinion given by the opinion giver.

Q.4 A (iii)

Explain E-stamping. Enumerate its benefits. (5 marks)**Ans:**

1. The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Indian Stamp Act.
2. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution.
3. E-stamping is a computer based application and a secured electronic way of stamping documents. The prevailing system of physical stamp paper/franking is being replaced by E-stamping system. The Stock Holding Corporation of India Limited (SHCIL) is the Central Record Keeping Agency (CRA).
4. E-stamping is beneficial for varied reasons such as E-stamps are less time-consuming, they are very easily accessible; they save cost, e-Stamp Certificate generated is tamper proof, e-

Stamp Certificate generated has a Unique Identification Number, they are easily accessible, they are secure and user friendly.

PART II

Q.5

Sharma, a resident of Delhi, filed a revision petition before the Delhi High Court challenging an order passed by the subordinate court in a property dispute case. The order had gone against him, as instead of filing appeal before appellate court, he sought relief under section 115 of the Civil Procedure Code (CPC).

Sharma has been embroiled in a property dispute for several years. Frustrated by the delays and complexities of the traditional court system, he seeks a more efficient resolution to his case. Upon hearing about the e-Courts Project, Mr. Sharma decides to explore its services.

The e-Courts Project was conceptualized on the basis of the “National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary—2005” submitted by e-Committee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts. The e-Courts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.

Furthermore, Sharma had advanced a sum of Rs 5 Lakh to Mr. T on 1st November 2023, with an agreed rate of interest @12 percent per annum and repayment within three months. He recovered Rs 5 Lakh with in time from T but could not recover the agreed interest even after repeated reminders. He wants to file suit against T for recovery of interest.

Based on the facts of the above case study, answer the following questions:

- (a) The e-Courts Project, initiated and based on the National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the judiciary, aims to transform the Indian judiciary through ICT enablement of courts. State the objective of the e-Courts mission project. What services are available to litigants through the e-Courts Project?**

- (b) What are the grounds upon which the High Court can intervene in revision proceedings? Whether it can interfere, if it differs from the conclusions of the subordinate court on questions of fact or law?
- (c) Sharma approaches you seeking guidance on filing a suit against T. Advise him on the necessary facts to include in the suit for the recovery of interest from T. (5 marks each)

Ans:

- a. The objective of the e-court mission project are:
- To provide efficient & time-bound citizen centric services delivery as detailed in e-Court Project Litigant's Charter.
 - To develop, install & implement decision support systems in courts.

- To automate the processes to provide transparency in accessibility of information to its stakeholders.
- To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

The services include:

1. Cause List
2. Latest Updates
3. Latest Judgments
4. Listing notices
5. E-SCR(Supreme Court of India reportable judgments)
6. Online Appearances
7. Live Streaming of Cases
8. Physical Hearing (Hybrid Options).

b. Revision petition is mostly filed by a party when in a case an opportunity to appeal is not allowed. The HC can either take suo moto cognizance of the matter or by an application filed by a party where the H.C is convinced that:

- (a) The lower court has failed to exercise its jurisdiction
- (b) The lower court has excessively exercised its jurisdiction

c. Facts to be included in a recovery suit:

- (a) Mr. Sharma should specify the date and nature of the transaction
- (b) written doc work executed between them if any
- (c) He must show it to the court that he initiated to recover the money from Mr. T by sending reminder after the due date
- (d) On failure to pay the interest amount, the cause of action arose
- (e) Mr. Sharma repeatedly followed-up with Mr. T to recover the amount of Interest

(f) Prove it to the court that this matter is within the limitation period and this court has appropriate jurisdiction to hear the same.

Q.6. (a)

Sudharshini approaches the National Company Law Tribunal in some matter and submits a document in Tamil. The Registry of the NCLT refuses to accept the document as it is in Tamil. Is the refusal of the Registry tenable? Explain. (5 marks)

Ans:

1. Every appeal or petition or application or caveat petition or objection or counter presented to the NCLT shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.

2. Therefore, if Sudharshini hasn't submitted a translated copy in English, then Registry of NCLT has a right to reject the documents and instruct the party the documents alongwith the translated copy in English.

Q.6(b)

The registered office of Poornabodha Limited is located in the city of Udupi in Karnataka. In a matter pertaining to the removal of a director, a notice was despatched by the company from a post office in Hassan in Karnataka. A shareholder has contended that the notice is not valid. Explain if the contention of the shareholder is correct. (5 marks)

Ans:

I. As per NCLT rules and as per the provisions of Companies Act, 2013, the notice for removal of a director must be sent either by registered post or speed post or courier and if the email is available with the company, then the notice could also be sent via e-mail.

2. Since in the present case, the notice was dispatched through ordinary post, it's an invalid mode of service of notice and hence has to be dispatched by any of the modes stated above.
3. Such notice must reach the concerned director at least 7 days before the date of the meeting and then his reply is to be sent to all the shareholders or else the director has a right of personal representation before the shareholders, before the resolution is put to vote.

Q.6(c)

Explain the nature of offences, which can be compounded under the Companies Act, 2013. Specify the jurisdiction for compounding such offences. (5 marks)

Ans:

1. Compounding means clubbing of offences of similar nature.
2. Under the provisions of Companies Act, 2013, any offence in which punishment is by way of Imprisonment OR fine or imprisonment OR fine or imprisonment or both, are compoundable offences.

3. Cases where punishment is either by way of imprisonment OR imprisonment and fine cannot be compounded.
4. For compounding, an application shall be made by the company with the Registrar, who shall then forward this application with the concerned authority.
5. If the punishment is upto an amount of Rs. 25 Lakhs, the application must be forwarded to RD and if it is beyond 25 Lakhs, then it must be forwarded to NCLT.

Q.6.A (i)

Examine the role of Adjudicating Officers under the SEBI Act, 1992 to determine the quantum of fine when any provisions specified in the SEBI Act or SCRA, 1956 are not been complied with. (5 marks)

Ans:

While adjudging the quantum of penalty as stipulated under the above mentioned sections, the Board or the adjudicating officer shall have due regard to the following factors, namely : –

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default ;
- (b) the amount of loss caused to an investor or group of investors as a result of the default ;
- (c) the repetitive nature of the default.

Q.6.A (ii)

Explain the objectives of the ICSI (Guidelines for Attire and Conduct of Company Secretaries), 2020. (5 marks)

Ans:

The objective of issuing these Guidelines is to:

- (a) Provide the rules of etiquette and decorum for appearance before the courts, statutory bodies and quasi-judicial bodies such as NCLT, NCLAT, SEBI, CCI, etc.
- (b) Ensure respect for authority and to maintain dignity of the profession of company secretaries.
- (c) Prevent company secretaries from contemptuous behavior to the judicial authorities.
- (d) Guide company secretaries as to which attire is considered unsuitable, unconventional or inappropriate and interfering with the orderly administration of justice.
- (e) Project a professional image amongst the regulators and build a brand for the profession of Company Secretaries.

Q.6.A (iii)

Explain Appellate Authorities under the Competition Act, 2002. (5 marks)

Ans:

National Company Law Appellate Tribunal (NCLAT):

The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition-related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General (DG) of the CCI.

High Courts:

High Courts have jurisdiction to hear appeals against the orders of the CCI or the DG. Appeals to High Courts are filed under Article 226 of the Constitution of India, which allows for the judicial review of decisions taken by administrative bodies.

Supreme Court of India:

The Supreme Court of India is the highest court of appeal in the country and has the power to hear appeals against the orders of the NCLAT. Appeals to the Supreme Court are usually filed in cases where the NCLAT has erred in law or where there is a substantial question of law to be decided.

CHAPTER I – TYPES OF DOCUMENTS

Q. Distinguish between Conveyance & Contract. (4 marks)

Conveyance	Contract
1. Governed by TOPA, 1882	1. Governed by Indian Contract Act, 1872
2. Passes on the title of property to another person	2. Remains to be performed & its specific performance may be sought.
3. Deed of Mortgage or Sale would operate as conveyance of such interest.	3. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property.
4. It not create any right of any action, but it alters the ownership of existing right.	4. Contract creates right to performance.

CHAPTER 2 – GENERAL PRINCIPLES OF DRAFTING

Q. Drafting is defined as synthesis of law & facts in language form. Explain. (4 marks)

Ans.

1. Drafting refers to the act of writing legal documents.
2. The key feature of drafting is that it presents a brief knowledge about the significant facts of the situation or issue.
3. Drafting is development & preparation of legal instruments such as constitution, statutes, regulations, contracts, etc.
4. However, while drafting draftsman should have proper knowledge of law & facts so as to put facts in systematized sequence to give correct presentation / analysis of situation.

Therefore, it is rightly stated that drafting is synthesis of law and fact in language form.

Q. Drafting and conveyancing provide the same meaning although these terms are not interchangeable. Explain. (4 marks)

Ans.

1. Drafting refers to writing of legal documents. Whereas, conveyancing refers to transferring of property from one person to another by means of deed.
2. In case of drafting, documents can either relate to transferring of property or documents defined as per general clause. In simple words, it may include all types of documents in business usage.
3. However, conveyancing is part of drafting which involves transfer of interest in property.
4. Thus, Drafting and conveyancing provide the same meaning although these terms are not interchangeable.

Q. Distinguish between Conveyance & Contract. (4 marks)

Ans.

Conveyance	Contract
5. It is governed by TOPA, 1882	5. It is governed by Indian Contract Act, 1872
6. It passes on the title of property to another person	6. It remains to be performed & its specific performance may be sought.
7. Deed of Mortgage or Sale would operate as conveyance of such interest.	7. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property.

8. Conveyance does not create any right of any action, but it alters the ownership of existing right.

8. Contract creates right to performance.

Q. DO's & Don'ts of Drafting. (5 marks)

Ans. DO's:

1. Reduce group of words to single words.
2. Write shorter sentences.
3. Avoid repetition
4. Active voice over passive voice.
5. Express the idea in fewer words
6. Choose the right words
7. Know the exact meaning of words & sentences you are writing.

Don'ts

1. Avoid use of words which sounds similar e.g. Employer & Employee
2. Clauses shall be numbered so it is convenient to give reference.
3. Avoid negative sentences.
4. Avoid use of words like 'less than' or 'more than' instead use 'Not Excluding'

Q. Explain: (i) Deed Pool, (ii) Deed Poll, (iii) Indenture, (iv) Cyrographum (v) Deed escrow. (5 marks)

Ans.

(i) Deed Pool:

1. It is deed between 2 or more parties. Where as many copies are made as there are parties. So, that each party may poses a copy,
2. No. of parties = No. of copies.

(ii) Deed Poll:

1. It is a deed made & executed by a single party

2. It is usually drawn in first person.

3. E.g. Power of Attorney.

(iii) **Indenture:**

1. In Indenture there are 2 or more parties

2. It was written in duplicate upon one piece of parchment & 2 parts were served so as to leave an intended or vary edge, forging being thin rendered very difficult. Cut with uneven edge at the top.

(iv) **Cyrographum:**

1. It is another type of indenture.

2. Word 'Cyrographum' is written between 2 or more copies of document & parchment is cut in judged line through the word.

3. Idea was to make it difficult for any person to forge another deed that would fit exactly into this cutting with the same Zig-Zag lines.

(v) **Deed Escrow:**

1. It is a deed signed by one party is delivered to another as an 'escrow'.
2. It is mere writing unless signed by all parties and dated when last party signs it.
3. It operates from date when it's last signed.

Q. Distinguish between Document & Deed. (4 marks)

Ans.

Document	Deed
1. Documents is defined by General Clause Act.	1. There is no specific definition of deed in any act.
2. It means & include any matter written, expressed or described upon any substance by means of lecture, figures, which is intended to be used for purpose of recording that matter.	2. It is an instrument by which 2 or more person agree to effect any right or liability.

3. E.g. Map, or plan, words printed, etc.	3. E.g. Sale deed, Lease Deed, etc.
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Q. Write Note on Recitals. (3 marks)

Ans.

1. Recitals are the introductory statements in a written agreement or deed, generally appearing at the beginning.
2. It contains short story about what the contract is about, who the parties are, why they are signing the contracts and so on.
3. Recitals may be of 2 types:
 - i) Narrative recitals - it relates to the past history of property transferred, how property was originally acquired.
 - ii) Inductory recitals - Which explains motive or intending behind execution of deed.
4. Recitals generally begins with the word “Whereas”

5. Recitals carry evidentiary importance in the deed, i.e. when operative part is unambiguous, recitals have no effect on the construction of the deed. But where operative part is ambiguous, the recitals governs the construction of the deed.

Q. Note on Habendum & Reddendum. (4 marks)

Ans.

• **Habendum:**

1. The purpose of habendum is to define the type of interest and rights to be enjoyed by the grantor or lesser & to set out limitation on property involved.
2. It shows whether transfer is of life interest or absolute sale.
3. It mentions whether property is encumbered or not.
4. The habendum clause starts with words **‘TO HAVE AND TO HOLD’**.

Reddendum:

1. A clause in a deed by which some new thing is reserved out of what had been granted before, the clause by which rent is reserved in a lease.

2. It is place where payable & installment is mentioned & if there is apportionment of rent that is also mentioned.

Q. Distinguish between Operative clause & Testimonium clause. (4 marks)

Ans.

- **Operative Clause:**

1. A clause which states anything that is to be done or not to be done.
2. It is followed by real operative words which vary according to the nature of property & transaction involved therein.
3. Words used in operative clause will differ from transaction to transaction.

- **Testimonium Clause:**

1. It is last part of the deed.
2. It signifies when an instrument was signed, by whom it was signed and in what capacity.

3. The usual form of testimonium is as under:

“In witness thereof both the parties to the contract have joined their hands respectively to give effect to the said contract on the date as mentioned above”.

Q. Difference between Endorsement & Supplement Deed. (4 marks)

Ans.:

- **Endorsement:**

1. It means to write on the back or on face of a document wherein it is necessary in relation to the contents of that documents or instrument.
2. The term ‘Endorsement’ is used with reference to negotiable instrument like – Cheque, Bills of Exchange, Promissory Note.
3. E.g. to sign on back of cheque, one name as payee to obtain cash – is an endorsement on cheque.

Supplemental Deed:

1. It is document entered into between the parties on same subject on which there is prior document, existing & operative, for adding new facts which otherwise cannot be done by way of endorsement.

5. Thus, supplemental deed is executed to give effect to new facts in the deed.

Q. Write a Note on Covenants & Undertakings. (4 marks)

Ans.

1. The term 'covenant' is defined as an agreement under seal, which stipulates for the truth of certain facts.
2. Covenants including undertaking.
3. Every deed must contain the terms and conditions by which parties bind themselves. However, it is not necessary to mention such covenants which are implied by law. But if they are not implied by law, they must be clearly stated.
4. Sometimes covenants & undertaking are mixed i.e. cannot be separated, in that case, they are joint together.

Q. Differentiate between Endorsement and Engrossment. (4 marks)

Ans.

- **Endorsement:**

1. It means to write on the back or on face of a document wherein it is necessary in relation to the contents of that documents or instrument.
2. The term 'Endorsement' is used with reference to negotiable instrument like – Cheque, Bills of Exchange, Promissory Note.
3. E.g. to sign on back of cheque, one name as payee to obtain cash – is an endorsement on cheque.

- **Engrossment:**

1. The draft of document is required to be approved by the parties.
2. In case of company, it is approved by BOD or by duly constituted committee by passing requisite resolution.
3. The document after approval is engrossed i.e. copied on the non-judicial stamp paper of appropriate value as per Stamp Act.

Q. Attestation, Registration & stamp duty on agreements comment. (5 marks)

Ans.

1. An agreement which is enforceable by law is called a contract and when such contract is reduced to writing, the document is called an agreement.

2. Attestation:

- i) It is not necessary for an agreement to be attested by any witnesses; however, they are usually attested by at least one witnesses.
- ii) And when agreement is registered, it shall be attested by 2 witnesses.

3. Registration of agreement:

- i) Agreement relating to movable property are not compulsorily registered.
- ii) Agreements which create an interest in immovable property worth more than Rs. 100 are required to be registered.

4. Stamp Duty:

Stamp duty for different agreement varies from state to state.

Q. Fowler's five rule of drafting. (4 marks)

Ans.

Following are fowler's five rules of drafting:

1. Prefer the familiar word to the far fetched
2. Prefer the concrete word to the abstract.
3. Prefer the single word to the circumlocution.
4. Prefer the short word to the long word.
5. Prefer the Saxon word to the Roman.

6. Always prefer active voice to the passive voice.

Q. The date of the execution of a deed is material for the purpose of limitation and registration of the document. If the date is accidentally missing in the deed, how do you, as a company secretary, will deal with such a situation? Refer the relevant law on the point. (6 marks)

Ans.

1. The date of deed is the date on which parties sign or execute it
2. The date on which the document is executed comes immediately after the description of the deed.
3. The date is not strictly speaking an essential part of the deed. A deed is perfectly valid if it is undated or the date given is an impossible one, e.g. 30th day of February.
4. If no date is given, oral evidence will always be admissible to prove the date of execution only it leaves necessary to prove it.

5. It is the date of execution which is material in a document for the purpose of application of law of limitation, maturity of period, registration of the document and passing on the title to the property as described in the document. Thus, the “date” of the document is important.
6. . In India, there is a short period of 4 months for its registration from the date of execution within which a deed must be presented for registration.
7. If several parties to a deed sign the deed on different dates, in such cases, the practice is to regard the last of such dates as the date of deed.
8. In view of the extreme importance of date of execution of deed it should be regarded as an essential requirement.

Q. Elucidate eight principles which a draftsman should keep in mind while drafting. (4 marks)

Ans:

1. As far as possible the documents should be self-explanatory.
2. The draftsman should begin by satisfying himself that he appreciates what he means to say in the document.
3. The well drafted document should be clear to any person who has competent knowledge of the subject matter.
4. The draft must be readily intelligible to a layman.
5. The documents may not be prefect because it says too much or too little or is ambiguous or contains one or more of the facts because it has to be applied in circumstances which the draftsman never contemplated. This should be avoided.
6. Nothing is to be omitted or admitted at random on the document that is to say negative statement should generally be avoided.

7. Use of judicial language should be made.
8. The text of documents should be divided into paragraphs containing the relevant facts.
9. Schedule should be provided in the documents. Whether any portion of the document should be put into the schedule(s) will depend on the circumstances.
10. The active voice is preferable to the passive voice, unless the passive voice in a particular connection make the meaning more clear.

Q. What are the considerations to be taken into account in the case of the words used in an agreement are found ambiguous? (4 marks)

Ans:

1. The cardinal rule is that clear and unambiguous words prevail over any hypothetical considerations or supposed intention.
2. But if the words used are not clear and unambiguous the intention will have to be ascertained.
3. In other words, if the intention of the parties can be gathered from the words and expressions used in a deed, such an intention does not require to be determined in any other manner except giving the words their normal or natural and primary meanings.
4. It is the dominant intention of the document as disclosed from its whole tenor that must guide the construction of its contents.

5. In case the terms are not unambiguous it is legitimate to take into account the surrounding circumstances for ascertaining the intention of the parties.
6. The social milieu, the actual life situations and the prevailing conditions of the country are also relevant circumstances.

Q. Conveyance and Contract. (4 marks)**Ans:**

CONVEYANCING	CONTRACT
1. Conveyancing does not create any right of any action but at the same time it alters the ownership of existing right.	1. Contract remains to be performed and its specific performance may be sought but conveyance passes on the title to property to another person.
2. Transfer of immovable property is governed by the Transfer of Property Act, 1882.	2. Contracts are governed by provisions of the Indian Contracts Act, 1872.
3. The deed of mortgage or sale would operate as conveyance of such interest.	

	3. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property.
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CHAPTER 3 – LAWS RELATING TO DRAFTING & CONVEYANCING

Q. In a contract, the material terms of the agreement are clear & specific. Omission of minor or basic details will not invalidate the agreement. Comment. (5 marks)

Ans.

1. For an agreement to be valid and enforced, it must fulfill all the essentials as per Indian Contract Act, 1872.
2. Every agreement contains material facts and some cosmetic details which the law may consider as an excuse too.
3. Any error or mistake in material terms of the contract may invalidate the agreement. However, cosmetic omission has no effect over its validity.
4. For e.g. if parties fail to specify address of both of them or maybe fails to specify bank A/c. details in case of an agreement having consideration may be considered as minor omissions.

Q. Explain Deed of Assignment**[OR]*****Transfer of actionable claim is usually called an Assignment. Discuss. (5 marks)*****Ans.**

1. Assignment is a form of transfer of property.
2. It is commonly used to refer the transfer of actionable claim or a debt or any beneficial interest in a movable property.
3. The term assignment is of under import and it stipulates what kind of rights have been assigned.
4. An actionable claim means any unsecured debt or any beneficial interest in MP, not in possession, actual or constructive, of the claimant.
5. The assignment of an actionable claim must be effected by an instrument in writing, signed by transferor. Thus, Transfer of actionable claim is usually called an Assignment.

Q. A Debtor cannot claim or take advantage of nonpayment of consideration for assignment. (4 marks)

Ans.

1. Assignment of business debt is an arrangement between business person & Bank or FI, wherein, business transfers the right of recovery of debts from debtor to a third party.
2. In such assignment arrangements, business transfers the right of recovery to bank & inform the debtors about such assignment.
3. Debtors as such have no rights to refuse this assignment arrangement and are duty bound to make payment to the assignee.
4. Therefore, Debtors cannot take advantage of such assignment arrangement.

CHAPTER 4 – DRAFTING OF AGREEMENTS, DEEDS & DOCUMENTS

Q. State some important points while drafting contracts. (4 marks)

Ans.

1. An agreement which is enforceable by law is called contract. When such contract is reduced to writing, the document itself is called agreement.
2. It is very much desirable to keep certain important points while drafting contract.
3. Following are some of important points:
 - (i) Description of parties
 - (ii) Licenses & permits
 - (iii) Consideration
 - (iv) Quality, quantity & inspection of goods.
 - (v) Packing
 - (vi) Insurance
 - (vii) Taxes, cheques & duties

- (viii) Shipment of goods
- (ix) Guarantee
- (x) Force measure
- (xi) Settlement of disputes & Arbitration.

Q. Explain the terms & conditions in the agreement to sell / purchase. (4 marks)

Ans.

Following are the terms & conditions in the agreement to sell/ purchase:

1. **Title** - Vendor has a marketable title & vendor has to produce the title deeds to the purchaser for inspection.
2. **Retention of right** – If only part of property is sold, retention of right should be mentioned.
3. **Encumbrance** - Prior charge, if any shall be mentioned.
4. **Price & Cost** – Mode of payment, Consideration amount, money to be deposited, taxes, Rent, if any.

5. **Possession** – Parties should agree when possession of property should be transferred.
6. **Registration fees** – Parties to agree who shall bear cost & expenses of execution, registration, etc. If both the parties have to bear, in what proportion they should.
7. **Brokerage** – agreement shall clearly specify If any brokerage is payable, at what rate & at what time.

Q. Write Note on Force Majeure clause. (4 marks)

Ans.

1. Force majeure is a provision that relieves parties from performing their contractual obligation when certain circumstances occurs which are beyond their control.
2. Circumstances which makes performance inadvisable, commercially impracticable or impossible.
3. For e.g.: Fire, flood, earthquake, civil war, strike, lockouts etc.

Thus, purpose of force majeure clause is to release either of the parties from its contractual obligation or extend the time for same in any of such events which are beyond their control

Q. Award given by arbitrator is not always final and binding upon parties [OR] Does it required registration? (5 marks)

Ans.

1. Arbitrator is considered as an alternate resolution machinery and its main object was to reduce the burden of court, speedy disposal of disputes & economic settlement.
2. Arbitrator is empowered with all the powers of civil courts as per CPC, 1908.
3. However, decisions given by arbitrator is always in its finality till the same is challenged before any court of competent authority [it can be challenged before HC]
4. Therefore, the award of arbitrator is always final and binding if not appealed upon and hence does not required registration.

Q. Explain requisites of a valid Award. (4 marks)

Ans.

1. Arbitration is considered as an alternate resolution machinery.
2. The decision given by arbitrator is known as 'Award' and is always final & binding upon parties, if same is not challenged before court of competent authority.
3. The general requisite of the awards is:
 - (i) It must be certain
 - (ii) It must be fair to the parties
 - (iii) It must be final
 - (iv) Its implementation must be possible
 - (v) It must be consistent with the submission.

Q. A contract of guarantee is a contract to perform promise. Comment. (4 marks)

Ans.

1. A contract of guarantee is a contract between 3 parties wherein the surety secures the performance of the principal debtor, in case if the principal debtor is not able to fulfill his part of the contract.
2. Specifically, in case of performance guarantee the surety either assures the performance of the contract or ensures that reasonable compensation is paid to the suffering party in case of non-performance by the principal debtor.
3. Thus, a contract of guarantee is a contract to perform promise.

Q. Types of Guarantee contracts. (4 marks)**Ans.****1. Continuing guarantee:**

Guarantee which extend to a series of transaction. It can be revoked by surety at any time as to future transaction by notice to creditor.

2. Counter Guarantee:

Given by principal debtor to the surety to indemnify against any loss or damage suffer by surety on account of default by PD.

3. Performance Guarantee:

Surety ensures the performance of contract or ensures that reasonable compensation is paid to the suffering party in case of non-performance by the PD.

4. Fidelity Guarantee:

- i) Guarantee, guaranteeing an employer against the misconduct of an employee.

- ii) It protects employer from the financial losses that are caused due to employees who embezzles commit forgery, fraud or steal directly from the company.

5. Bank Guarantee:

- i) Guarantee given by bank on behalf of its client to another person with whom he has or wants to enter into contract.
- ii) Bank is being called upon to pay the amount in the event of contingency, happening or non-happening as the case may be.

Q. Subrogation of surety to right of creditors Explain. (4 marks)

Ans.

1. Surety is a person or company that gives guarantee of performance of contract.
2. In case of principal's failure to make payment, the surety is asked to pay the debt.
3. On making such a payment, the law will give the surety a right of subrogation.

4. By subrogation, surety is allowed to step into the shoes of creditors and have a right to recover the payment.
5. Surety is entitled to recover the cost even in the absence of the express agreement to that effect.
6. Thus, when surety makes good the default of his principal, by discharging the obligation of the principal, the surety is generally subrogated to the rights of a creditor.

❖ **Extra points to Remember:**

I. Surety's Liability:

- i) The liability of surety is co-extensive with that of principal debtor, unless it is otherwise provided by contract. [i.e. surety is liable to the same extend as the principal debtor is]
- ii) It is choice of creditors to recover the amount either from Principal Debtor (PD) or from surety.

2. Consideration for a guarantee:

Anything done, or any promise made for the benefit of PD may be sufficient consideration to surety. It is not necessary that surety should receive any advantage himself.

Q. Difference between Surety & Security (4 marks)

Ans.

- **Surety**

1. Surety is a person who gives guarantee of performance of contract when Principal Debtor fails to fulfil it.
2. Upon fulfilling his obligation, he takes the position & rights of creditors, under doctrine of subrogation.
3. Commonly found in contract of guarantee.

4. **Security:**

Property charged or pledged as a guarantee of the fulfillment of an undertaking or repayment of debt is referred as security.

Q. Outsourcing Agreement. Explain. (3 marks)

Ans.

1. Outsourcing agreement is an agreement between a business and a service provider in which service provider promises to provide necessary services.
2. Usually, non-core & non-revenue activities are outsourced to the specialists
3. There are two common types of Outsourcing :
 - i) Business Process Outsourcing (BPO) – related to HR, payroll & financial activities.
 - ii) Knowledge Process Outsourcing (KPO) – related to legal & other highly skilled activities.

4. Benefits of Outsourcing:

- i) Get access to the skilled expertise

- ii) Work load is increased by additional non-core activities & quality of core activities suffers. Hence by outsourcing it helps to focus on core activities.
- iii) Staffing flexibility
- iv) Recruitment & selection is costly & time

Q. Factors to be properly addressed in outsourcing agreements. (4 marks)

Ans.

1. Outsourcing agreement is an agreement between a business and a service provider in which service provider promises to provide necessary services. Usually, non-core & non-revenue activities are outsourced to the specialists.
2. Following are the factors to be properly addressed in outsourcing agreements:
 - i) Duties & obligation of Outsourcer.
 - ii) Duties & obligation of service provider
 - iii) Legal compliance

- iv) Fees & payments
- v) Term
- vi) Non-Disclosure
- vii) Default
- viii) Dispute – Arbitration.

Q. Explain Service Agreements. (3 marks)

Ans.

1. When a contractor agrees to perform a service in exchange for compensation, a service contract defines the terms of that agreement.
2. In service contract, terms of employment should be fixed & clearly expressed, nothing should be left to presumptions.
3. Contract should contain affirmative [acts & duties to be performed] & as well as negative [putting restriction on or after term of employment].

4. While drafting restrictive covenants, they shall not be illegal. Agreements in restraint of trade are void and hence should not be included in agreements.

Q. Distinguish between Lease Agreement and License Agreement. (4 marks)

Ans.

Basis	Lease Agreement	License Agreement
Interest in land	Interest in land is transferred in case of lease agreement.	In License agreement, interest in land is not transferred, acquires a right to occupy the land.
Heritable	It is Heritable	It is not heritable
Registration	Registration of lease agreement is mandatory	Registration of license agreement is Optional
Consideration	It is in the form of Rent	It is in the form of fees

Death	Death of lessor does not terminate the lease	Death of licensor terminates the license
Definition	As per TOPA, right to enjoy is transferred For certain period or in perpetuity.	As per Indian Easement Act. Right granted by licensor to do or continue to do, something which would be unlawful in absence of such right.
Period	It is for definite period/ Life of person/ Permanent.	It is Always for definite period.

Q. Difference between Pledge & Hypothecation. (3 marks)**Ans.**

Hypothecation	Pledge
It is not governed by any law	It is governed by Indian Contract Act, 1872.
Legal property in goods is transferred to person who lends money to them.	Pledge is a bailment of goods as a security
Possession is not transferred	Possession is transferred
Parties: Hypothecator, Hypothecatee	Parties: Pawnor Pawnee
E.g. Working capital loan given by bank on goods which are in possession of borrowers	E.g. Mr. A gives Mr. B his goods as a security for payment of Rs.40,000 payable by A to B.

Q. Define Gift. Discuss procedure for making a Gift

[OR]

Gift can be made either orally or through gift deed. Is there any requirement to get it stamped & registered? (5 marks)

Ans.

1. Gift has been defined in TOPA, 1882 as transfer of existing immovable property made voluntarily and without consideration by the donor to the donee.
2. In case of moveable property: It may be effected either by a registered instrument signed by donor or by delivery. Whereas, in case of immovable property, it shall be affected by registered instrument signed by donor & attested by at least 2 witnesses.
3. Gift shall be only of existing property and it shall be accepted by the donee during lifetime of donor.
4. However, Gift shall be void in following cases:
 - i) If gift relates to transfer of future property or

ii) Donee dies before acceptance.

5. Stamp Duty:

i) Stamp duty payable on gift deed shall be value of property as mentioned in deed or Market value of Property [whichever is greater]

ii) If value of Property is omitted or undervalued, prosecution may be invited & further, penalty provisions may also be attracted.

6. Gift once made shall be binding upon donor and donor, in no case can revoke such gift unless it is obtained by fraud or undue influence.

Q. Note on Revocation of Gift. (4 marks)

Ans.

1. Gift has been defined in TOPA, 1882 as transfer of an existing immovable property made voluntarily and without consideration by the donor to the donee.

2. Under Hindu Law, Gift once made shall be binding upon donor and donor, in no case can revoke such gift unless it is obtained by fraud or undue influence.
3. Whereas, under Muslim law, rules are different.
4. It states Muslim can revoke a gift even after delivery of possession except in following cases:
 - i) It is made by husband to wife or vice-a-versa
 - ii) If done is related to the donor
 - iii) When gift is sadiki
 - iv) When donor is dead
 - v) When gift has passed out of donor's possession by gift sale or otherwise.
 - vi) When gift is lost or destroyed.
 - vii) When thing given is too changed that it cannot be identified.
 - viii) When given gift has increased in value
 - ix) When donor has received something in exchange of gift.

Q. Aims and pre-requisite of Arbitration comment. (5 marks)

Ans.

1. Arbitration means alternate resolution machinery which aims at speedy disposal of cases, minimization of cost & to reduce the burden of the court.
2. Following are the pre-requisite of arbitration:
 - i) A dispute between parties to an agreement, requiring a settlement.
 - ii) Its submission for a settlement to a third person and.
 - iii) A decision by such third person according to his own judgment based on the facts & circumstances of the disputes.

Q. In order to solve certain disputes among the partners, arbitrator has been appointed, but there is no arbitration clause in the partnership deed, except only communication through electronic means among the partners relating appointment of arbitrator. One partner challenges the appointment of arbitrator, Decide. (4 marks)

Ans.

1. The 'arbitration agreement' under the Arbitration and Conciliation Act, 1996 means an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them in respect of defined legal relationship whether contractual or not.
2. Such agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
3. It has to be in writing. It is considered to be in writing, if it is contained in a document signed by the parties, or in an exchange of letters, telex telegrams or other means of

telecommunication “including communication through electronic means” which provide a record of the agreement.

4. Thus, the appointment of arbitrator in the given question cannot be challenged by the partner.

Q. An arbitrator is not bound by the strict rules of evidence of law. Comment and state the methods of arbitration in the light of the statement. (4marks)

Ans:

- 1.** The parties to the dispute will enter into an agreement to refer the dispute to arbitration and will agree on the terms of reference, that is, to state clearly and precisely the matter the arbitrator is required to decide.
- 2.** While deciding the matters, he follows the practice of presentation and conduct of a case in a court of law.

3. Most of the evidence is in writing, party may be cross-examined on the written evidence of both the parties, and then the arbitrator makes his award in writing within the terms of reference. It is for the arbitral tribunal to lay down its own procedure during the arbitration proceedings.
4. The power of the arbitral tribunal includes the power to determine the admissibility, relevance and significance of any evidence before it. So an arbitrator is not bound by the strict rules of evidence of courts of law.

Q. Continuing Guarantee and Counter Guarantee. (4marks)

Ans:

Continuing Guarantee-

1. As per Section 129 of the Indian Contract Act, 1972, a Guarantee that extends to a series and multitudes of transactions is known as a “Continuing Guarantee” in a contract.

2. These guarantees have a set time limit and time frame or are for a fixed duration, maybe one month, one year, etc.
3. Continuing Guarantee does not come to an end after the discharge of a single promise or repayment of single debt or transaction.
4. It is in the hands of the Surety to make sure that the liability regarding time or amount can be limited according to his wishes and interest.
5. Under Continuing Liability, the Surety is liable for unpaid and left balance at the end of the guarantee.

Counter Guarantee-

1. Counter guarantee is a guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of principal debtor.

Q. Illustrate whether stamp duty and registration of a gift deed is compulsory? (4 marks)

Ans:

1. Yes, the value of the property gifted must be set forth in the deed of gift.
2. Stamp Duty is payable on gift deed as on the conveyance as per amount of value of the property as mentioned in the deed or as per market value of such property whichever is greater as per Article 23 of the Indian Stamp Act, 1899.
3. If the value of the property is intentionally omitted or under-valued with a view to defraud the revenue, prosecution may be invited under Section 64 of Indian Stamp Act (**Muhamad Muzaffar Ali ILR 44 Allahabad 339 FB**). Further, penalty provisions under Gift-tax Act may also be attracted.
4. Gift deed of immovable property can compulsorily registered as per Section 123 of the Transfer of Property Act and Section 17(i)(a) of the Registration Act, 1908, whatever may be the values.

Q. Mention important aspects which should be kept in mind while drafting a sale deed of an IP by a limited company. (4 marks)

Ans.

1. Company can validly acquire or dispose of the property if

- Its MOA/AOA provides &
- BOD pass requisite resolution in conformity with provisions of Companies Act, 2013.

2. Important Aspects:

(i) Lawful Consideration & Object:

- The property must be purchased for consideration. Also, the objectives should be lawful i.e., not forbidden by law or opposed to public policy.

(ii) Competence of Person to Transfer:

- Property must be transferred by the person having competent authority

(iii) Absolute Transfer:

- The transfer should be free of any conditions or limitations.

(iv) Absolute Interest:

- interest in property should not be conditional

(v) Property to be free from the conditions:

- The property being transferred should be free from any rights or obligations.

(vi) Transfer in good faith & with full authority

- Where the property is transferred by a person not to be the real owner, it is necessary to make such transfer valid for the transferor should have the authority to transfer and he must exercise this authority in good faith

(vii) Protection for defective title:

- Law protects the transferee who acquires the immovable property under good faith and for bona fide consideration.

Q. Transfer of IP by way of sale can be effected only by way of deed of conveyance.

Explain. (4 marks)

Ans.

1. Conveyance means transfer of ownership from seller to the buyer.
2. Every sale deed of an IP specifically mentioned about transfer of ownership by way of specific clause without which no asset can be transferred.
3. In case of transfer of IP, the agreement is also required to be in writing, has to be executed, registered, stamped & attested
4. Thus, Transfer of IP by way of sale can be effected only by way of deed of conveyance.

Q. A lease is a transfer of right for use of equipment / real property for consideration
[OR]

A lease of IP is a transfer of right. (5 marks)

Ans.

1. Lease is a transaction in which rights or interest in specific IP by one party lessor is transferred to another party called lessee.
2. During the tenancy of this transfer, the lessee has absolute rights to use this property. However, it may be subject to certain conditions as may be specified by lessor.
3. Therefore, the rights transferred may be absolute or restrictive depending on the terms of the agreement.
4. Hence, lease of IP is transfer of right.

Q. Note on Creation of Trust. (4 marks)**Ans.**

1. Trust is an obligation annexed to the ownership of property & arising out of confidence reposed in and accepted by owner for the benefit of another or of another & owner.
2. Trust can be created only for lawful purpose. Trust with an unlawful purpose is void.
3. Creation of Trust in respect of IP:
 - Can be declared only by non-testamentary instrument in writing & shall be signed by author / trustee & registered (or) by will of the author or trustee.
4. Creation of Trust in respect of MP:
 - Can be made as declaration as above or by transfer of the ownership of the property to the trustee.
5. In places, where Indian Trust Act does not apply, trust of IP can be created orally, if author of trust is himself the trustee & no transfer of property is involved.

6. Deed creating trust should contain the following:

- i) Intention to create trust
- ii) Beneficiaries
- iii) Purpose of the trust
- iv) Name of trustees
- v) Duties, rights & liabilities.

Q. Note on Extinction of Trust.

OR

Difference between: Revocation & Extinction of Trust. (4 marks)

Ans.

- **Extinction of Trust:**

Trust can be extinguished when-

1. Purpose is fulfilled
2. Trust become unlawful or
3. Fulfilment of its purpose becomes impossible
4. Trust being revocable, is expressly revoked.

- **Revocation of Trust:**

1. Trust created by will, can be revoked at the pleasure of trustee.
2. A trust created otherwise than will can be revoked only:
 - (i) By consent of all beneficiaries
 - (ii) Power of revocation has been expressly made in deed
 - (iii) In case of trust for payments of debt, it has not been communicated to the creditors.

It applies only to a trust solely for payment of debts & not to trust deed created for payment of debts & other purpose.

Q. Note on Extinction of Trust.

OR

Difference between: Revocation & Extinction of Trust. (4 marks)

Ans.

- **Extinction of Trust:**

Trust can be extinguished when-

5. Purpose is fulfilled
6. Trust become unlawful or
7. Fulfilment of its purpose becomes impossible
8. Trust being revocable, is expressly revoked.

- **Revocation of Trust:**

3. Trust created by will, can be revoked at the pleasure of trustee.
4. A trust created otherwise than will can be revoked only:

- (iv) By consent of all beneficiaries
- (v) Power of revocation has been expressly made in deed
- (vi) In case of trust for payments of debt, it has not been communicated to the creditors.

It applies only to a trust solely for payment of debts & not to trust deed created for payment of debts & other purpose.

CHAPTER 5 – DRAFTING OF COMMERCIAL CONTRACTS

Q. How Del Credere Agency is different from that of other agents. (4 marks)

Ans.

1. An agency agreement is a contract between principal and agent, whereby an agent acts on behalf of his principal.
2. There exists fiduciary relationship between them whereby for the acts of agent, principal is held liable subject to certain exceptions.
3. Whereas Del Credere Agency is an arrangement where agency is combined with guarantee to recover the dues over the goods sold by the agent on behalf of the principal.
4. He gives guarantee of due performance of contract by buyer in lieu of an extra remuneration i.e. agent indemnifies principal against the loss if any, caused by the buyer.
5. A commission Del Credere is a premium price paid for the guarantee given by him.
6. Thus, Del Credere agent is distinguished from other agent simply in this term, that he guarantees the performance of contract with whom he makes the contract.

Q. Ingredients of an agency contract. (4 marks)**Ans.**

1. Agency contracts are governed by Indian Contract Act, 1872.
2. Basic features of contracts are:
 - (i) Authority should be given expressly or implied by, to his principal.
 - (ii) Principal should not be minor, agent could be minor.
 - (iii) Consideration is not necessary.
 - (iv) For acts of agent, the principal is liable.
 - (v) Contract of agency is not assignable unless:
 - a) Nature of business necessitates such assignment.
 - b) Such assignment is expressly permitted by contract of agency.
 - (vi) The authority of agent extends to doing of all that is necessary and collateral to the doing of main act.

Q. Write a note on collaboration agreement. (4 marks)

Ans.

1. Collaboration agreement is an agreement that regulates 2 or more people working together on a project on a collaborative or commercial basis.
2. Usually, collaboration is done for exchange of Technical Know How, Technical designs & drawings, Training of technical personnel, etc.
3. If the agreement is between a party within India and a party abroad, such agreement between collaborating parties are known as “Foreign Collaboration agreement”.
4. Large number of Indian Industrialists have already entered into long term & short term arrangements with foreign companies, firms to obtain technical knowhow.
5. E.g. Maruti Suzuki.

Q. Mention important guidelines which are required to be followed while entering into a Foreign Collaboration agreement. (5 marks)

Ans.

I. It covers following aspects of foreign collaboration agreements:

- (i) **Investment** – if equity participation is involved, the value of shares to be acquired about be brought in cash.
- (ii) **Lump sum payment** – Amount shall be paid in 3 installments by Indian party to foreign collaborator as follows :
 - 1/3 – after approval of CG.
 - 1/3 – on transfer of technical document
 - 1/3 – on commencement of commercial production.
- (iii) **Royalty** – has to be calculated on the basis of net ex-factor selling price of product less excise duty & cost of imported components.

- (iv) **Duration of agreement** – Normal period **8 years to max. 10 years**.
- (v) **Extension or Renewal** – CG may consider it on merit.
- (vi) **Exports** – agreement shall not contain any restriction on free exports to all countries.
- (vii) **Training** – Provisions shall be made for adequate facility for training of Indian technicians for R & D.
- (viii) **Brand Name** – No restriction on use of foreign brand name on products for sale in India.
- (ix) **Indian Laws** – shall be subject to Indian laws
- (x) **Approval of CG** – Every Foreign Collaboration agreement shall be approved by CG.

Q. Explain E-contracts. (3 marks)

Ans.

1. E-contract is the result of advances made in science and technology.
2. They are not paper based and are electronic in nature.
3. E-contracts are governed by the provisions of Information Technology Act, 2000.
4. However, their formation and acceptance are governed by as per the Indian Contract Act, 1872.
5. In today's times, everything from shopping a product online to signing of an international treaty constitutes an e-contract. Such contracts are generally made for speedy entering into contract or for the convenience of the party.

Q. Essentials of e-contracts. (3 marks)**Ans.**

E-contracts are governed by the provisions of information Technology Act, 2000. However, their formation and acceptance are governed by as per the Indian Contract Act, 1872. It has following essentials:

- (i) Offer or proposal by one party & acceptance of that offer by another.
- (ii) An intention to create legal relation.
- (iii) Supported by lawful consideration.
- (iv) Parties shall be capable of contracting
- (v) Genuine consent
- (vi) Object – lawful
- (vii) It shall not be impossible of being performed.

Q. Types of e-contracts (3 marks)**Ans.****I. Click wrap or web wrap agreements:**

- i) Agreements which generally come across while surfing internet as 'I AGREE' or 'I DISAGREE'
- ii) Also called as click through agreements.
- iii) However, they lack bargaining power.
- iv) They are usually found in the software installation process.
- v) They can be of following types:
 - a. Type & click
 - b. Icon clicking.
- vi) E.g. choosing to make payment online or choosing to reject it.

2. Shrink Wrap Agreements:

- i) Agreement which can be read & accepted by consumer after opening of a particular product.
- ii) Installing software from a CD into your PC is an example of shrink wrap agreement.

3. Electronic Data Interchange [EDI]:

- i) EDI is computer to computer communication to exchange business documents between independent organizations.
- ii) Such business documents are transferred electronically. Documents such as purchase order, invoices etc.
- iii) EDI exchanges the information using standard data format.
- iv) The exchange of information is typically between 2 different computers referred as business partners.

Q. Write a note on Online Shopping Agreement between the service provider & Manufacturer. (5 marks)

Ans.

1. In case of an agreement between an e-commerce platform and a manufacturer, the manufacturer sells his products through this web platform.
2. The service provider displays his product on manufacturer's website and therefore, such agreements covers all the mutual rights and obligations between the service provider & manufacturer.
3. It covers issues such as products to be displayed, quality of products, pricing, other specification etc.
4. While drawing such agreement it shall be ensured that all essentials of valid contract must be fulfilled.

Q. Distinguish between the following: BPO and KPO type of outsourcing. (4 marks)

Ans.

Basis	BPO	KPO
Stands for:	Business Process Outsourcing.	Knowledge Process Outsourcing.
Includes:	BPO includes outsourcing related to accounting, human resources, benefits, payroll, and finance functions and activities	KPO includes outsourcing related to legal, paralegal, and other highly skilled activities.
Requirements:	Process Expertise	Knowledge Expertise
Relies on	Cost arbitrage	Knowledge arbitrage
Focus on	Low level process	High Level process

Q. Differentiate between Special POA & General POA. (4 marks)

Ans.

1. POA is an instrument in writing, authorizing another person to act on behalf of it.

2. There are 2 types of POA:

(i) **Special POA –**

- It is executed for the purpose of specific act.
- It implies to form one particular transaction
- It is also called as 'Particular POA'.
- E.g. authorizing a person to sale and T.P.

(ii) **General POA –**

- It is executed for the purpose of more than one act.
- E.g. appointed of person as a director in a company to carry out the activities.

Q. Ingredients necessary to prepare POA. (3 marks)

Ans.

1. POA is an instrument in writing, authorizing another person to act on behalf of it.
2. Following are necessary ingredients to prepare POA:
 - i) Person executing POA should be:
 - Sound Mind
 - Attained age of Majority
 - Married woman can execute POA for purpose of any Non-testamentary instrument.
 - ii) It shall be executed only in favor of major.
 - iii) It is in form of deed poll, usually in first person.
3. It is a unilateral document.
4. It begins with **“KNOW ALL MEN BY ITS PRESENTS”**
5. Generally, operative words making the appointment are introduced without any recitals.

Powers conferred on attorney should be specifically state after the appointment, preferably in separate paragraphs.

Q. POA must be strictly construed

[OR]

Principles governing construction of POA. (4 marks)

Ans.

1. POA is an instrument in writing, authorizing another person to act on behalf of it.
2. Some of principles governing the construction of POA are:
 - (i) Operative part of the deed is controlled by the recitals.
 - (ii) When authority is given to do a particular act followed by general words, general words are restricted to what is necessary for the performance of particular act.
 - (iii) Any power which is not expressly delegated should not be implied.
 - (iv) POA is construed so as to include all incidental powers necessary for its effective execution.

Q. Write a note on difference between Revocable POA & Irrevocable POA. (4 marks)

Ans.

1. POA executed in favor of person are revocable at the discretion of donor.
2. However, there are some exceptions to it.
3. Irrevocable POA:
 - i) POA executed, in which donor himself has an interest is irrevocable:
 - ii) - Such POA are executed in favor of financial institution by company, who offers financial assistance to later.
 - In such a case, powers are given to FI for executing security document for securing financial assistance in event of company failing to execute such document.
 - Such POA needs registration.

Q. Is it necessary to get POA attested? Comment. (3 marks)

Ans.

1. POA is an instrument authorizing another person to act on behalf of him.
2. POA is executed by a person competent to contract.
3. POA can be authenticated by Notary Public, or any court/Judge/Magistrate, Indian counselor or representative of a Central Government.
4. POA need not be attested, but it is advisable to get it attested.
5. If POA is attested, court will presume that every document purposing to be POA is properly executed and is a conclusive proof.
6. However, any POA executed outside India needs authentication and such document must be stamped within 3 months from date of received in India.

Q. Registration of POA is not compulsory. Comment. (4 marks)

Ans.

1. Section 4 of the Powers-of Attorney Act, 1882 provides that it may be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument is with an affidavit verifying its execution, and a copy may be presented at the office and stamped as the certified copy and it will then be sufficient evidence of the contents of the deed.
2. In certain cases, registration of power of attorney may become compulsory under Section 17 of the Indian Registration Act, 1908.
3. Thus, a power which authorizes the donee to recover rents of immovable property belonging to the donor for the donee's own benefit is an assignment and requires registration under clause (b) of Sub-section (1) of Section 17 of the Registration Act.

4. Similarly, a power of attorney which creates a charge on the immovable property referred to therein in favor of the donee of the power requires registration [**Indra Bibi v. Jain Sirdar, (1908) I.L.R. 35 Cal. 845, 848**].

❖ **Extra points to Remember:**

1. The due execution of document is necessary to create legal binding of an agreement.
2. POA by company must be:
 - i) Under common seal of the company & when there is no common seal, it shall be authorized by 2 directors or by a director & CS.
 - ii) Shall be executed in conformity with the Articles of the company.
 - iii) Deed signed by an attorney & under his seal, bind the company & same effect as if it were under its common seal.
3. POA is liable for stamp duty – it depends upon in which state it is executed.
4. Documents to be registered with registrar must strictly comply with certain requirement
[like common seal or signed]

5. In POA there exist law of agency. Donee is agent of donor (one who executes)

6. Duration:

- It is in force, until revoked
- On death of either of the party
- In case of Company – when order for winding up is made
- Based on Specific Transaction after it is done.

Q. Family Settlement must be bona fide. Comment. (4 marks)

Ans.

1. Family settlement is an arrangement or agreement entered into by members of same family for division of property.
2. It aims at settlement of family disputes by compromising on some disputed rights by its members.
3. Court always favor family arrangements which brings on not only peace and goodwill of the family members but also preserves the family property.
4. Thus, family settlement must be bona fide by fair and equitable division of property between the various members of the family and shall not be induced by fraud, coercion or under influence.

Q. A family arrangement can be enforced in court of law. Comment. (4 marks)

Ans.

1. Family settlement is an arrangement or agreement entered into by members of same family for division of property.
2. It aims at settlement of family disputes by compromising on some disputed rights by its members.
3. A family arrangement which is in the benefit of family can be enforced in court of law.
4. However, before the court would do so, it must be shown that:
 - i. There was an occasion for effecting a family arrangement &
 - ii. It was acted upon.

Q. Explain essentials of Family Settlement. (4 marks)**Ans.**

1. Family settlement is an arrangement or agreement entered into by members of same family for division of property.
2. Following are the essentials of family settlement:
 - i) Settlement must be bona fide.
 - ii) The said settlement shall be voluntary and not induced by fraud, coercion or undue influence.
 - iii) Family arrangement may be in oral, in such case no registration is required.
 - iv) If it is reduced to writing, then registration would be required.
 - v) Parties to family arrangement must have some title, claim or interest.

Even if party to the settlement had no tile but other party relinquishes all its title or claim in favor of such a person, then the antecedent title must be assumed & family

arrangement will be upheld and the courts will find no difficulty in giving assent to the same.

vi) A family arrangement which is benefit of the family can be enforced in a court of law.

Q. Explain Assignment of Patents

[OR]

Patents refers to the right granted under Patent Act, 1970 to the granter providing exclusive principle of making or selling his invention, innovation or process, so it has little value in pleading. Comment. (5 marks)

Ans.

1. An important aspect of IP deals with assignment agreements. Patent is one of the IPR.
2. Patent is a unique idea or invention made by a person which when register under Patents Act, 1970, earns protection.

3. Though registration of patent is not mandatory, but it seeks to lose the right of being copied by third party in case, if the same is not registered.
4. Registration of such patent is filed with controller within 6 months from execution of documents.
5. A registered patent can also be assigned to third party and any act of infringement shall allow the inventor to take action against the person breaching it.
6. Such assignment to be valid, it shall be in writing.

Q. Differentiate between Partnership & LLP. (4 marks)**Ans.**

Partnership	LLP
1. It is governed by Indian Partnership Act, 1932	1. It is governed by the LLP Act, 2006
2. Registration of Partnership is Optional	2. Registration is Compulsory
3. It can be created by agreement	3. It is created by law
4. It has no separate legal entity	4. It has separate legal entity
5. Min. 2 partners shall be there.	5. Min. 2 partners but there is no limit on max. No. of partners
6. Liability of partner is unlimited.	6. Liability of partner is limited.

Q. Mention usual important conditions of debenture trust deed. Whether Debenture trust deed can be registered or not? (4 marks)

Ans:

1. The main term of this trust deed must be an undertaking by the company to pay the debenture holders' principal and interest amount.
2. The trust deed usually gives a legal mortgage on block capital and a floating security on the other assets of the company in favor of the trustee on behalf of the debenture holders.
3. The trust deed gives in detail the conditions under which the loan is advanced.
4. The trust deed should specify in some detail the remuneration payable to the trustee, their duties and responsibilities in relation to the trust property.
5. It also gives in detail the rights of debenture holders to be exercised through the trustees in case of default by the company in payment of interest and principal as agreed upon.
6. The trust deed should give the trustee the power to take possession of the property charged when the security becomes enforceable.

The debenture trust deed can be registered with the Registrar of Assurances at the place where the registered office of the company is situated.

CHAPTER 6 – DOCUMENTS UNDER COMPANIES ACT

Q. ‘Corporate Decision Making process has to be collective as per law’. Comment. (5 marks)

Ans.

1. A company is an artificial judicial person having its own distinct entity.
2. It is capable of entering into contracts, acting in its own name, can sue or be sued by others in its name.
3. However, despite of all these powers, company not being a natural person, all the decisions are taken by natural persons i.e. Members or directors.
4. Such decision by members or directors collectively is known as a resolution.
5. Board of directors take decision by passing resolution as follows:
 - i. Resolution by majority Or
 - ii. By unanimous resolution.

6. Whereas Members take decision by passing resolution as follows:

- i. Ordinary Resolution or
- ii. Special Resolution

7. Thus, corporate decision making process has to be collective as per law.

Q. When an urgent resolution by circulation can be initiated? (4 marks)

Ans.

1. The Companies Act, 2013 requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation.
2. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.
3. As per the secretarial standard I on 'Meetings of the Board of Directors':
The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft Resolution is

circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.

4. Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board.
5. Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.
6. Matters covered by section 179(3) is required to be passed at a meeting of Board and cannot be passed by circulation.

Q. Main characteristics of the Equitable Mortgage. (4 marks)**Ans:**

The main characteristics of the Equitable Mortgage are as under:

1. Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered.
2. It is not necessary for creation of mortgage that the property be located in the specified town or the company making deposit should have its registered office in that town.
3. This deposit can be made by the Company through its nominee or agent duly authorized.
4. Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor.
5. Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage.

Q. Continuing Guarantee and Counter Guarantee. (4marks)**Ans:****Continuing Guarantee-**

6. As per Section 129 of the Indian Contract Act, 1972, a Guarantee that extends to a series and multitudes of transactions is known as a “Continuing Guarantee” in a contract.
7. These guarantees have a set time limit and time frame or are for a fixed duration, maybe one month, one year, etc.
8. Continuing Guarantee does not come to an end after the discharge of a single promise or repayment of single debt or transaction.
9. It is in the hands of the Surety to make sure that the liability regarding time or amount can be limited according to his wishes and interest.
10. Under Continuing Liability, the Surety is liable for unpaid and left balance at the end of the guarantee.

Counter Guarantee-

2. Counter guarantee is a guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of principal debtor.

Q. A Mortgage is a transfer of interest in any property. Comment.

[OR]

Define Mortgage. (5 marks)

Ans.

1. Mortgage means transfer of interest in a specific immovable property to secure a debt or loan.
2. Mortgage is always in case of specific IP & not general property i.e. should not be just free from ambiguity & uncertainty, but it should be specific as distinguished from general.

3. There are various forms of mortgage and they may or may not involve transfer of interest.
4. Like for e.g.: In case of English mortgage or Usufructuary Mortgage, interest in property is transferred to mortgage. Whereas, in case of simple mortgage or deposit of title and no such interest is transferred.
5. Therefore, it all depends upon the kind of mortgage which the mortgagor desires to create.

Q. Define / Explain all types of Mortgage (5 marks)

Ans.

I. Simple Mortgage :

1. Mortgagor binds himself personally to pay debt, if the property is not sufficient to pay the debt.
2. Possession & ownership of the property is not transferred.
3. On default in payment by mortgagor, mortgagee can obtain decree from the court & obtain ownership. [i.e. It can be sold]
4. There is no foreclosure of mortgaged property.

II. Mortgage by conditional sale:

1. Property is mortgaged with condition that if Mortgagor defaults, the transaction shall be treated as sale.
2. But if loan amount is repaid, sale shall be invalid.

3. Possession is transferred to Mortgager but whereas ownership of the property is not transferred.
4. It is ostensible [implied] sale, with a condition to repurchase by mortgager on repayment of loan.
5. Remedy to mortgagee: By way of foreclosure & not by way of sale.

III. English Mortgage:

1. Mortgager binds himself personally
2. Property is absolutely transferred to Mortgagee.
3. Mortgager receives back the property on repayment of the loan.
4. Remedy to mortgagee By way of sale & not by way of foreclosure.

IV. Usufructuary Mortgage:

1. It means legal right to derive profit from someone else property.
2. Mortgagor otherwise Mortgages to receive rents & profits accruing from property & appropriate the same for mortgage loan.

3. Possession of property is transferred, Right to use is also transferred

4. There is no Remedy to the mortgagee either by way of sale or by way of foreclosure.

V. Mortgage by deposit of title deed / Equitable Mortgage:

1. It is valid even if written & registered agreement is not made as ownership & possession of the property is not transferred, only title deeds is given to Mortgagee.

2. Characteristics:

(i) Debt- even time bared, present& future advances are covered.

(ii) Can be created only in certain cities of India- Bombay, Madras & Calcutta & other specified town

(iii) Deposit can be made by company through its agents or nominee.

(iv) Neither ownership nor possession pf the property is transferred.

Such type of mortgage is usually preferred by lenders / Banks / Creditor due to the advantages like: save time; avoid inconvenience of documentation & registration; maintain secrecy; minimum cost.

VI. Anomalous Mortgage:

1. Combination of 2 or more kinds of mortgager
2. Remedy – depends on the terms of deed.

Q. Difference between Mortgage & Lease. (4 marks)**Ans.**

- **Mortgage:**

1. Transfer of interest in specific immovable property for securing debt or loan.
2. Parties: Mortgagor & Mortgagee.

- **Lease:**

1. Lease of IP is transfer of a right to enjoy property.
2. Lessor – allows lessee to use his property.
3. Lessee – acquires right to use property.

Q. Explain Debenture Trust deed & elements of Debenture Trust Deed. (5 marks)**Ans.**

1. Companies raise funds through various modes, debenture being one of them. An issue of debenture is secured by the trust deed.

2. Debenture trust deed is an instrument legally conveyancing the property to the trustee for the purpose of securing loan or mortgage.

3. Following are the elements of debenture trust deed:

- i) It gives description of debenture like purpose of issue, details of the issue & terms of conversion or redemption
- ii) It gives in detail condition under which loan is advanced.
- iii) It specifies details – about payment of remuneration to trustees, duties & responsibility of trustee in relation to trust property.
- iv) It gives details about right of debenture holder to be exercised through trustee – in case of default by the company in payment of interest & principal as agreed upon.

Q. What do you mean by Pre-incorporation contract? Can a company ratify a contract entered into by promoter on its behalf before its incorporation Explain with reasons?

[OR]

Write a note on: Pre-incorporation contract. (5 marks)

[OR]

Pre-incorporation contracts and ratification thereof.

Ans.

1. Promoter is usually a person who conceives an idea, develops it, formulate a scheme and take all necessary steps for formation of company.
2. Promoter enters into contract on behalf of proposed company i.e. before incorporation, such contract is known as pre-incorporation contract.
3. Such contract can be made to acquire some property or rights for proposed company.
4. However, such contract is not binding on company because at the time of contract, company was not in existence.

Further, company cannot even ratify such contract after its incorporation and hence, promoter remains personally liable to the contract.

5. But specific, performance of a contract may be enforced under Specific Relief Act, 1963. If such contract is warranted by terms of incorporation & company has adopted the contract after incorporation & communicated acceptance to other party.
6. If company ones not ratify, as required by Specific Relief Act the possession remains the same as under common law.

Q. In view of limited precedential value of many HC decisions, it is difficult to come to clear & crisp answer as to the enforceability of shareholders agreement. Discuss.

[OR]

SHA are generally enforceable in India. Comment.

[OR]

In case of conflict between AOA & SHA, former shall prevail. Discuss. (8 marks)

Ans.

1. Shareholders Agreement is a contract between the shareholders of the company describing how company should be operated and defining their rights and duties.
2. They are drafted to provide specific rights, impose restriction & on basis of which articles of the company are framed.
3. However, in light of judicial pronouncements, such agreement has been enforced only if the same has been incorporated in the articles of the company.
4. But in England, irrespective of whether they have been incorporated in the articles or not, shareholders agreement is enforceable.
5. However, as per ruling courts in India, in case of conflict between articles and SHA, former will always prevail. **Case Law: V. B. Rangaraj vs. V.B. Gopalkrishnan.**

Q. Enforceability of Shareholders Agreement in India. (4 marks)

Ans:

1. Shareholders agreement is a contractual arrangement between the Shareholders and of a Company describing how the Company should be operated and the defining inter-se shareholders' rights and obligations.
2. A Shareholders Agreement creates personal obligation between the members signing such agreement, however, such agreements do not become a regulation of the company in the way the provisions of Articles are.
3. In India, courts have either refused to recognise clauses in shareholders agreements or, even when consistent with company legislation, enforced such clauses only if they have been incorporated in the articles of association of the company.
4. There is a series of rulings where the courts have upheld that in case of any conflict between the Articles and the Shareholders Agreements, the former will always prevail.
5. The Supreme Court in V.B Rangaraj v. V.B Gopalakrishnan held that a restriction which is not specified in the articles of association is not binding either on the company or on the shareholders. This decision was reiterated by the Bombay High Court in IL & FS Trust Co. Ltd. v. Birla Perucchini Ltd.

Q. Discuss the salient points to be kept in mind as a Company Secretary while drafting a contract of Appointment of a person as Managing Director of the Company. (8 marks)

Ans:

- I. While drafting a Contract of appointment of a person as a Managing Director following points need to be kept in mind:
 - a) The person who is being appointed as Managing Director should be a Director of the Company, and
 - b) He must be entrusted with substantial power of the Management
2. Usually the Articles of Association of Companies empower the Board of Directors to appoint one or more of the Directors as Managing Director(s) and fix their remuneration subject to the provisions of Section 196, 197, 198, 199, 200 and other applicable provisions of the Companies Act, 2013 and rules made thereunder.

3. The Board of Directors critically examine the draft agreement for appointment of Managing Director and after having approved the same with or without modification, authorizes one of the Director to sign and execute the same on behalf of the Company.
4. It should, therefore, be made sure that the person executing the agreement on behalf of the Company should be authorized by the Board of Directors.

CHAPTER 7 – ART OF OPINION WRITING

Q. Formulation of a legal opinion needs certain precautionary measures. Comment. (4 marks)

Ans.

1. A legal opinion is a professional written response to client's instruction to advice in writing.
2. A request of legal opinion usually comes in written form and includes at least one question which legal advisor is being asked to address.
3. Being asked to draft legal opinion implies that you are asked to advice, and it needs to be supplemented with the basic reasoning behind it.
4. If case is not viable, client must be advised about the same & also one need to spell out if something can be done to improve the client's prospectus of success.
5. While drafting legal opinion, one has to lay out all the pros and cons of particular course of action, but always come down on one side or other.

6. Thus, Formulation of a legal opinion needs certain precautionary measures.

Q. Writing process is an essential part of a legal opinion even if composed on laptop. (4 marks)

Ans.

1. A legal opinion is professional's written response to client's instruction to advice in writing.
2. Legal opinion comprises / involves 3 processes:
 - (i) Mental Attitude
 - (ii) The thinking process
 - (iii) The writing process.
3. Writing being one of the most important process as it acts as a medium to transfer the thinking process into form of legal opinion.
4. Legal opinion can be drafted either in physical form or in electronic form. In case of electronic form, they are composed using laptop, desktop, etc.

5. Composing of legal opinion merely in electronic form does not dilute the importance of writing.
6. Therefore, skill of drafting shall not be compromised with the modern techniques of writing.

Q. Summarize standards applicable to preparation of an opinion. Mention the common purpose for which legal opinion are sought. (4 marks)

[OR]

Q. There are some standards which are applicable for preparation of an opinion. Explain.

Ans.

Following are the standards applicable for preparation of an opinion:

I. Generally:

A lawyer is expected to be well informed and to exercise such skill, prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake. When a matter falls within a recognized area of legal

specialty, such as tax or securities law, it is advisable to take that assignment only if it falls within the competence of the professional.

2. Customary Practice :

An attorney does not ordinarily guarantee the soundness of his opinions and, accordingly, is not liable for every mistake he may make in his practice. He is expected, however, to possess knowledge of those plain and elementary principles of law which are commonly known by well-informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.

3. Fraudulent or Misleading Opinions :

An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation. A lawyer owes a duty to non-clients to refrain from fraudulent misrepresentation. It is generally understood that, regardless of compliance with other standards, and even if an opinion is technically correct, a lawyer should not render an opinion that the lawyer recognizes would be misleading to the opinion recipient.

4. Ethical Issues Relating to the Provision of Opinions to Non-clients :

A lawyer delivering an opinion letter to a non-client should also consider ethical principles. For example, rendering an opinion to a non-client may conflict with the opinion giver's ethical obligations to maintain the confidences of its client. He should decline to give legal opinion in such cases.

Q. Mention the points which will cover a legal opinion. (4 marks)

Ans:

There is no form for a legal opinion prescribed by law or rule. In general a legal opinion will cover the following:

1. Introductory matters, such as the date, identity of the opinion, and the purpose for which the opinion is given.
2. A general or specific recitation of the documents and other factual and legal matters reviewed by the opinion giver, including various factual assumptions.
3. The legal conclusions expressed in the opinion and any qualifications to the legal conclusions.

4. Matters peculiar to the particular opinion, such as matter relative to opinions of local counsel in other jurisdictions and specific limitations.
5. The person giving such legal opinion is desirable to use the usual disclaimers that the opinion is based on the facts and the documents that were supplied by the concerned person.
6. The signature of the opinion giver.

Q. ‘A Company Secretary should not render any fraudulent or misleading opinion’.

Discuss. (4 marks)

Ans:

1. An opinion is a professional's written response to client's instructions to advice in writing.
2. It follows that it must contain advice.
3. Professionals do not advise someone simply by telling them what to do, but supplement it with the basic reasoning behind it.
4. An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation.

5. A Company Secretary/ Lawyer owes a duty to non-clients to refrain from fraudulent misrepresentation.
6. It is generally understood that regardless of compliance with other standards and even if an opinion is technically correct, a CS/ Lawyer should not render an opinion that the he recognises would be misleading to the opinion recipient.

Q. ‘Opinions considered inappropriate due to certain reasons’. Explain with illustrations. (5 marks)

Ans:

In a business transaction a number of opinions would be considered inappropriate because their scope is not reasonably within the competence of the opinion giver or they are not cost-justified. Examples of such opinions include the following:

1. The client is qualified to do business as a foreign corporation in all jurisdictions in which its property or activities require qualification or in which the failure to qualify would have a material adverse effect on the client;
2. The client is not in material violation of any central, state or local law, regulation or administrative ruling; and
3. The client is not in material violation of any contract, indenture or undertaking to which it is a party or by which it may be bound.

The common characteristic of these examples is that they are essentially openended. Requests for opinions of this sort inherently cast into question whether the party requesting the opinion may be effectively seeking legal insurance” rather than legal “assurance”. An opinion giver may properly refuse to give such opinions.

Q. The opinion giver may also be requested to furnish an opinion on matters governed by the laws of some other country.” Comment and discuss the reliance of the opinion of local counsel on foreign laws. (8 marks)

Ans:

1. The principal opinion giver for a party in a business transaction typically renders an opinion covering the laws of the state and applicable central laws and sets forth this limitation in the text of the opinion.
2. The opinion giver may also be requested to furnish an opinion on matters governed by the laws of some other country.
3. Unless the limited nature of the review of another jurisdiction's law is described in the opinion, the opinion giver will, in most instances, seek the advice and opinion of local counsel.

4. An opinion giver should, however, always be cognizant of the fact that rendering an opinion based upon legal principles applicable in foreign jurisdictions exposes the opinion giver to liability for a negligent interpretation of that law.
5. When expressly stating reliance on the opinion of local counsel, the principal opinion giver's sole responsibility is to exercise reasonable care in the selection of local counsel.
6. The opinion giver is not responsible for independently investigating or otherwise verifying the law of the foreign jurisdiction.
7. The principal opinion giver may assume a broader responsibility to examine the statutory and case law of the foreign jurisdiction if the principal opinion giver's opinion letter states that the opinion giver "concurs" with the legal opinions provided in the opinion letter of local counsel or that the local counsel's opinion letter is satisfactory in substance.
8. The opinion giver can only be relied on when it complies with the provisions of foreign laws and client prospects.

Q. Write a note on Experts Opinion. (4 marks)

Ans.

1. Drafting is the development & preparation of documents. Drafting of legal documents require skilled job.
2. The duties of draftsman is to express the intention of parties in the technical language.
3. The draft should be clear to any person & must be readily intangible to layman.
4. If the draft is prepared for the first time which to be used again and again with suitable modifications, it needs to be vetted by experts to ensure the suitability.
5. Expert opinion, comes from a professional who have acquired knowledge & skills through study & practice.
6. Thus, expert opinion is one of the general principle of drafting.

CHAPTER 9 - JUDICIAL & ADMINISTRATIVE FRAMEWORK

Q. ‘Limited judicial control over delegated legislation can be exercised by the courts.’

Discuss. (5 marks)

Ans.

1. Judicial control over delegated legislature can be exercised at the following two levels:
 - i. Delegation may be challenged as unconstitutional; that is the delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary or
 - ii. That the Statutory power has been improperly exercised.
2. Article 13(3)(a) of the Constitution of India lays down that law, which includes any ordinances, order, by-law, rule, regulation, notification, etc if found in violation of fundamental rights would be void and that even the procedure must confirm such rights.
3. Here, the substance of the Rules and Regulations impugned has to be looked into and not the procedural requirements of the rule-making that may be prescribed in the statute.
4. The validity of the rules can be described at this stage in two ways

- i. They run counter to the provisions of the Act; and
- ii. They have been made in excess of the authority delegated by the Legislature.

Q. Distinguish between summons case and warrants case. (4 marks)

Ans.

- **Summons Case**

1. It is defined under Section 2(w) of Code of Criminal Procedure, 1973.
2. Summon cases are those cases in which an offence is punishable with an imprisonment of fewer than two years is a summons case.
3. A summons case doesn't require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.
4. Important points about summons case:
 - i. A summons case can be converted into a warrant case.
 - ii. The person accused need not be present personally.

- iii. The person accused should be informed about the charges orally. No need for framing the charges in writing.
- iv. The accused gets only one opportunity to cross-examine the witnesses.

- **Warrant case:**

1. It is defined under Section 2(x) of Code of Criminal Procedure, 1973.
2. A warrant case is one which relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
3. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate.
4. Important features of a warrant case are:
 - i. Charges must be mentioned in a warrant case.
 - ii. Personal appearance of accused is mandatory.
 - iii. A warrant case cannot be converted into a summons case.

- iv. The accused can examine and cross-examine the witnesses more than once.
- v. The Magistrate should ensure that the provisions of Section 207 are complied with. Section 207 of CrPC, 1973, include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.

Q. 'X' filed a civil suit for eviction and possession of his property against 'Y', an unauthorized occupier. But the case was 'dismissed by default' without any hearing and not considering merits of the case by Honorable Court, due to several non-appearance of 'X'. Now 'X' again wants to file another civil case before the same Court for same cause of action. Advice 'X'. (4 marks)

Ans.

1. The principle of res judicata aims at bringing finality to the litigation.
2. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim.
3. The principle of res judicata applies only under following circumstances:
 - i. The matter has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.
 - ii. The matter is in the court competent to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.
4. By applying above provisions to the given case, the competent court has dismissed without any hearing i.e. the case not been heard, and also case must be decided on merits. So, the principle of Res judicata does not apply, Mr. X can file a fresh suit before the competent court.

Q. Rush Bank, a banking company, wants to take action against the defaulting borrower. Being a Company Secretary, advice the appropriate forum to file the petition. Suggest, whether THFL, and MBFC (not a banking company) can file the petition against the defaulting borrower before the same forum? Give a reasoned reply. (4 marks)

Ans.

1. The Debt Recovery Tribunals have been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993
2. Debt Recovery Tribunal (DRT) was established for expeditious adjudication and recovery of debts due to banks and financial institutions in order to reduce the non-performing assets of the Banks and Financial Institutions.
3. The original aim of the Debts Recovery Tribunal was to receive claim applications from Banks and Financial Institutions against their defaulting borrowers.

4. Hence, Rush Bank can file the petition before the Debt Recovery Tribunal against the defaulting borrower.
5. Assuming THFL and MBFC (not a banking company) being financial institutions can also file the petition before the Debt Recovery Tribunal against the defaulting borrower.

Q. An application for revision had been made before the Sessions Judge, can another revision be filed before High Court? Whether application of revision can only be filed directly before the High Court? (4 marks)

Ans.

1. Section 397(3) of the Code of Criminal Procedure, 1973 states that if an application under this section has been made by any person for the revision either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.
2. Since the application for revision is already made before the Session Judge the same cannot be filed before the High Court.

3. Also, person can directly move a revision application to the High Court without first approaching the Session Court. But if he has already filed the application before the Session Court, he cannot thereafter approach High Court for another revision.

Q. Explain the principle of res-judicata and its impact on litigation. (5 marks)

Ans.

The principle of res judicata implies that “no one shall be twice vexed for the same offence.”

Section 11 of Civil Procedure Code, 1908 defines Principle of Res Judicata.

The principle of res-judicata applies only under following circumstances:

- (i) The matter directly and substantially in issue has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.

- (ii) The matter is in the court competent to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided. The word former suit means suit decided prior, irrespective of the date of institution.
- (iii) The matter must be decided on merits i.e. the issue was alleged by one party and denied by the other. The principle of res-judicata is one of convenience and not one of absolute justice and it should not be unduly conditioned and qualified by technical interpretations.

Q. Enumerate the different stages of a criminal trial in a Warrant case when instituted by Police Report. (4 marks)

Ans:

A warrant case is one which is punishable with death, imprisonment for life or imprisonment for a term exceeding 2 years. Under warrant case presence of accused is mandatory.

DIFFERENT STAGES OF CRIMINAL TRIAL IN A WARRANT CASE WHEN INSTITUTED BY POLICE REPORT

- **First Information Report:**

Under Section 154 of the Code of Criminal Procedure, 1973 an FIR or First Information Report is registered by any person. FIR puts the case into motion. An FIR is information given by someone (aggrieved) to the police relating to the commission of an offense.

- **Investigation:**

The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then that conclusion is filed to the Magistrate as a police report.

- **Charges:**

If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.

- **Plea of guilty:**

Section 241 of the Code of Criminal Procedure, 1973 talks about the plea of guilty. After framing of the charges the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.

- **Prosecution evidence:**

After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called “examination

in chief”. The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.

- **Statement of the accused:**

Section 313 of the Criminal Procedure Code, 1973 gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.

- **Defence evidence:**

An opportunity is given to the accused to produce evidence so as to defend his case. The defence can produce both oral and documentary evidence.

- **Judgement:**

The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are

invited to give arguments on the punishment which is to be awarded. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

Q. Supreme Court of India plays role of guardian of Constitution of India. (4marks)

Ans:

1. Supreme Court of India is the highest level of Court of Indian juridical system which is established as per Part V, Chapter IV of the Constitution of India. It plays the role of the guardian of the Constitution of India.
2. The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs.

3. This Court is also an appellate Court and has the power to exercise extra ordinary jurisdiction to hear any appeal related to any matter for which any court or tribunal had decided with judgment through the option of special leave petition except the case of tribunal related to Armed Forces.
4. It has the power to withdraw or transfer any case from any High Court and also has the authority to review any verdict ordered. The order of Supreme Court is binding on all courts across India.
5. The Supreme Court has the option to report its opinion to the President about any questions raised of public importance referred to it by the President.

Q. Review of a case means re-examination or reconstruction of its own decision by the same court. Explain. (4 marks)

Ans:

1. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit' which means an act of the court shall prejudice no man. The other maxim is, 'lex non cogit ad impossibilia' which means the law does not compel a man to do that what he cannot possibly perform.
2. Section 114 of the Code of Civil Procedure, 1908 provides for a substantive power of review by a civil court and consequently by the appellate courts. The section is worded as follows:
Subject as aforesaid, any person considering himself aggrieved –
 - a. by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;
 - b. by a decree or order from which no appeal is allowed by, this Code;
 - c. by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

3. An 'aggrieved' person is one who has suffered a legal grievance, i.e., against whom a decision has been pronounced which has wrongfully affected his title or wrongfully deprived him of something which he was entitled to.

Q. Enumerate the consequence of a civil suit in following independent situations. (4 marks)

Ans:

1. Defendant has not appeared on the day fixed and the case has not been adjourned;
2. It was found that summon was not served to defendant for the day fixed for appearance;
3. Neither plaintiff nor defendant appears on the day fixed;
4. The defendant appears and does not admit claim partly or wholly but the plaintiff does not appear;
5. The defendant appears and admits claim partly or wholly, but plaintiff does not appear-
 - a. The court may proceed ex parte, if case has not been adjourned;
 - b. if summon is not served, the court may dismiss the suit;

- c. where both plaintiff and defendant does not appear, the court may dismiss the suit;
- d. Where the defendant does not admit the plaintiff claim and plaintiff does not appear, the court may dismiss the suit
- e. where the defendant admits the plaintiffs claim partly or wholly , the decree will be passed accordingly. If the defendant admits the claim or part thereof, in which case the court shall pass a decree against the defendant upon such admission and where the claim has been admitted, shall dismiss the suit so far it relates to the remainder.

Q. Discuss the stages of Criminal Trial in Summons Cases. (5 marks)

Ans:

According to Section 2(w) of Code of Criminal Procedure, 1973, those cases in which an offence is punishable with an imprisonment of fewer than two years is a summon case and such cases do not require any method of preparing the evidence.

Stages of Criminal Trial in a Summons Case:

1. Pre-trial-

In the pre-trial stage the process such as filing of FIR and investigation is conducted.

2. Charges-

In summons trials, charges are not framed in writing. The accused appears before the court or brought before the court then the Magistrate would orally state the facts of the offence he is answerable.

3. Plea of guilty-

The Magistrate after stating the facts of the offence will ask the accused if he pleads guilty or has any defence to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of accused as far as possible and may convict him on his discretion.

4. Plea of guilty and absence of the accused-

In the cases petty offences, where the accused wants to plead guilty without appearing in the court, the accused should send a letter containing an acceptance the guilt and the

amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.

5. Prosecution and defence evidence-

In the summons case, the procedure followed is very simple and elaborate are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defence are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.

6. Judgement-

When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.

Q. Distinguish between Appeal and Review. (4 marks)**Ans:****Appeal-**

- Sections 96 to 112 and orders 41 to 45 deal with appeals.
- An appeal lies to the superior court from inferior court.
- There are three appeals- (a) from the District Munsiff Magistrate Court/ Subordinate Judge's Court to District Judges (First Appeal); (b) from District Judge's Court to High Court (Second Appeal); (c) from High Court to Supreme Court (Third Appeal).
- An appeal is heard by a different judge.
- The grounds of appeal are wide than the grounds of review.

Review-

- Section 114 and order 47 deals with review.
- A review lies to the same court.

- There is only one review. Second review application does not lie
- Review of judgement involves reconsideration of the same subject matter by the same judge.
- The grounds of review are narrower than the grounds of appeal.

Q. “A subordinate Court cannot be supposed to entertain a reasonable doubt on a point of Law.” Explain and state various provisions of reference under the Civil Procedure Code, 1908. (5 marks)

Ans:

Reference Provision are given in Section 113 of the Civil Procedure Code, 1908, as under:-

- a. A reference is made to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, 1908, only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.

b. Where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance or Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

Q. In light of Judicial Pronouncements, if available, explain the following :

Order VII Rule I of Code of Civil Procedure, 1908 (5 marks)

Ans:

Rule I Order VII of Code of Civil Procedure 1908 "Particulars to be contained in plaint"

The plaint shall contain the following particulars :-

1. the name of the Court in which the suit is brought;
2. the name, description and place of residence of the plaintiff;

3. the name, description and place of residence of the defendant, so far as they can be ascertained;
4. where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
5. the facts constituting the cause of action and when it arose;
6. the facts showing that the Court has jurisdiction;
7. the relief which the plaintiff claims;
8. where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
9. a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

Q. Differentiate between Revision & Review (4 marks)**Ans.**

Revision	Review
1. Sec. 115 of the Code of Civil Procedure deals with Revision	1. Sec. 114 of the Code of Civil Procedure deals with the Review
2. HC can do revision of any case which has been decided by any court subordinate to it.	2. Any court, which passed the decree or made order can review the case.
3. Revision can be made by HC on an application or even suo moto	3. Review can be made only on application by aggrieved party
4. An order passed in the revisional jurisdiction is not appealable.	4. An order granting review is appealable.

5. Revisional Power can be exercised by HC only in case where no appeal lies to HC.

5. Review can be made even when an appeal lies to the HC.

6. Conditions:

- (i) Case must have been decided
- (ii) Court which decided case shall be sub-ordinate to HC
- (iii) Order should not be appealable one
- (iv) Subordinate court must have
 - Exercised jurisdiction not vested in by law.
 - Fails to exercise jurisdiction vested in it

6. Grounds of review:

- (i) Discovery of new & important matter or evidence
- (ii) Mistake or error apparent on face of record
- (iii) Any other sufficient reason.

- Exercised its jurisdiction illegally or with material irregularity.

Q. Differentiate between Revision & Appeal. (4 marks)

Ans.

Revision	Appeal
1. It cannot be claim as a matter of right i.e. it depends on discretion of the court.	1. Right to appeal is substantive.
2. Revision can be applied only on the ground of jurisdiction & not question of law or fact.	2. In appeal, appellate court has power to consider both Question of law & fact.
3. Application can be made only to HC.	3. It can be made to any court, superior to one of from whom decree is sought.

4. Revision is exercised against those orders which are not appealable.	4. Appeal lies only from the appealable decree & orders.
5. Revision can be exercised suo moto by HC.	5. It can be filed only by a party of the proceedings.

CHAPTER 10 – PLEADINGS

Q. There is no particular format for making Complaint. (4 marks)

Ans:

1. A complaint is an allegation made orally or in writing to the Magistrate that some person known or unknown has committed a crime
2. Such complaint may be filed orally at the first instance but later on must be backed by an affidavit before the hearing starts.
3. As such there is no proforma/ format for filing such complaint before any court and can be made by way of a simple application and can be submitted directly by the suffering party.

Q. Explain Interlocutory Proceedings and Interlocutory Orders. (4 marks)**Ans:**

1. During the pendency of the suit, either of the parties to the case may apply to the court for seeking some interim relief in connection with the said matter.
2. Therefore, as a part of hearings, the parties may file an application for and interim relief for order.
3. The hearings and the proceedings for this interim relief before the court is known as interlocutory proceedings and the decision of the court granting or refusing relief based upon such application is known as interlocutory order.

Q. Differentiate between complaint and first information report (FIR) under the Criminal Procedure Code, 1973. (4marks)

Ans:

BASIS	FIR	COMPLAINT
MEANING	FIR is not defined under CRPC per se. However, it is explained under sec. 154 of CEPC which says that it is the information given to the police regarding the commission of cognizable offence by any person.	Complaint is defined under sec 2(d) of CRPC. It means any allegation made orally or in writing to a magistrate with a view to taking his action under the code that some person whether known or unknown has committed an offence. It does not include a police report.

FORMAT	FIR has a designated prescribed format.	No prescribed format has been given for the complaint.
WHOM TO APPLY	FIR is made to a competent police officer.	A complaint is made to a magistrate.
NATURE OF OFFENCE	FIR relates to cognizable offences only.	A complaint can be made for both cognizable and non-cognizable offences.
INVESTIGATION	As soon as a FIR is lodged, a police officer starts investigating the matter.	When a complaint is filed, no investigation is done by a police officer unless directed by any competent authority.
COGNIZANCE	In case of FIR, the magistrate takes cognizance on the	In case of complaint being made, magistrate takes cognizance under sec 190(1)(a) of CRPC.

	report of police officer under sec 190(1)(b) of CRPC.	
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Q. Distinguish between Article 32 and Article 226 of the Constitution of India (5 marks)

Ans:

1. Article 32 gives right to file writ to the Supreme Court whereas Article 226 gives right to file writ to the High Court.
2. Article 32 can be invoked only for the enforcement of Fundamental Rights whereas Article 226 can be invoked not only for the enforcement of Fundamental Rights but for 'any other purpose' as well.
3. This means that the Supreme Court's power under Article 32 is restricted as compared with the power of a High Court under Article 226, for, if an administrative action does not

affect a Fundamental Right, then it can be challenged only in the High Court under Article 226, and not in the Supreme Court under Article 32.

4. The words “for any other purpose” found in Article 226 (but not in Article 32), enable a High Court to take cognizance of any matter even if no Fundamental Rights are involved.

Q. Write Note on Pleading

[OR]

Write Note on object of Pleading

[OR]

What is meant by pleading? What is the objective behind formulating rules of pleading? Explain fundamental rules of Pleading. (8 marks)

Ans.

- I. Pleadings are based on the provisions of the Civil Procedure Code, 1908, supplemented by rules in that behalf by HC.

2. Pleading means either a plaint or written statement i.e. it is the beginning stage of suit in which parties submit their claims & defenses before the court.
3. The object of the pleading is to bring the parties to an issue and purpose of the rules relating to pleading is to present the issue being enlarged.
4. Further, that the parties themselves know what matters in dispute are and what facts they have to prove at the trial.
5. Fundamental Rules of Pleading:
 - i) Every pleading shall contain material fact on which party rely for his claim or defense.
 - ii) It shall be divided into paragraphs, numbered consecutively.
 - iii) Dates, sums & numbers shall be expressed in pleading in figure as well as words.
 - iv) It shall contain:
 - Facts only, Material facts
 - Not law
 - Not evidence

- Immaterial facts to be discarded
- Deficiency in pleading.

Q. In pleading, there is no scope for law and evidence as per Order 6 of CPC, 1908, yet, in practice, both are pleaded in higher courts, like HC & Tribunal. (5 marks)

Ans.

1. Pleading means plaint or written statement.
2. It is the statement in writing, filed by plaintiff stating his contention, on the basis of which the defendant shall file the written statement defending himself and stating why the plaintiff's contention shall not prevail.
3. While drafting the pleading, only the facts upon which they are claiming their compensation shall be stated.
4. Further, only material facts shall be stated i.e. facts upon which plaintiff will claim damages or rights & defendant will put forth his defense.

5. To find out law is a duty of court. The court shall apply law as per the stated facts to give the judgments. Hence, one should not assert or apply any law.
6. In like manner, evidence has to be avoided in pleadings. Evidence means facts by which case is to be proved.

Q. *Deficiency in pleading would not affect the plaintiff case. Discuss. (5 marks)*

Ans.

1. Pleading means plaint or written statement.
2. In normal circumstances, pleading has to be complete in all respect. However, if party omits to state a material fact, he will not be allowed to give evidence unless pleading is amended.
3. Following are the cases where deficiency of facts would not affect the case of plaintiff :
 - i) Parties are related to each other & know everything in respect of facts of the case.
 - ii) There is no element of surprise caused to other party.
 - iii) Where parties understood the case & led evidence accordingly.

Q. *Material facts vis-à-vis immaterial facts while drafting a plaint. Explain. (5 marks)*

Ans.

1. Complaint is the first process in inferior court, whereby party seeks remedy from court for redressal of grievances.
2. Complaint is statement filled by plaintiff, in which he sets out his cause of action with all necessary particulars.
3. It is fundamental rule of pleading, that every pleading shall contain only material facts.
4. Material facts are the facts upon which plaintiff will claim rights & damages and defendant will put forth his defense.
5. Whereas, immaterial facts are of no substantial consequences or of no material significance and hence, case cannot be decided upon such facts.
6. Therefore, facts which are immaterial shall be discarded.
7. Facts, whether is material or immaterial depends on the circumstances & facts of each case.

Q. Note on Complaint Structure. (4 marks)

Ans.

1. A plaint is the first step towards the initiation of suit.
2. Through a plaint, the grievances of the plaintiff are spelled out, as well as possible cause of action that can arise out of the suit.
3. As per CPC, every plaint must contain :
 - (i) Name of the court, in which suit is brought
 - (ii) Name, description & place of residence of plaintiff of defendant.
 - (iii) If Plaintiff or defendant are minor, a statement to that effect.
 - (iv) Facts constituting cause of action.
 - (v) Relief which plaintiff claims.
 - (vi) Amount allowed or relinquished by plaintiff if so
 - (vii) A statement containing value of subject matter of the suit as admitted by the case.

Q. What is written statement and enumerate the important points while drafting the reply or a written statement. (8 marks)

Ans.

1. Written statement is the reply statement filed by the defendant in a suit specifically denying the allegation made against him by the plaintiff.
2. Plaint is called the pleading of plaintiff, whereas, the written statement is called pleading of the defendant.
3. All possible defenses must be taken and if defendant does not take any plea in first instance, he may not be allowed to take it afterwards.
4. At time of drafting the reply or written statement, one has to keep the following points in mind:
 - i) One has to deny the averment of plaintiff petition which are incorrect or false, if it is not denied, it is presumed to be admitted by defendant.
 - ii) Denial has to be specific.
 - iii) If plaintiff has raised a point which is not admitted by other party, it shall deny such point & let the onus to prove that point be on the complainant.
 - iv) Reply to each para of plaintiff & no para shall be left unattended.

- v) Attach relevant documents, challan, invoice, etc. as annexure while reply is drafted to particular para of plaint.
- vi) After reply, the same is to be signed by the authorized person of opposite person.
- vii) If plaint or reply is not filled by authorized person, petition shall be liable to be dismissed.
- viii) If pleading are not signed by authorized person, same can be ratified subsequently.
- ix) The reply is to be supported by affidavit of the opposite party.
- x) The reply, along with annexures, should be duly numbered.
- xi) In pleading, one must state specifically the relief which party is claiming. If relief is not prayed for, will not be allowed.

Q. Courts generally do not grant relief if not prayed for. Comment. (5 marks)

Ans.

I. While presenting a case before the court, a plaint must comprise of the following :

- (i) Facts of the case
 - (ii) Grounds
 - (iii) Relief
2. It is well stated principle of the court that relief may not be granted by the court till the time it is prayed for.
3. In case, if the parties expect some extra ordinary relief that also must be stated in the plaint, else court is never expected to grant relief if it is not prayed for.
4. And the same rule shall apply to any relief claim by the defendant in his written statement.

Q. Different forms of defense that may be adopted by defendant while replying to opponents pleading. (5 marks)

Ans.

I. Forms of Defense:

- (i) Traverse - Where defendant totally denies plaintiff allegation.
- (ii) A confession & avoidance or 'special defense'- Where he admits the allegation but destroys their effects by alleging affirmatively certain facts of his own. I.e. he admits bond in suit but pleads that it has been paid up or that claim is barred by limitation.
- (iii) An objection in point of law: E.g. Plaintiff allegation does not disclose the cause of action or that special damages claimed are too remote.

2. Defendant may adopt one or more forms of defense and he can take any no. of different defenses to the same action.

Q. Write a note on Replication / Rejoinder. (4 marks)

Ans.

1. Complaint is an allegation made by the plaintiff against the opposite party who is called as defendant.
2. On receipt of complaint, the court summons the opposite party [defendant] & gives him opportunity to reply which is called written statement.
3. While submitting written statement, the defendant usually denies all the claims as made against him and at the same time he has right to levy additional claims against the plaintiff.
4. Court therefore lends an opportunity to the plaintiff to reply to such additional claims which is called replication or rejoinder.
5. In short, it is reply by the plaintiff on the claims made by defendant in the written statement.

Q. Rejection of complaint will amount to decree. Comment. (4 marks)

Ans.

1. As per sec 2(22) of CPC Decree means the formal expression of adjudication which court determines the rights of the parties with regards to all or any of the matters in controversy in the suit.
2. It may be either preliminary or final.
3. It shall be deemed to include the rejection of a plaint as well.
4. Since it is a formal expression of the court, and if the court sees no ground in carrying forward a matter up for hearing, they may reject the plaint on various grounds and pass a final judgment in its effect.
5. Therefore, even rejection of a plaint may amount to decree, if the same is given by the court in writing to the parties to the dispute.

Q. Where the defendant pleads set off, he will be in the position of plaintiff. Comment.
(5 marks)

Ans.

1. Set off means that the amount claimed by the plaintiff from defendant is to be satisfied against the amount that the plaintiff owes to the defendant.
2. Whereas, counter claim is usually made by the defendant in excess of right claimed by the plaintiff.
3. Therefore, such a counter claim may defeat the relief sought by the plaintiff and can be viewed as a 'Cross Action.'
4. And in answer to the counter claim, the plaintiff has a right to file a written statement.
5. Thus, in case of the counter claim defendant will be in the position of plaintiff and not in the case of set off.

Q. Note on Interlocutory Applications

[OR]

Explain with example, the scope of interlocutory application filed by parties in the court.

(5 marks)

Ans.

1. Interlocutory means not that decides the cause but which only settles some intervening matter relating to the cause.
2. Interlocutory application is an application which is moved within original petition. It is usually made to seek urgent relief or to intimate the court about the discovery of new facts to the proceedings.
3. Interlocutory order is made after suit is instituted by the plaintiff & before it is finally disposed of.
4. E.g. Interlocutory application may be moved for application for appointment of commissioner, temporary injunction, Receivers, payment into court, security for cause, etc.

Q. Explain Affidavit, what are rules and guiding principles that should be followed while drafting upon affidavit. (8 marks)

Ans.

1. An affidavit is a statement or declaration on oath by the deponent before a notary public or some other authority having power to witness an oath.

2. Affidavit is an important document and consequence of false affidavit are serious. Therefore, great care is required while drafting it.

3. Following rules should be remembered while drawing affidavit :

- (i) Person making affidavit should be fully described in affidavit.
- (ii) It shall be drawn up in first person.
- (iii) Every person & place referred in affidavit should be correctly and fully described.
- (iv) It shall be divided into paragraphs, numbered consecutively.
- (v) When declarant speak of any fact within his knowledge, he must use words “I affirm” or “I make oath & say”
- (vi) Where application rests on facts disclosed in documents, the declarant should state what the source from which they were produced is and belief as to the truth of facts disclosed.
- (vii) Not a single allegation more than is absolutely necessary shall be inserted.

(viii) It shall have following oath or affirmation written out at an end: “I solemnly affirm that my declaration is true and correct to the best of my knowledge that it conceals nothing and no part of it is false”.

(ix) Any alteration must be authenticated by officer before whom it is sworn.

(x) It has to be drawn on non-judicial stamp paper & are chargeable with stamp duty.

But no stamp duty is charged on affidavits filed or used in courts. Such affidavits are liable to payment of court fees.

Q. Counter Affidavit

OR

Relevance of counter affidavit in pleadings. (5 marks)

Ans.

1. Counter affidavit is an affidavit filled by the respondent in reply to a petition. I.e. Respondent files reply to the petition in the form of affidavit.

2. The rules of pleading as are applicable to written statement, apply to counter affidavit as well.
3. Filing of counter affidavit is obligatory when defendant / Respondent is so required by court.
4. Failure to file a counter affidavit on the day fixed by the court, will not entitle him, to file it thereafter.
5. However, court may permit him to file it on later date if sufficient ground is shown for not filing it.

Q. Decree has been awarded by the court. Advice on information required for making written application for execution of decree. (5 marks)

Ans.

1. When court gives its decision, party has to pray to court to give powers to execute the order/ decree.
2. In order to execute it, party shall make an application, it can be made either orally when decree is for the payment of the money, otherwise it has to be made in writing.

3. Such written application shall be signed and verifies by the applicant & shall contain the following particulars:

- i) Number of suit.
- ii) Name of the parties.
- iii) Date of the decree.
- iv) If any appeal is made from the decree.
- v) Amount awarded.
- vi) Name of the person against whom execution of decree is sought.
- vii) If any adjustment has been made between the parties after decree.
- viii) Any previous application made for execution of decree; their date & result.

Q. *Right of Appeal is not a natural or inherent right. Examine the above statement.*
(5 marks)

Ans.

I. To file suit is inherent or general right and need not be provided by any statute.

2. However, right to appeal is statutory right and is maintainable only when some statute provides the remedy of appeal.
3. Right to appeal is not procedural right, or a substantive right.
4. Parties cannot create a right of appeal by agreement or mutual consent.
5. Thus, right of appeal is not natural or inherent right. It is statute alone to which court must look to determine whether a right to appeal exist in particular instance or not.

Q. Can revision application be made where aggrieved party has right to appeal in the matter? (5 marks)

Ans.

1. The aggrieved person can file revision application before HC and no other court, in which no appeal lies and such sub-ordinate court appears :
 - (i) To have exercised jurisdiction not vested in it by law, or
 - (ii) Have failed to exercise a jurisdiction so vested or
 - (iii) Have acted illegally or with material irregularity.

2. Revision is not a matter of legal right but it depends upon discretion of court.
3. Generally, revision is exercised against those orders which are not appealable.
4. Thus, revision application cannot be made where aggrieved party have a right to appeal in the matter.

Q. A complaint in criminal case is what plaint in civil case, whether the complaint is made to police or to court? Explain.

[OR]

Difference between: Complaint & Plaint. (5 marks)

Ans.

1. Plaint is statement of claim filled by the plaintiff, in which he sets out his cause of action and relief which he feels he is entitled to. Whereas, complaint is litigation matter filled by complainant in respect of criminal wrong suffered by him and he seeks the justice for the same.

2. Complaint is filed before the judge while complaint is made to a magistrate.
3. Complaint is filed in the civil matters & complaint for criminal matters.
4. Therefore, a complaint in criminal case is what complaint in a civil case.

Q. What is complaint? Discuss requisite of complaint. (4 marks)

Ans.

1. Complaint means allegation made to magistrate by complainant in respect of injustice or criminal wrong suffered by him and to which he seeks justice.
2. Following are the requisites of a complaint :
 - (i) An oral or written allegation
 - (ii) Made to the magistrate
 - (iii) Some person known or unknown has committed an offence
 - (iv) It must be made with the object that he should take action.

3. Complaint does not include a police Report. However, a report made by police officer which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be compliant.
4. Complaint can be filled by any person except in case of offences relating to marriage, defamation.

Q. Geniuses of information of an offence as a condition precedent for registration of offence under the Code of Criminal Procedure, 1973. Discuss. (5 marks)

Ans.

1. Every information relating to commission of cognizable offense given orally or in writing to the office in charge of police station shall be entered in a book as provided by state government.
2. Section 154 of the code casts a statutory duty upon a police officer to register the case as disclosed in the complaint & then to proceed with the investigation.
3. Hence, genuineness or creditability of information is not a condition precedent for registration of a case & that can only be considered after registration of case.

[Case Law: Ramesh Kumari V/s. State]

Q. Amendment of Pleading with reference to the general rule 'No pleading, No evidence'. Explain the statement. (5 marks)

Ans.

1. When the Plaintiff makes certain allegations in the plaint, the defendant is given opportunity to disclose his defense to each & every allegation specifically through written statement & state the true facts.
2. Once the facts are stated by both the parties, the court has to frame the issue & ask to lead the evidence.
3. It is well settled law that parties can lead evidence limited to their pleadings.

4. However, if there are any new facts which party want to bring on record, it can be done by amending pleading.
5. But without amendment of pleading, the parties cannot be allowed to lead evidence beyond pleading.

Q. Differentiate between Affidavit & Petition (4 marks)

Ans.

Affidavit:

1. It is a statement or declaration on oath by the deponent.
2. It is sworn before Notary Public or any other authority appointed for the purpose.
3. Affidavit to be produced in court must strictly confirm to the provisions of CPC.
4. False affidavit may result into serious consequences.

Petition:

- Petitions are complaints against the defendant / Respondent in the event of any breach of contract or when crime is committed or when loss or damage are incurred.

Q. Differentiate between Set off & Counter Claim (4 marks)

Ans.

Set off	Counter claim
Set off means that the amount claimed by the plaintiff from defendant is to be satisfied against the amount that the plaintiff owes to the defendant.	Whereas, counter claim is usually made by the defendant in excess of right claimed by the plaintiff
Set off shall be in case of the same transaction	Counter claim need not arise out of the same transaction

It is ground of defence to plaintiff's action.	It is weapon of offence enabling defendant to enforce his claim against plaintiff
It is recoverable at the date of the suit	It is recoverable at the date of written statement.

Q. A civil suit was filed without disclosing the cause of action in the Plaint and the Honorable Court rejects the Plaint. Comment and advise the plaintiff for remedial measures, if any. (4 marks)

Ans.

1. Plaint is the first process in inferior court, whereby party seeks remedy from court for redressal of grievances.
2. The court has power to reject the plaint on following grounds:
 - i. Where it does not disclose the cause of action.

- ii. Where the relief claimed is undervalued and Plaintiff fails to correct the valuation within the time fixed.
 - iii. If the relief is properly valued but insufficient court fee / stamp is paid and the Plaintiff fails to make good such amount.
 - iv. Where the suit appears to be barred by any law, from the statements in the plaint.
3. The rejection of plaint on aforesaid grounds does not of its own force bar the Plaintiff from presenting a fresh plaint.
4. Therefore, the court has power to reject the plaint where it does not disclose the cause of action. However, the plaintiff can present a fresh plaint.

Q. Pleadings cannot be construed too technically. Comment. (5 marks)

Ans.

- 1. Pleading means either a plaint or written statement i.e. it is the beginning stage of suit in which parties submit their claims & defenses before the court.
- 2. Rules of Pleading states that:

- a) It shall include only material facts
 - b) There shall be no evidence
 - c) No law, to find out law shall be duty of court.
3. Evidence has to be avoided in pleadings. Evidence means facts by which case is to be proved. Therefore, they never form part of pleadings. They are presented through attorney.
4. Therefore, Pleadings cannot be construed too technically.

Q. What do you understand by the term “Cause of Action”. Why is this most important part of plaint? (4 marks)

Ans:

1. The Cause of Action' is that part of the Plaint which explains the background upon which the differences and disputes arose between the plaintiff and the defendant. In fact, the part of the plaint is the most important part, which explains the basis of the fight between the plaintiff and the defendant.

2. Further this will reveal the agreement, relationship between them, when the breach started, where is happened and whether the suit is filed within the limitation period etc.
3. If a plaint does not allege facts sufficient to support every element of a claim, the court, upon motion by the opposing party, may dismiss the plaint for failure to state a claim for which relief can be granted.
4. The defendant to the Cause of Action must file a Written Statement to the plaint in which, he may admit or deny the claims made by the plaintiff and give his proof for the same and his written arguments to show how the law supports him.
5. The Written Statement may also contain counterclaims in which the states its own causes of action. Finally, the answer may contain affirmative defence. Almost all defence must be raised at the first possible opportunity either in the Written Statement or by motion, else they are deemed waived by the Court.
6. A cause of action is very essential to a suit, since without cause of action a civil suit cannot arise.

Q. When are issues framed by court? On what basis, issues are framed? (4 marks)

Ans:

- 1.: The court shall at first hearing, after reading the plaint and written statement ascertain upon what material facts.
2. Court is required to pronounce judgment on all the issues. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party.
- 3.. If the court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may first try it, if issue relates to:-
 - a. Jurisdiction of the court,
 - b. Bar to the suit created by law for the time being in force.
4. Where the parties are at issue on some question of law or fact and issues have been framed by the court as herein-above provided, if the court is satisfied that no further argument or evidence than what the parties can at once adduce is required upon such of

the issues as may be sufficient for decision of the suit and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues.

Q. Illustrate the exceptions to the general rule of pleading that pleading must state material facts only. (4 marks)

Ans:

The second fundamental rule of pleading, namely, that every pleading must state all the material facts and the material facts only is subject to the following well known exceptions:

I. Condition Precedent:

The performance or occurrence of any condition precedent need not be pleaded as its averments shall be implied in the pleading. But where a party chooses to contest the performance or occurrence of such condition, he is bound to set-up the plea distinctly in his pleading.

2. Presumption of Law:

Order VI Rule 13, C.P.C., provides that neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied.

3. Matters of Inducement:

Another exception to the general rule is regarding facts which are merely introductory. Such facts only state the names of the parties, their relationships, their professions and such circumstances as are necessary to inform the court as to how the dispute has arisen. Such facts are hardly necessary or material to the pleading, but they are generally tolerated and are set in the pleadings by both the parties in order to facilitate the court to take a stock of the situation of the parties. It is better if such prefatory remarks are cut down to the minimum.

Q. Facta probanda and Facta probantia. (4 marks)**Ans:**

The material facts on which the party pleading relies for his claim or defence are called facta probanda and the facts by means of which the material facts are to be proved are called facta probantia.

1. Facta probanda : The facts which are to be proved. These are the facts on which a party relies and are ought to be stated in the pleading.
2. Facta probantia : These are the facts which are not to be stated because by their means facta probanda are proved. Thus these facts are the evidence as to the existence of certain facts on which the party relies for his cause of action or defiance as the case may be.

Facta probanda are not facts in issue, but they are relevant in that at the trial their proof will establish the existence of facts in issue. No doubt in certain cases both the facts in issue and there facts in evidence are mixed up and are almost indistinguishable. They should not be stated in the pleading.

Q. Special leave Petition under Article 134A and under Article 136 of the Constitution of India are similar in formats and same in essence. (5 marks)

Ans.

- **Article 134A:**

1. It is about certificate for appeal to SC.
2. It states that every HC while passing or making a judgement, decree or order either
 - On its own motion &
 - On oral application by aggrieved party

HC may give or refused to issue the required certificate to enable aggrieved person to appeal in SC.

- **Articles 136:**

SC may grant permission to aggrieved party to be heard against any HC/Tribunal orders.

- **Conclusion:**

1. Article 134A & Article 136 are in same formats.
2. However, they have different purpose. Article 136 seek permission as to why right should be given to make appeal.

Q. What are the provisions in the constitution regarding filing of SLP? (4 marks)

[OR]

Under what circumstances, the SC of India can entertain appeals in cases where law does not provide right to appeal?

Ans.

1. SLP means an individual takes special permission of SC to be heard in appeal against any high court order / decree.

2. SLP is filled when HC refuses to issue the required certificate to enable an aggrieved party to appeal to SC against judgement, order of HC.
3. Thus, it is not an appeal but petition filed for an appeal.
If SC deems fit, may grant leave and convert that petition into an 'appeal' and will hear the matter & pass a judgement.
4. This leave is granted when the case involves a question of law. Mere error of facts, misappreciation of evidence are not grounds of appeal before the Supreme Court.

❖ **Extra points to Remember:**

I. COMPUNDING OF OFFENCES

- Compounding of Offenses:
 - Compounding means complainant & accused comes to terms & dispute between parties has been settled amicably or by agreement & Complainant agrees not to prosecute accused

∴ It is done to avoid the lengthy process & to save time, cost, mental agony etc. in return for payment of compounding charges.

- Offences which are of private nature & not serious nature are compoundable.
- For this, complainant & accused makes joint application to the court that they have come to terms & case may not be proceeded with.

II. Factors to be taken into consideration for purpose of compounding of offence:

1. Whether violation is intentional.
2. Past history of non-compliance
3. Violation is technical and/or minor in nature.
4. Consideration of amount of party's harm or gain.
5. Whether there was situation beyond control
6. Economic benefit occurring to party
7. Party has undergone any other regulatory enforcement action for same violations.

8. Any other factors necessary in facts & circumstances of the case.

III. Compounding of Offences:

Under Companies Act, 2013	Under FEMA, 1999	Under SEBI Act, 1992
An offence committed - By company or - Any officer Not being: Punishable with imprisonment only (OR) Imprisonment & Fine	Compounding is allowed by paying monetary penalty & person acknowledges having committed contravention. Powers of compounding: I. Directorate of Enforcement in case of Hawala transaction	It permits compounding of offense in respect of criminal prosecution proceeding. Here, Prosecution means Filing of criminal complaint before various criminal court by SEBI for violation of securities law.

i.e. all such types of offences are compoundable where imprisonment is not compulsory

Powers:

Compounded by:

1) By RD – max amount of fine does **not**

exceed Rs 5,00,000

2) By Tribunal – No Limit

Offence shall be compoundable if same is

2. RBI – all other transaction.

Offence shall be compounded within **180 days** from date of receipt of application & sum worked out shall be paid **within 15 days** from order of compounding.

- **No contravention is compoundable unless amount involved is quantifiable.**

It has overriding effect over Cr.PC, 1973

- Provides offences **punishable with imprisonment only or Imprisonment & fine,**
- either before or after institution of proceeding, be compounded by court, where such proceedings are pending.

Process:

not committed within 3 years.

If offence is committed after 3 years – it is deemed as first offence.

If Offence is compoundable before prosecution: No Prosecution shall be initiated.

&

If offence is compoundable after prosecution, No

Offence shall be compoundable if same is not committed within 3 years.

If offence is committed after 3 years – it is deemed as first offence.

1. File application to court where case is pending.

Addressed to
Prosecution Division
enforcement Dept. of
SEBI's Mumbai office

2. They shall forward it to
High Powered
Committee (HPC)

3. Terms are recommended
by HPC & approved by
authority placed before
court

Prosecution shall be discharged.		4. Final acceptance of any offer of compounding shall come into effect only upon court passing comp. ordered.
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I. **Compounding under Cr.PC [Code of Criminal Procedure] 1973:**

- Crime is essentially wrong done to Society & not just Individual.
- ∴ Compromise between complainant & accused does not absolve the accused from its criminal responsibilities
- However, offences which are of private nature & less serious, can be compounded after payment of composition amount.

II. Consent Order:

1. It is generally a voluntary agreement worked out between 2 or more parties to a dispute.
2. SEBI has brought the concept of consent order into force for resolving the dispute in smoother manner through negotiation & discussion rather than lengthy process.
3. It is an order setting administrative or civil proceedings between SEBI & a person, who may by prima facie found to have violated securities law.
4. It is settlement order passed with the consent of parties.
5. Here action include:
 - Giving / issuing direction
 - Suspension / cancellation of certificate of registration
 - Imposition of monetary penalty
6. After passing consent order, it should be release through Press release & Put on SEBI's Website.

7. On violation of consent order by party it would invite :

- Appropriate action by SEBI &
- Revival of Litigation

Q. Briefly explain four types of writs (except Quo warranto) that are available under Article 32 of Constitution of India. (8 marks)

Ans:

ARTICLE 32 and **ARTICLE 226** of the Constitution confers on Supreme Court and High Court respectively to issue writs. Following are the types of writs:

I. HABEAS CORPUS:

The words “Habeas Corpus” literally mean **“to have a body”**. This is an order **to let the Court know on what ground he has been confined and to set him free if there is no legal justification for his detention**. This writ has to be obeyed by the detaining authority by production of the person before the Court. This is a very powerful safeguard to the subject against arbitrary acts of private individuals and also executives.

2. MANDAMUS:

The expression “mandamus” means a command. The writ of mandamus is, thus, a **command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty**. This writ is used when the inferior tribunal has declined to exercise jurisdiction. Mandamus can be issued against any public authority. The applicant must have a legal right to the

performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion.

3. PROHIBITION:

The writ of prohibition is issued by the **Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it.** It compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of rules or law. This writ is available during the pendency of the proceedings and before the order is made.

4. CERTIORARI:

If any lower **court or a tribunal gives its decision but based on wrong jurisdiction, the affected party can move this direction against such lower court or tribunal**

to ignore such decisions based on wrong jurisdiction. The writ of certiorari is available on a later stage, after the order has been passed.

CHAPTER II – ART OF ADVOCACY & APPEARANCES

Q. Illustrate rule of adverse inference. (4 marks)

Ans:

1. No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted under Section 294 of the Code of Criminal Procedure, 1973.
2. It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party. [**Ms. Shefali Bhargava v. Indraprastha Apollo Hospital & Others, 2003 NCJ 787 (NC)**].

3. It is equally incumbent upon a party to produce evidence of some expert where the issue involved is a complex or difficult one as for instance, issues pertaining to engineering, medical, technology or science etc.
4. Since the court cannot constitute itself into an expert body and contradict the claim/proposition on record unless there is something contrary on the record by way of expert opinion or there is any significantly acclaimed publication or treatise on which reliance could be based. **[Dr. Harkanwaljit Singh Saini v. Gurbax Singh & Anr., 2003 NCJ 800 (NC)].**

***Q. Factors / Consideration that judge looks for in the pleading for parties in the cause.
(5 marks)***

Ans.

While pleading, a judge in your pleadings looks for:-

- I. Clarity – the judge time is limited, so make the most out of it.

2. Credibility – judge needs to believe what you are saying is true.
3. Eye contact: While pleading, maintain eye contact.
4. Voice Modulation – Modulating your voice allows to emphasize the points you want to emphasize. Be careful about raising voice.
5. Psychology – understand psychology, as your job is to make the judge prefer your version of truth.
6. Be likeable – than your opponent.
7. Entertain your judge. Humor will often bail you out of tough spot.
8. Learn to listen.

Q. *Mention important consideration while drafting an affidavit in evidence.*

[OR]

It is well settled that evidence should be tailored strictly according to pleading. (8 marks)

Ans.

The following must be kept in mind while preparing the affidavit-in-evidence by the parties:

1. The best evidence is that of a person who was personally involved in the whole transaction.
In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.
2. In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in- evidence.
3. The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence.
4. In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit.
5. Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.

6. It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.
7. At the time of tendering affidavit-in-evidence, the party must bring along with it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same.

Q. “A Company Secretary representing his company in court providing is not an advocate even though he is law graduate performing advocacy functions” Comment, highlight conceptual distinction between CS and Advocate as professionals. (5 marks)

Ans:

Company Secretary	Advocate
Member of ICSI	Member of Bar Council
Represent before Tribunal	Represent before Court & Tribunal
Deals in Corporate Laws	Deals in Civil & Criminal Matter for service

It is contract of service	It is contract for service
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Q. Dress code is essential for looking professional while appearing before judicial bodies and tribunal. (4 marks)

Ans:

Institute of Company Secretaries of India has prescribed the following guidelines for professional dress for members while appearing before judicial/quasi-judicial bodies and tribunals:

- a. The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
- b. The professional dress for female members will be saree or any other dress of a sober color with a navy blue jacket.
- c. Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.

d. Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

CHAPTER 12 – APPLICATIONS, PETITIONS & APPEALS

Q. Arrangement as per section 230 of the Companies Act, 2013. (4 marks)

Ans:

1. Section 230 of the Companies Act, 2013, enables promoters and creditors of a company to propose arrangement schemes or compromise schemes for restructuring the debt of the company.
2. In 2019, the NCLAT ruled that the section 230 does not apply to persons who are ineligible under section 29A of the IBC i.e. section 230 is not applicable if the company is facing liquidation.
3. Section 29A of the Insolvency and Bankruptcy Code bars promoters of insolvent companies from bidding for their own company.
4. The Supreme Court recently upheld this ruling.

Q. Difference between Compounding & Consent order. (4 marks)**Ans.**

- **Compounding of offence:**

1. Compounding means complainant & accused comes to terms & dispute between parties has been settled amicably or by agreement.
2. It is generally a voluntary agreement worked out between 2 or more parties to a dispute.

- **Consent Order:**

1. It is generally a voluntary agreement worked out between 2 or more parties to a dispute.
2. SEBI has brought the concept of consent order into force for resolving the dispute in smoother manner through negotiation & discussion rather than lengthy process.
3. It is an order setting administrative or civil proceedings between SEBI & a person, who may by prima facie found to have violated securities law.

❖ Extra points to Remember:

- SC in one of its cases stated that:

1) NCLT cannot allow compounding of offence which are not compoundable even if there is settlement between complainant & accused.

2) Relevancy of such settlement:

Can be taken into consideration for determining the quantum to be awarded to the accused of sentence.

Q. Explain Compounding of offence and its advantage. (4 marks)

Ans.

1. Compounding means complainant & accused comes to terms and dispute between parties are settled amicably or by agreement.

2. Offences which are of private & not serious nature are compoundable.

3. Following are the advantages of compounding of offences:

- i. Summary proceeding i.e. Avoid the lengthy process.
- ii. No further prosecution is initiated in respect of that offence after compounding.
- iii. Saves the time & cost.
- iv. No need of personal appearance for officers in default as in case of prosecution for offence in a criminal count.

CHAPTER 13 – ADJUDICATIONS & APPEALS

Q. Explain Appellate authorities under the Companies Act, 2013 on refusal of shares. (4 marks)

Ans.

1. The provisions of Companies Act, 2013 provides that companies can refuse registration of transfer provided it shall be in interest of the company.
2. Aggrieved person can file an appeal for such refusal before NCLT.
3. In case of **Private Company**, appeal can be file within **30 days of reply or when reply is not received, within 60 days from date of delivery of instrument.**
4. Whereas, in case of **Public company**, **appeal** can be filed within **60 days from date of reply or within 90 days from date of delivery of instrument, when there is no reply.**
5. On submitting application, NCLT shall issue summons & give its decision within 10 days after hearing the parties.

6. NCLT can either dismiss the appeal or order registration of such transfer.

7. Person aggrieved by decision of appellate tribunal can appeal to SC within 60 days from order of Appellate Tribunal.

Q. Write Note on: Name forums where CS in practice can appear as authorised representative. (4 marks)

Ans.

1. The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals.
2. Apart from this, CS can appear as authorised representative on behalf of company with respect to filling, registering, presenting, attesting or verifying any documents.
3. It can represent before:
 - i) Company law Board
 - ii) NCLT (National Co. law Tribunal).
 - iii) Competition Commission of India

- iv) Securities Appellate Tribunal
- v) Registrar of Companies
- vi) Consumer Forums
- vii) Tax authorities
- viii) Other quasi – judicial bodies & tribunals

Q. ‘Registrar of Companies is the Primary Regulatory Authority for the companies.’

Comment on this statement

(5 marks)

Ans:

I. The Registrar of the Company is defined under section 2(75) of the Companies Act, 2013 as “Registrar” means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act.

2. Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act.
3. These offices function as a registry of records, relating to the companies registered with them. The records are available for inspection by the public on payment of the prescribed fee.
4. The Central Government exercises administrative control over these offices through the respective Regional Directors.
5. Hence it will be true to say that 'Registrar of Companies is the Primary Regulatory Authority for the Companies.'

CHAPTER 14 – APPEARANCES BEFORE REGULATORY AUTHORITIES

Q. Explain the right to legal representation of Company Secretary under the Competition Act, 2002 and Real Estate (Regulation and Development) Act, 2016. (5 marks)

Ans:

Right to Legal Representation under Competition Act, 2002-

1. Section 35 of the Competition Act, 2002, authorizes Company Secretaries in practice to appear before Competition Commission of India.
2. Besides, there are a number of concepts and terms such as value of assets, turnover, determination of market, relevant market, geographic market which require active professional involvement and advice.
3. Further, Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.
4. According to Section 35 of the Competition Act, 2002 a person or an enterprise or the Director General may either appear in person or authorize one or more chartered

accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Right Commission.

Right to Legal Representation under Real Estate (Regulation and Development) Act, 2016-

1. As per Section 56 of the Real Estate (Regulation and Development) Act, 2016 a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of the applicant or appellant as the case may be.
2. According to the said section the applicant or appellant may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be. Hence a Company Secretary holding certificate of practice can –

- a. Represent a person (promoter) before any real estate regulatory authority for registration of real estate project.
- b. Represent a person before real estate appellate tribunal.
- c. Represent a person before Adjudicating Officer.

Q. Write a note on Debt Recovery Tribunal. (4 marks)

Ans:

1. In 1993, the Recovery of Debts due to Banks and Financial Institutions (RDDBFI) Act was passed which led to the establishment of Debt Recovery Tribunals (DRT) to facilitate the debt recovery involving banks and other financial institutions.
2. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act passed in 2002 also provides access to DRTs.

3. DRTs and DRATs are established by the Central Government and consist of one person each referred to as the Presiding Officer of the Tribunal and the Chairperson of the Appellate Tribunal respectively.
4. DRTs are empowered to go beyond *the Civil Procedure Code* and pass comprehensive orders. It can hear cross-suits, counterclaims and allow set-offs
5. DRTs were empowered to adjudicate claims equal to or greater than ten lakh rupees. This limit was raised to twenty lakh rupees in 2018.
6. After adjudication, the DRT issues order and Recovery Certificate, certifying the amount payable by the borrower. This is executed by Recovery Officers as per the procedure for recovery of income tax.
7. There are 39 DRTs and 5 DRATs at present.

Q. Explain Regulatory and Appellate Authority under Real Estate (Regulation and Development) Act, 2016. (4 marks)

Ans:

1. The Real Estate (Regulation and Development) Act, 2016, enacted by the Parliament establishes RERA in each state for regulation of Real Estate Sector. It also acts as an adjudicating body for speedy dispute resolution.
2. Government's aim is to create a more equitable and fair transaction between the seller and the buyer of properties, especially in the primary market. RERA is designed in such a way that it will make real estate purchase simpler by bringing in better accountability and transparency, provided that the state does not dilute the provisions and spirit of the Central Act.
3. The objectives of RERA are to regulate and promote the real estate sector, ensuring transparency in the real estate project transactions in an efficient manner, safeguarding consumer interest and creating a customer-friendly environment along with creating a

4. system for adjudicating the timely resolution of conflicts by distinguishing those brought within the authority of Appellate Authority.

5. The Authority shall be a Body Corporate having name as aforesaid, having perpetual succession and common seal with power subject to the provisions of this Act to acquire, hold and dispose of property both, movable or immovable, and contract shall by the said name sue or be sued.

Q. Write a note on National Company Law Tribunal. (4 marks)

Ans:

1. The National Company Law Tribunal or NCLT is a quasi-judicial body in India adjudicating issues concerning companies in the country. It was formed on June 1, 2016, as per the provisions of the Companies Act 2013 (Section 408) by the Indian government.

2. All proceedings under the Companies Act such as arbitration, arrangements, compromise, reconstruction, and winding up of the company will be disposed of by the Tribunal.
3. The NCLT is also the Adjudicating Authority for insolvency proceedings under the Insolvency and Bankruptcy Code, 2016.
4. In the above-mentioned subjects, no civil court will have jurisdiction.
5. The NCLT has the authority to dispose of cases pending before the Board for Industrial and Financial Reconstruction (BIFR), as well as, those pending under the Sick Industrial Companies (Special Provisions) Act, 1985.
6. Also to take up those cases pending before the Appellate Authority for Industrial and Financial Reconstruction.
7. It can also take up cases relating to the oppression and mismanagement of a company.

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He is also a speaker at various Management Institutes and ICSI on various Corporate matters and Entrepreneurship. In his previous assignments, he worked as an Associate Vice President with LexValueAdd Consulting Private Limited, an Investment Banking firm based out of Mumbai.

He has significant hands on experience in Mergers and Acquisitions, Public Offerings and consequent listing of the Shares and GDR's on the Bourses, fund raising and Deal Structuring. Before that he also worked with Kirloskar Brothers Investments Limited & Bajaj Auto Limited wherein, he was deeply involved in various M&A activities.

Vikas is presently the Founder of YES Academy for CS, Pune He is also a Co-Founder of PapaZapata (Mexican food chain) & GujjuKhakhra (Indian Breads). He enjoys writing poetry and doing meditation in his free time.



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