

BLP INTERNAL-II SOLUTIONS

Q1 a) What do you understand by Intellectual Property?

Ans: Intellectual property (IP) refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce. Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

Q1 b) Briefly mention the categories covered under TRIPS.

Ans: The TRIPS Agreement, which came into effect on **1 January 1995**, is to date the most comprehensive multilateral agreement on intellectual property. The areas of intellectual property that it covers are:

- (i) Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organisations);
- (ii) Trademarks including service marks;
- (iii) Geographical indications including appellations of origin;
- (iv) Industrial designs;
- (v) Patents including protection of new varieties of plants;
- (vi) The lay-out designs (topographies) of integrated circuits;
- (vii) The undisclosed information including trade secrets and test data.

Q1 c) Write short notes on Copyright and Trademarks.

Ans: Copyrights

Copyright is a bundle of rights given by the law to the creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings. The rights provided under Copyright law include the rights of reproduction of the work, communication of the work to the public, adaptation of the work and translation of the work. The scope and duration of protection provided under copyright law varies with the nature of the protected work.

The Indian copyright law protects literary works, dramatic works, musical works, artistic works, cinematograph films and sound recordings.

Term of Copyrights: lifetime of the author + sixty years from the beginning of the calendar year next following the year in which the author dies.

Copyright Office. - (1) There shall be established for the purposes of this Act an office to be called the Copyright Office.

(2) The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government

Copyright Board. - As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two or more than fourteen other members.

Offences: Any infringement of copyright is punishable with imprisonment of not less than 6 months (extendable up to 3 years) or fine of not less than Rs. 50,000 (extendable up to Rs 2 lakhs)

Trademarks:

Trademark defined under Section 2 (zb) of the Trade Marks Act, 1999 as, "trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours." A mark can include a device, brand, heading, label, ticket, name, signature, word, letter, and numeral, shape of goods, packaging or combination of colours or any such combinations.

Term of Trademarks: The duration of trademark registration is ten years, that may be renewed for a further period of ten years on payment of prescribed renewal fees. The non-user of a registered trademark for a continuous period of the five years is a ground for cancellation of registration of such trademark at the behest of any aggrieved party.

Under the new Trademarks Act of 1999:

The registration of service marks permissible in addition to trademarks for goods.

No separate application necessary for each category of goods or services; a single application would do, however filing fee will be charged separately for each class of goods or services.

The term of registration of trademark is ten years, subject to renewal afterward.

The registration of trademarks which are imitations of well identified trademarks not permitted.

The registration of collective marks owned by associations allowed.

The offences relating to trademark made cognizable.

Filing Fees enhanced by more than 8 times.

Extension of application of convention countries.

Q2 a) Define the term "Goods" as per Consumer Protection Act, 1986?

Ans: Goods mean: "Every kind of moveable property other than actionable claims and money, and includes stocks and shares, growing crops, grass and things attached to or forming a part of land which are agreed to be severed before sale or under the contract of sale."

Q2 b) Summarize the key points of Consumer Protection Act,1986.

Ans: Consumer Protection Act, 1986: is an Act of the Parliament of India enacted in 1986 to protect the interests of consumers in India. It makes provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith also. It extends to whole of India except the state of Jammu and Kashmir.

The objective of the Act is to promote and to protect the rights of the consumers such as: -

1. The Right to be Protected against the marketing of goods and services which are hazardous to life and property.
2. The Right to be Informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices.
3. The Right to be Assured, wherever possible, access to a variety of goods and services at competitive prices.
4. The Right to be Heard and to be assured that consumer's interest will receive due consideration at appropriate forums.
5. The Right to seek Redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.
6. The Right to consumer Education, using magazines and publishing material.

Q2 c) Discuss the salient features of Environment Protection Act,1986.

Ans: The salient features are:

1. Extends to all of India since 19th Nov 1986.
2. Not only for environment protection but also effective and bold measures to tackle pollution.
3. Enables central government to take all measures as necessary for the quality of environment and may also constitute an authority for exercising power regarding the same.
4. Every citizen has the right to approach a court (after a notice of 60 days) regarding an alleged environmental offence or complain to the competent authority.
5. The maximum penalty has been increased to Imprisonment upto 5 years or fine of Rs 1 lakh or both. In case the guilty party doesn't pay Rs 1 lakh within 1 year, then imprisonment may increase upto 7 years.
6. The government can collect samples of air, water, soil as evidences.
7. The act applies to pollution generated by government agencies as well.
8. A special procedure can be prescribed for handling hazardous substances which require an expert.
9. The central government has been vested with the power for entering and inspecting any place. Through any person or agency authorised.
10. Central Government can issue direction for closure, prohibition or regulation of any industry.

Q3 a) Define "Partnership"

Ans: "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

Q3 b) What are the essential elements of a partnership?

Ans: Essential Elements of Partnership

A partnership firm is Not a person in the eyes of the law. It has no separate legal entity. The partnership contains the following elements, namely:

1. Agreement.
2. Between two or more persons.
3. Who agree to carry-on a business.
4. With the objective of sharing profits.
5. The business must be carried-on by all or any of them acting for all.

1. Agreement: Partnership is the result of an agreement. It does not arise from status, operation of law or inheritance. Thus, at the death of father, who was a partner in a firm, the son can claim share in the partnership property but cannot become a partner unless he enters into a contract for the same with other persons concerned.

2. Association of Two or More Persons: A partnership must have two persons are necessary to constitute a partnership. The partnership Act does not mention anything about the maximum number of persons who can be partners in a partnership firm but section 11 of the companies Act, 1956, lays down that a partnership consisting of more than 10 persons for banking business and 20 persons for any other business would be illegal. Hence these should be regarded as the maximum limits to the number of partners in a partnership firm.

3. Carrying on Business: The third essential element of a partnership is that the parties must have agreed to carry on a business. The term 'business' is used in its widest sense and includes every trade, occupation or profession [**Sec. 2(b)**]. If the purpose is to carry on some charitable work, it will not be a partnership. Similarly, if a number of persons agree to share the income of a certain property or to divide the goods purchased in bulk amongst them, there is no partnership and such persons cannot be called partners because in neither case they are carrying on a business. Thus, where **A** and **B** jointly purchased a tea shop and incurred additional expenses for purchasing pottery and utensils for the job, contributing necessary money half and half and then leased out the shop on rent which was shared equally by them, it was held that they are only co-owners and not partners as they never carried on any business.

4. Sharing of Profits: This essential element provides that the agreement to carry on business must be with the object of sharing profits amongst all the partners. Impliedly the partnership must aim to make profits because then only profits may be divided amongst the partners. Thus, there would be no partnership where the business is carried on with a philanthropic motive and not for making a

profit or where only one of the partners is entitled to the whole of the profits of the business. The partners may, however, agree to share profits in any ratio they like.

5. Mutual Agency: The fifth element in the definition of a partnership provides that the business must be carried on by all the partners or any (one or more) of them acting for all, that is, there must be mutual agency. Thus, every partner is both an agent and principal for himself and other partners, i.e. he can bind by his acts the other partners and can be bound by the acts of other partners in the ordinary course of business.

6. Unlimited Liability: Every partner is liable for the debts of the firm jointly as well as severally to an unlimited extent. His private assets may also be held responsible for the payment of the liabilities of the firm since in the eyes of law partnership is not distinct from its partners. An agreement between the partners to limit their liability shall be void.

Q3 c) Compare the consumer disputes redressal agencies at central, state and district level.

6.4 Consumer Disputes Redressal Agencies

S. No	Point of Distinction	District Forum	State Commission	National Commission
1.	Territorial Jurisdiction	One or more district.	One or more State.	All India.
2.	Composition	President & two members – one woman.	President & minimum two members – one woman.	President & Minimum four members – one woman.
3.	Qualifications for President	Serving or retired or qualified to be a district judge.	Serving or retired judge of High Court. (Consultation with Chief Justice of the High Court necessary).	Serving or retired judge of Supreme Court. (Consultation with Chief Justice of India necessary).
4.	Qualifications of members	<ul style="list-style-type: none"> ♦ age – 35 yrs. ♦ Bachelors degree ♦ 10 yrs experience in economics, law, e-commerce, accountancy etc. 	Same as for District Forum.	Same as for District Forum.
5.	Disqualifications of members	<ul style="list-style-type: none"> a) Convicted & sentenced to imprisonment for an offence of moral turpitude. b) Undischarged insolvent. c) Unsound mind d) Removed or dismissed from service. e) Has financial or other interest. f) Others as may be prescribed. 	Same as for District Forum.	Same as for District Forum.
6.	Selection Committee	Chairman – President of State Commission. Members – Secretary law, Secretary Consumers Affairs of State.	Same as for District Forum.	Chairman, S.C. Judge Members – Secy. Deptt of legal affairs – Secy. Deptt of Consumer Affairs.
7.	Term	5 years or age of 65 whichever is earlier.	5 years or age of 67 whichever is earlier.	5 years or age of 70 whichever is earlier.
8.	Eligibility for reappointment	Yes	Yes	Yes
9.	Monetary Jurisdiction	Upto 20 lakhs	Between 20 lakhs and one crore.	More than one crore.
10.	Administrative control	State commission	National commission	-
11.	Limitation	Upto 2 years from the date on which the cause of action arose.		
12.	Appeal	State Commission within 30 days of order. 50% of the amount payable or Rs. 25,000, whichever is less to be deposited by the appellatant.	National commission within 30 days of order. 50% of the amount payable or Rs. 55,000, whichever is less to be deposited by the appellatant.	Supreme Court within 30 days of order.
13.	Enforcement of the order	As if it is a court. Forwarded to the appropriate court.		
14.	Penalties	Imprisonment – Not less than one month but may extend to 3 years. Fine – not less than Rs. 2000, but may extend to Rs. 10,000 or both.		
15.	Privious or vexatious complaints.	Dismiss the complaint and costs upto Rs. 10,000.		

Q4 a) Discuss any five inventions NOT patentable.

Ans: The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature is not patentable. This means the

discovery of an existing phenomenon like a natural gas, or an element cannot be patented. It is for the simple reason that the discovery of the phenomenon or the theory is not an invention i.e. neither a new process nor a new product but a mere finding.

A **method of agriculture or horticulture**, for example, a new type of soil or a new method of cultivating wheat cannot be patented. But this clause does not exclude filing for a patent of a new, better working agricultural equipment.

Plants and animals as a whole or parts thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals is another exclusion under clause (j). Examples of it include Clones of animals and new varieties of plants, a process for the production of plants or animals if it consists entirely of natural phenomena such as crossing or selection, essentially biological process etc.

A **mathematical method or business method or algorithms or computer programme per se** is not patentable under clause (k).

A **mere scheme or rule or method of performing a mental act or method of playing game** example method of learning a language, or solving a crossword puzzle etc is excluded from Patent Law application.

Q4 b) A & B are partners in a trading firm. A borrows Rs 50,000 from C in the name of the firm. Without the knowledge of B. A spends the money for personal use. Can C hold B liable for Rs 50,000? Substantiate your answer.

Ans: Yes, C can hold B liable.

Mutual Agency: The fifth element in the definition of a partnership provides that the business must be carried on by all the partners or any (one or more) of them acting for all, that is, there must be mutual agency. Thus, every partner is both an agent and principal for himself and other partners, i.e. he can bind by his acts the other partners and can be bound by the acts of other partners in the ordinary course of business.

Unlimited Liability: Every partner is liable for the debts of the firm jointly as well as severally to an unlimited extent. His private assets may also be held responsible for the payment of the liabilities of the firm since in the eyes of law partnership is not distinct from its partners. An agreement between the partners to limit their liability shall be void.