


- N. B.: (1) All questions are compulsory.  
 (2) Make suitable assumptions wherever necessary and state the assumptions made.  
 (3) Answers to the same question must be written together.  
 (4) Numbers to the right indicate marks.  
 (5) Draw neat labeled diagrams wherever necessary.  
 (6) Use of Non-programmable calculators is allowed.

<b>1.</b>	<b>Attempt <u>Any three</u> of the following:</b>	<b>15</b>																					
<b>a.</b>	<p><b>Explain differentiate between cognizable and non-cognizable offense.</b>  <b>Answer:</b></p> <table> <tr> <th><b>BASIS FOR COMPARISON</b></th><th><b>COGNIZABLE OFFENCE</b></th><th><b>NON-COGNIZABLE OFFENCE</b></th></tr> <tr> <td>Meaning</td><td>Cognizable offence is one in which the police is authorized to take cognizance of the crime at its own.</td><td>Non-cognizable offences refers to the offences in which the police has no authority to apprehend a person for crime on its own.</td></tr> <tr> <td>Arrest</td><td>Without warrant</td><td>Requires warrant</td></tr> <tr> <td>Approval of Court</td><td>Not required to begin investigation.</td><td>Prior approval of court is required to begin investigation.</td></tr> <tr> <td>Offence</td><td>Heinous</td><td>Comparatively less heinous</td></tr> <tr> <td>Includes</td><td>Murder, rape, theft, kidnapping, etc.</td><td>Forgery, cheating, assault, defamation etc.</td></tr> <tr> <td>Petition</td><td>FIR and complaint</td><td>Complaint only.</td></tr> </table> <p><b><u>OR (For reference)</u></b></p>	<b>BASIS FOR COMPARISON</b>	<b>COGNIZABLE OFFENCE</b>	<b>NON-COGNIZABLE OFFENCE</b>	Meaning	Cognizable offence is one in which the police is authorized to take cognizance of the crime at its own.	Non-cognizable offences refers to the offences in which the police has no authority to apprehend a person for crime on its own.	Arrest	Without warrant	Requires warrant	Approval of Court	Not required to begin investigation.	Prior approval of court is required to begin investigation.	Offence	Heinous	Comparatively less heinous	Includes	Murder, rape, theft, kidnapping, etc.	Forgery, cheating, assault, defamation etc.	Petition	FIR and complaint	Complaint only.	<b>5</b>
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	<p><b>Key Differences Between Cognizable and Non-Cognizable Offence:</b> The following points are relevant with respect to the difference between cognizable and non-cognizable offence:</p> <ol style="list-style-type: none"> <li>1. The offence in which the cognizance of the crime is taken by the police on its own, as it does not need to wait for court's approval, is known as a cognizable offence. On the other hand, non-cognizable offence, as the name suggests, is the offence in which the police has no authority to apprehend a person for crime on its own, as explicit permission of the court is required.</li> <li>2. In cognizable offence, the police can arrest a person without any warrant. As against this, a warrant is must in the case of non-cognizable offence.</li> <li>3. In cognizable offence, court's order is not required to start an investigation. Conversely, in the non-cognizable offence, first of all, court's order should be obtained for undertaking an investigation.</li> <li>4. Cognizable offences are heinous crimes, whereas non-cognizable offences are not so serious.</li> <li>5. Cognizable offence encompasses murder, rape, theft, kidnapping, counterfeiting, etc. On the contrary, non-cognizable offences include offences like forgery, cheating, assault, defamation and so forth.</li> <li>6. For a cognizable offence, one can file FIR or make a complaint to the magistrate. Unlike, in case of non-cognizable offence one can only make a complaint to the magistrate.</li> </ol>	
<b>b.</b>	<p><b>Explain the term 'Necessity of Arrest without warrant from any place'.</b> <b>Answer:</b> If a person has committed or is suspected of being involved in an offence that is <b>classified</b> as a cognisable crime and police investigation of the case leads them to believe that the <b>suspect</b> is guilty, then the police can arrest that person without waiting for a magistrate to issue a warrant.</p> <p>➤ <b>Necessity:</b></p> <p><b>Arresting persons without a warrant (see section 365 of the Police Powers and Responsibilities Act 2000)</b></p> <p>It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspect has committed or is committing an offence if it is reasonably necessary for one or more of the following reasons:</p> <ol style="list-style-type: none"> <li>(i) To prevent the continuation or repetition of an offence or the commission of another offence;</li> <li>(ii) To make inquiries to establish the person's identity;</li> <li>(iii) To ensure the person's appearance before a court;</li> <li>(iv) To obtain or preserve evidence relating to the offence;</li> <li>(v) To prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;</li> </ol>	<b>5</b>

<p>(vi) To prevent the fabrication of evidence;</p> <p>(vii) To preserve the safety or welfare of any person, including the person arrested;</p> <p>(viii) To prevent a person fleeing from a police officer or the location of an offence;</p> <p>(ix) Because the offence is an offence against ss. 790: 'Offence to assault or obstruct police officer', or 791: 'Offence to contravene direction or requirement of police officer' of the Police Powers and Responsibilities Act 2000;</p> <p>(x) Because the offence is an offence against s. 80: 'Breach of order of conditions' of the Domestic and Family Violence Protection Act 1989;</p> <p>(xi) Because of the nature and seriousness of the offence; or</p> <p>(xii) Because the offence is an offence against s. 135(4): 'Person near prisoner' or s. 136: 'Temporary detention for security offence' of the Corrective Service Act 2006.</p> <p>Also, it is lawful for a police officer:</p> <p>(i) Without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence, or investigating the offence, under chapter 15 of the Police Powers and Responsibilities Act 2000; and</p> <p>(ii) Subject to section 13 of the Juvenile Justice Act 1992, to arrest a child without warrant if the police officer reasonably suspects the child is committing or has committed an offence.</p> <p>(1) A constable may arrest without a warrant—</p> <p>(a) Anyone who is about to commit an offence;</p> <p>(b) Anyone who is in the act of committing an offence;</p> <p>(c) Anyone whom he has reasonable grounds for suspecting to be about to commit an offence;</p> <p>(d) Anyone whom he has reasonable grounds for suspecting to be committing an offence.</p> <p>(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.</p> <p>(3) If an offence has been committed, a constable may arrest without a warrant—</p> <p>(a) Anyone who is guilty of the offence;</p> <p>(b) Anyone whom he has reasonable grounds for suspecting to be guilty of it.</p>	
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	(4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.	
c.	<p><b>Explain the end of Draco's law code.</b></p> <p><b>Answer:</b></p> <p>Introduction: Draco was an aristocrat who in 7th century BCE <u>Athens</u> was handed the task of composing a new body of laws. We have no particular clues concerning his life and general biography and the only certainty is that, as an aristocrat and an educated man, he was in the right place at the right time in order to take his opportunity and legislate. During the infancy of the Athenian legal system Draco composed the <u>city's</u> first written <u>law</u> code with the aim of reducing arbitrary decisions of punishment and blood feuds between parties. Ultimately, though, the laws aided and legitimized the political power of the aristocracy and allowed them to consolidate their control of the land and poor. Famously harsh, the laws were ultimately replaced by <u>Solon</u> in 594 BCE.</p> <p><b>DRACO'S LAWS</b></p> <p>Draco's laws were known for their cruelty and their bias towards the rich landowners as opposed to those who found themselves owing money. His series of drastic punishments (the origin of the term 'draconian') for a variety of crimes were not actually in force for long and certainly did not succeed in their aim. This rudimentary law-code of which we know only the provisions regarding homicide were written, according to tradition and myth in blood because of their perceived cruelty. Below are some examples quoted in <i>The Athenian Constitution</i> (translated by the author according to <i>Inscriptiones Graecae</i> 1 115):</p> 	5

## Draco's Code of Laws

Around 620 BC Draco, the lawgiver, wrote the first known written law of Ancient Greece. Draco was an Athenian lawgiver whose harsh legal code punished both trivial and serious crimes in Athens with death—hence the continued use of the word draconian to describe repressive legal measures. Today the word draconian means harsh or severe. Draco's laws were shockingly severe, so severe that they were said to have been written not in ink but in blood. Solon succeeded him in about 594 BC.

<https://www.history.com/news/draco-lawgiver> [Back](#)

### THE END OF DRACO'S LAW CODE

Draco's law code was later regarded as intolerably harsh, especially in regards to punishing trivial crimes with **death**; it was probably unsatisfactory to contemporary rulers too, since Solon, who was the archon in 594 BCE, later repealed Draco's code and published new laws, retaining only Draco's homicide statutes. The cruelty behind the laws may have been the only a way to sustain power within the aristocratic party as well as preventing blood feuds that could last for generations. In addition, the aristocrats found a way to secure land by legitimately taking it from the poor according to written laws besides their real political power. Under Draco's law code the rulers were in power in accordance with the law and, as they saw it, justice.

#### d. List of offences and the corresponding penalties in IT Act 2000.

Answer:

Section	Offence	Description	Penalty
65	Tampering with computer source documents	If a person knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes	Imprisonment up to three years, or/and with fine up to ₹200,000

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			another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force.	
66	Hacking with computer system		If a person with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hack.	Imprisonment up to three years, or/and with fine up to ₹500,000
66B	Receiving stolen computer or communication device		A person receives or retains a computer resource or communication device which is known to be stolen or the person has reason to believe is stolen.	Imprisonment up to three years, or/and with fine up to ₹100,000
66C	Using password of another person		A person fraudulently uses the password, digital signature or other unique	Imprisonment up to three years, or/and with fine up to ₹100,000

			identification of another person.		
	66D	Cheating using computer resource	If a person cheats someone using a computer resource or communication.	Imprisonment up to three years, or/and with fine up to ₹100,000	
	66E	Publishing private images of others	If a person captures, transmits or publishes images of a person's private parts without his/her consent or knowledge.	Imprisonment up to three years, or/and with fine up to ₹200,000	
	66F	Acts of cyberterrorism	If a person denies access to an authorised personnel to a computer resource, accesses a protected system or introduces contaminant into a system, with the intention of threatening the unity, integrity, sovereignty or security of India, then he commits cyberterrorism.	Imprisonment up to life.	
	67	Publishing information which is obscene in electronic form.	If a person publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having	Imprisonment up to five years, or/and with fine up to ₹1,000,000	



			regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.	
67A	Publishing images containing sexual acts		If a person publishes or transmits images containing a sexual explicit act or conduct.	Imprisonment up to seven years, or/and with fine up to ₹1,000,000
67B	Publishing child porn or predating children online		If a person captures, publishes or transmits images of a child in a sexually explicit act or conduct. If a person induces a child into a sexual act. A child is defined as anyone under 18.	Imprisonment up to five years, or/and with fine up to ₹1,000,000 on first conviction. Imprisonment up to seven years, or/and with fine up to ₹1,000,000 on second conviction.
67C	Failure to maintain records		Persons deemed as intermediary (such as an ISP) must maintain required records for stipulated time. Failure is an offence.	Imprisonment up to three years, or/and with fine.
68	Failure/refusal to comply with orders		The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure	Imprisonment up to three years, or/and with fine up to ₹200,000

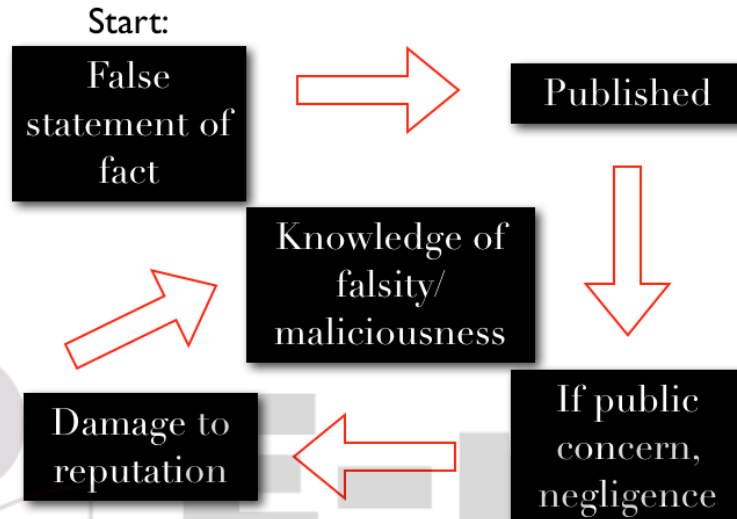


			compliance with the provisions of this Act, rules or any regulations made thereunder. Any person who fails to comply with any such order shall be guilty of an offence.		
69	Failure/refusal to decrypt data		<p>If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource. The subscriber or any person in charge of the computer resource shall, when called upon by any agency which has been directed, must extend all facilities and technical assistance to decrypt the information. The subscriber or any person who fails to assist the agency referred is deemed to</p>	Imprisonment up to seven years and possible fine.	

			have committed a crime.		
70	Securing access or attempting to secure access to a protected system		<p>The appropriate Government may, by notification in the Official Gazette, declare that any computer, computer system or computer network to be a protected system.</p> <p>The appropriate Government may, by order in writing, authorise the persons who are authorised to access protected systems. If a person who secures access or attempts to secure access to a protected system, then he is committing an offence.</p>	Imprisonment up to ten years, or/and with fine.	
71	Misrepresentation		If anyone makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any license or Digital Signature Certificate.	Imprisonment up to three years, or/and with fine up to ₹100,000	
e.	<b>Explain defamation in India.</b> <b>Answer:</b> <ul style="list-style-type: none"> <li>○ <b>Cyber defamation</b> is not a specific criminal offense, misdemeanor or tort, but rather defamation or slander conducted via digital media, usually through the <u>Internet</u>.</li> <li>○ Penalties for "cyber defamation" vary from country to country, but the fundamental rights covered in the UN Declaration of Human Rights and <u>European Union</u> Fundamental Human Rights.</li> </ul>				5

- Stopping or addressing defamation can be difficult. If the person has no serious grudge, then a cease and desist letter may stop the behavior and get the statements removed from the Internet. On the other hand, if the person is acting out of spite, it may be necessary to file a report with the police depending on local law.

# Defamation



The offense of cyber defamation can be committed by publishing the defamatory material (i.e. comment/post/links/picture/videosetc.):

- on World Wide Web (i.e. websites and blogs)
- on Forums and Discussion groups
- Intranets (local connections)
- through Mailing lists and bulletin boards
- by sending E-mail
- by sending SMS

Why people try to defame on internet?

Apart from easy access to the internet following are the main reasons why people choose to spread hoax and fabricated stories on internet.

- It is cheap (even setting up a website costs very less)
- Users do not have to reveal their true identity while posting on internet
- people are connected it takes less effort to make the defamatory content spread like wild fire
- And it's damn easy.

- ✓ **somebody posted defamatory material about me or my company, Now what?**

Well in such a case when you or your company has become a victim of cyber defamation, Engage a lawyer who has good knowledge of cyber laws, and the following steps can be taken to remove the unwanted/offensive defamatory comments/posts/links/pictures/videos from internet.

	<ul style="list-style-type: none"> <li>• Analysis of the link, content and verify with section 499 IPC, section 503 IPC and section 66A of information Technology act</li> <li>• Try to contact the poster and get the information deleted</li> <li>• Try to contact website administrator/owner and negotiate</li> <li>• Try to approach the search engines to remove the links or push down such links</li> <li>• Issue legal notice to the poster and/or website owner/administrator and even the search engine companies</li> <li>• Proceed with cyber cell of the police and register a complaint (try to get an FIR registered)</li> <li>• Take the necessary legal action against the poster/website by filling a complaint in court</li> <li>• Initiate legal proceedings against the culprits demanding compensation for damages caused by such illegal act</li> </ul> <p><b>Where to file the complaint?</b> A complaint can be filed in local police station, cyber crime cell or a complaint before the judicial magistrate may also be pursued.</p>	
f.	<p><b>What is cyber-crime? Explain different strategies to tackle cybercrimes and trends.</b></p> <p><b>Answer:</b> <b>Crime:</b>A <b>crime</b> is an unlawful act punishable by a <u>state</u> or other authority. <b>Cyber Crime:</b><b>Cybercrime</b> is defined as a crime in which a computer is the object of the crime (hacking, phishing, spamming) or is used as a tool to commit an offense (child pornography, hate crimes). A framework addressing cybercrime should include these five strategies:</p> <p><b>1. Raising awareness:</b></p> <ul style="list-style-type: none"> <li>➤ A comprehensive and sustained national cybersecurity education campaign is essential for raising public awareness of the risk and impact of cyber activity and the need to deploy basic protective measures on desktops, laptops, tablets, phones and other mobile devices. The explosion of connected devices -- from smart refrigerators, lighting systems, heating and air conditioning, security services to autonomous automobiles -- puts an exclamation point behind the importance of cyber protection for individual users and organizations of all sizes and levels of sophistication.</li> </ul> <p><u>Cybersecurity education should cover the basics:</u></p> <ul style="list-style-type: none"> <li>▪ Use strong passwords.</li> <li>▪ Apply system updates in a timely and efficient manner.</li> <li>▪ Secure devices by enabling a firewall and deploy solutions to address viruses, malware and spyware.</li> <li>▪ Learn not to click on email links or attachments, unless the sender is known and trusted. Even then, phishing emails sometimes spoof the sender's identity to trick the user into clicking a link or attachment.</li> </ul> <p><b>2. Leveraging trusted resources:</b></p> <ul style="list-style-type: none"> <li>➤ Additionally, building, maintaining, scaling and updating an online source of information on how users of all levels of sophistication can establish and improve their protection profiles in cyberspace is imperative. Leveraging</li> </ul>	5

	<p>capabilities, such as those created in the United States by the National Cyber Security Alliance through <u>Stay Safe Online</u> or in the United Kingdom with <u>Get Safe Online</u>, to implement a comprehensive and sustained national education and awareness campaign is a fundamental component of any successful cybersecurity program. Current cybersecurity efforts, such as the <u>Stop... Think... Connect</u> campaign sponsored by the Department of Homeland Security, are a good start. However, existing programs need to scale more broadly to accelerate positive change.</p> <p>Enterprises can reference valuable tools such as the <u>NIST Cybersecurity Framework</u>, <u>Center for Internet Security/SANS Top 20 Controls</u>, <u>ISO 27001</u> and <u>NIST 800-53</u> for recommendations on improving an overall cybersecurity profile.</p> <p><b>3. Building an economic framework:</b></p> <ul style="list-style-type: none"> <li>➤ Simply purchasing every new tool or security product is not the answer. From the individual user to the small business to the large enterprise, it is important to make investment decisions for cyber security in a risk management construct that includes trying to secure the biggest bang for the buck. AFCEA International's Cyber security Committee took a look at this issue and provides useful information to assist in the examination around the economics of cyber security.</li> </ul> <p><b>4. Working with invested partners:</b></p> <ul style="list-style-type: none"> <li>➤ Improving our national and global capabilities to detect, prevent, mitigate and respond to cyber events through a joint, integrated, 24x7 public/private operational capability that leverages information sharing, analysis and collaboration should be a priority. To build a mature operational capability for cyber security, we should learn from how the National Weather Service and the Centers for Disease Control and Prevention leverage technology and data analytics to identify patterns and trends to issue early alerts and warnings as well as recommendations for potential protective measures.</li> <li>➤ Working through the global community to address gaps and coordinate law enforcement, investigation and prosecution of cyber criminals will help tackle both the economics and the challenges of anonymity in nefarious cyber activity. Global agreement on cyber deterrence and norms of cyber conduct will benefit national and economic security, public health and safety and everyday life in cyberspace.</li> </ul> <p><b>5. Implementing a response plan:</b></p> <ul style="list-style-type: none"> <li>➤ Implementing a National Cyber Incident Response Plan is essential to national and economic security. It should recognize the unique nature and risk presented by cyber events and provide a predictable and sustained clarity around roles and responsibilities of various stakeholders during thresholds of escalation. A strategic, yet agile, framework should be accompanied by operational playbooks that focus on critical infrastructure. These steps are necessary to achieve ground truth and situational awareness during a cyber event.</li> <li>➤ There are initiatives across these topic areas, but many remain ad hoc. Ongoing improvement in cyber security requires a coherent, coordinated</li> </ul>	
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	<p>and collaborative approach across the stakeholder community. It is not just about the federal government, it is also about state, local, tribal and territorial agencies. It is not just about the public sector, it must include industry in a true partnership founded on mutual respect and engagement that honors, recognizes and leverages roles, responsibilities and capabilities in a joint, integrated and collaborative manner. It is not just about domestic risk, it is about global risk to an interconnected and interdependent community and the threat to national and economic security.</p> <p>➤ Each of us has a role to play in improving our individual and collective cyber security. With the proliferation of mobile devices and the explosion of the Internet of Things presenting new and emerging cyber challenges, we must implement basic protective measures that will help to reduce the risk while increasing the cost and difficulty for cyber criminals.</p>	
<b>2.</b>	<b>Attempt <u>Any three</u> of the following:</b>	<b>15</b>
<b>a.</b>	<p><b>What is a contract? Explain its seven essential elements of endorsable contract.</b></p> <p><b>Answer:</b></p> <p><b>Contract:</b> a written or spoken agreement, especially one concerning employment, sales, or tenancy that is intended to be enforceable by law.</p> <p>Contract is an agreement with 7 essential elements as follows:</p> <p><b>1) Offer:</b></p> <p>⇒ An offer is the beginning of a contract. One party must propose an arrangement to the other, including definite terms. For example, if the proposal is an offer to purchase shirts, it must include quantity, price and a delivery date. When the offer is communicated to the other party, he has the right to accept, reject or amend the offer. If he rejects it, the offer dies. If he amends the offer, the original offer dies and his amendments become a new counteroffer that the other party can accept or reject.</p>	<b>5</b>

**2) Acceptance:**

- ⇒ An offer can be accepted in writing, in person or over the phone. The acceptance must simply be communicated to the offering party, with an obvious declaration that the accepting party intends to be bound by the buyer's terms. Under the "Mailbox Rule" used in most states, an offer is deemed accepted when the accepting party places it in a mailbox or sends an email, even if the offering party never actually receives it.

**3) Consideration:**

- ⇒ Consideration is something of value that the parties are contracting to exchange. Generally, one party exchanges money for property or services, but the parties can both exchange property or services, as long as a court would find that each party's consideration has sufficient value.

**4) Competence/Capacity:**

- ⇒ Competence, also called legal capacity, is a party's ability to enter into a contract. The most common reason for incompetence is age. A party must be at least 18 years old to enter into a contract. If a minor signs a contract, she has the right to cancel it. Another reason for incapacity is mental illness. A person incapacitated by a disease or disability, who does not understand the terms of a contract he entered, has the right to rescind his acceptance of an offer, voiding the contract. Lastly, a person under the influence of drugs or alcohol may be considered incompetent if the other party knew or should have known that the person's



	<p>impairment affected his ability to understand and freely consent to the contract.</p> <p><b>5) Mutual Consent:</b></p> <p>⇒ Generally, the law assumes that a competent party freely consents to a contract. However, if consent was obtained on the basis of fraud, duress or because of the exercise of undue influence, a party's consent is considered involuntary and the contract is void.</p> <p><b>6) Legality:</b></p> <p>⇒ A contract is only enforceable if the activity in the contract is legal. For example, a person cannot contract with someone to commit assault, murder or another criminal act. Additionally, contracts to split lottery winnings in states where gambling is illegal have been deemed unenforceable.</p> <p><b>7) Writing:</b></p> <p>⇒ Not all contracts need to be in writing, but under the Statute of Frauds, certain contracts must be in writing in order to be enforceable. A written contract is required for all transactions involving real estate (i.e., lease or sale of a home), any promises to marry, any agreements to pay a third party's debt and any transaction in which performance cannot be completed within one year of the contract signing.</p>	
b.	<p><b>Explain different types of electronic contract.</b></p> <p><b>Answer:</b></p> <p><b>Three types of Electronic contracts as follows:</b></p> <ol style="list-style-type: none"> <li>1) Click Wrap Contract</li> <li>2) Shrink Wrap Contract</li> <li>3) Browse Wrap contract</li> <li>• Click Wrap Contract:</li> </ol>	5

A **clickwrap** or **clickthrough** agreement is a digital prompt that offers individuals the opportunity to accept or decline a digitally-mediated policy. Privacy policies, terms of service and other user policies, as well as copyright policies commonly employ the clickwrap prompt. Clickwraps are common to signup processes for social media services like Facebook, Twitter or Tumblr, connections to wireless networks operated in corporate spaces, as part of installation processes of many software packages, or in other circumstances where agreement is sought using digital media. The name "clickwrap" is derived from the use of "shrink wrap contracts" commonly used in boxed software purchases, which "contain a notice that by tearing open the shrinkwrap, the user assents to the software terms enclosed within".

The screenshot shows a Microsoft account creation interface. At the top, there is a 'Phone number' input field. Below it, a message states: 'Before proceeding, we need to make sure a real person is creating this account.' There are two buttons: 'New' and 'Audio'. A CAPTCHA image shows the letters 'YRX' and 'XPGV' in a stylized font. Below the CAPTCHA is an input field for 'Enter the characters you see'. A checkbox is labeled 'Send me promotional offers from Microsoft. You can unsubscribe at any time.' A line of text reads: 'Clicking Create account means that you agree to the Microsoft Services Agreement and privacy and cookies statement.' At the bottom is a large blue 'Create account' button. The footer includes '© 2016 Microsoft', 'Terms of Use', and 'Privacy'.

⇒ Diagram shows click wrap contract.

- **Shrink wrap contracts:**

**Shrink wrap contracts** are boilerplate contracts packaged with products; usage of the product is deemed acceptance of the contract.



Diagram shows shrink wrap contract.

**Web-wrap**, **click-wrap** and **browse-wrap** are related terms which refer to license agreements in software which is downloaded or used over the internet.

A software license agreement is commonly called an end user license agreement (or EULA).

The term 'Shrink Wrap' describes the shrink wrap plastic wrapping which coats software boxes or the terms and conditions which comes with products on delivery.

Shrink wrap assertions are unsigned permit understandings which state that acknowledgement on the client of the terms of the assertion is demonstrated by opening the shrink wrap bundling or other bundling of the product, by utilisation of the product, or by some other determined instrument.

- **Browse-Wrap Contracts:**

⇒ Browse-wrap agreements cover the access to or use of materials available on a website or downloadable product. Only if the person agrees to the terms and conditions on the web page, then he can access the contents of the web page.



⇒ Diagram shows browse wrap contract.

⇒ In most cases, the website or the browse wrap includes a statement that the user's continued use of the website or the downloaded software manifests assents to those terms. Many times, the terms mentioned in the browse wraps are explicitly displayed on the website but the existence of such browse wrap is hidden or not seen on the page.

c.	<p><b>What is civil law? Explain jurisdiction of civil court in India.</b></p> <p><b>Answer:</b> The Civil Law consists of a body of rules, procedures, regulations and judicial precedents that helps in resolving the various non-<b>criminal</b> disputes.</p> <p><b>Jurisdiction Of Civil Courts In India</b> Jurisdiction of civil courts can be divided on two basis.</p> <p><b>1) Pecuniary/Monetary</b> <b>2) Territorial / Area Wise Classification</b></p> <p><b>1) Pecuniary/Monetary Jurisdiction:</b> Pecuniary jurisdiction of the court divides the court on a vertical basis. At present the pecuniary jurisdiction of the Delhi courts is as follows:</p> <ul style="list-style-type: none"> <li>· Suits amounting to Rs.1 - Rs.20, 00,000 lie before district courts.</li> <li>· Suits over and above Rs. 20,00,000/- lie before High Courts.</li> </ul> <p>It is very important to note that the amount of pecuniary</p>	5
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	<p>jurisdiction is different for all High Courts. This limit is decided by respective High Court Rules.</p> <p>In many states High court has no pecuniary jurisdiction. All civil suits go before District Courts, and only appeal lies before High Court</p> <p><b>2) Territorial Jurisdiction:</b> Territorial Jurisdiction divides the courts on a horizontal basis.</p> <p><b>District Courts:</b> For example in Delhi, there are three District level courts, viz. Patiala House, Tis Hazari and Karakardooma. All these courts have nearly same powers. However, being on a same horizontal line, these courts are divided territory wise, i.e. area wise. Again for example, cases pertaining to South Delhi, New Delhi and West Delhi will lie before Patiala House, and North Delhi cases will lie before Tis Hazari, and cases pertaining to East Delhi will lie before Karakardooma.</p> <p><b>High Court:</b> Similarly High Court of two different states, say Delhi, and Punjab may have similar powers in their respective states, but are divided on the basis of area. Cases pertaining to Delhi will lie before Delhi High court and cases pertaining to Punjab will lie before Punjab High Court.</p> <p><b>How Is Territory Decided?:</b> Territory of a court is decided after taking into account several factors. They are:</p> <p><b>In Case Of Immovable Property:</b> If the suit is with regard to recovery, rent, partition, sale, redemption, determination of right of immovable property, it shall be instituted in the court within the local limits of whose jurisdiction the property is situated.</p> <p><b>Immovable Property Situated Within The Jurisdiction of Different Courts:</b> In such a case the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situated.</p>	
d.	<p><b>Define foreign judgment in India.</b> <b>Answer:</b> <b>Definition:</b> A judgment judge by foreign court is known as foreign judgment. Section 2(5) defines the term 'Foreign Judgment'. Accordingly, foreign judgement means, the judgment of a foreign court. Accordingly to the section 2 (5), foreign</p>	5

<p>court means, a court situated outside India and not established or continued by the authority of the Central Government.</p> <p>As per Section 13, a judgment delivered by a foreign court having competent jurisdiction can be enforced in India</p> <p>Section 13 says that, a Foreign judgement is conclusive as to many matter thereby directly adjudicated upon between the same parties, or between parties under whom they or any of them claim, litigating under the same</p> <p><u>But, under following six cases the foreign judgement shall not be conclusive , they are :-</u></p> <ol style="list-style-type: none"> <li>1. If the foreign judgement has not been pronounced by the court having competent jurisdiction.</li> <li>2. Where the foreign judgement is not given on the merits of the case</li> <li>3. Where a foreign judgement appears to be on the face of proceeding to be founded on incorrect view of the international law or where the recognition of Indian law was not referred in cases where the Indian law is applicable</li> <li>4. Where the foreign judgement was delivered in a proceeding which wasa opposed to principles of natural justice.</li> <li>5. If the foreign judgement has been obtained by fraud</li> <li>6. Where the foreign judgement is made on claim which was founded on a breach of any law which is in force in India</li> </ol> <p>❖ In law, the enforcement of <b>foreign judgments</b> is the recognition and enforcement in one jurisdiction of <b>judgments</b> rendered in another ("<b>foreign</b>") jurisdiction. <b>Foreign judgments</b> may be recognized based on bilateral or multilateral treaties or understandings, or unilaterally without an express <b>international</b> agreement.</p> <p>A foreign judgment can be enforced in India in one of two ways:</p> <ol style="list-style-type: none"> <li>1. Judgments from Courts in "reciprocating territories" can be enforced directly by filing before an Indian Court an Execution Decree.</li> </ol> <p>A "reciprocating territory" is defined in explanation 1 to Section 44A of India's Civil Procedure Code as: "Any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare as a reciprocating territory."</p> <p>The United Kingdom and Canada are among the list of countries which has been declared as "reciprocating territories."</p> <p>Presently, the United States of America is not declared as a "reciprocating territory" by the Government of India.</p> <ol style="list-style-type: none"> <li>2. Judgments from "non-reciprocating territories," such as the United States, can be enforced only by filing a law suit in an Indian Court for a Judgment based on the foreign judgment. The foreign judgment is considered evidentiary.</li> </ol> <p>The time limit to file such a law suit in India is within three years of the foreign judgment.</p> <p>A foreign judgment is considered conclusive by an Indian Court if such judgment:</p> <ul style="list-style-type: none"> <li>• has been pronounced by a court of competent jurisdiction;</li> <li>• has been given on the merits of the case;</li> <li>• is founded on correct view of international law;</li> </ul>
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	<ul style="list-style-type: none"> <li>• is contained in proceedings that followed principles of natural justice;</li> <li>• has not been obtained by fraud; and</li> <li>• Does not sustain a claim on a breach of any law in force in India.</li> </ul> <p>Indian courts are overburdened and therefore slow. Enforcing a foreign judgment in India could take years in some instances, depending upon the complexity of the issues involved in the dispute between the parties.</p> <p><b>Whether a Judgment / Decree on a Commercial Matter obtained in the USA is enforceable in India?</b></p> <p>Judgments from "non-reciprocating territories," such as the United States, can be enforced only by filing a law suit in an Indian Court for a Judgment based on the foreign judgment. The foreign judgment is considered evidentiary.</p> <p>The time limit to file such a law suit in India is within three years of the foreign judgment.</p> <p>A foreign judgment is considered conclusive by an Indian Court if such judgment:</p> <ul style="list-style-type: none"> <li>• has been pronounced by a court of competent jurisdiction;</li> <li>• has been given on the merits of the case;</li> <li>• is founded on correct view of international law;</li> <li>• is contained in proceedings that followed principles of natural justice;</li> <li>• has not been obtained by fraud; and</li> <li>• Does not sustain a claim on a breach of any law in force in India.</li> </ul>	
e.	<p><b>Explain the Status under the Indian Contract Act, 1872.</b></p> <p><b>Answer:</b></p> <p>➤ <b>Status under the Indian Contract Act, 1872:</b></p> <p>The <b>Indian Contract Act, 1872</b> defines the term “<b>Contract</b>” under its section 2 (h) as “An <b>agreement</b> enforceable by <b>law</b>”. In other words, we can say that a <b>contract</b> is anything that is an <b>agreement</b> and enforceable by the <b>law</b> of the land.</p> <p><b><u>Interpretation of the Indian Contract Act, 1872:</u></b></p> <ol style="list-style-type: none"> <li>1. When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;</li> <li>2. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;</li> <li>3. The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";</li> <li>4. When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;</li> </ol>	5



	<ol style="list-style-type: none"> <li>5. Every promise and every set of promises, forming the consideration for each other, is an agreement;</li> <li>6. Promises, which form the consideration or part, of the consideration for each other are called reciprocal promises;</li> <li>7. An agreement not enforceable by law is said to be void;</li> <li>8. An agreement enforceable by law is a contract;</li> <li>9. An agreement which is enforceable by law at the option of one or more of the parties - thereto, but not at the option of the other or others, is a voidable contract;</li> <li>10. A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.</li> </ol>	
f.	<p><b>Explain jurisdiction dispute w.r.t. the internet in the United states of America.</b></p> <p><b>Answer:</b></p> <p>Jurisdiction Disputes w.r.t. the Internet in the United State of America :</p> <p>⇒ "It is increasingly clear that modern businesses no longer require an actual physical presence in a state in order to engage in commercial activity there. With the advent of 'e-commerce,' businesses may set up shop, so to speak, without ever actually setting foot in the state where they intend to sell their wares ... Businesses who structure their activities to take full advantage of the opportunities that virtual commerce offers can reasonably anticipate that these same activities will potentially subject them to suit in the locales they have targeted."</p> <p>⇒ This is a lesson that many merchants conducting business via the Internet are learning—and are learning it the hard way, by being forced to face litigation in jurisdictions where they would otherwise not have had to before the rapid expansion of the Internet. This paper will address jurisdictional issues involving E-Commerce that are unique to the U.S. legal system, as well as examine jurisdictional trends throughout the United States.</p> <p><b>1. The Internet Is Big Business</b></p> <p>According to a January 2004 estimate, U.S. online sales were anticipated to reach \$65 billion by the end of 2004, with growth expected to continue at a compound annual rate of 17% through 2008 to \$230 billion. This study also estimated that online growth in the United States was expected to increase 14% in 2005 This figure is equivalent to 30% of the U.S. population. Many believe that by 2008, approximately one-half of the U.S. population will make at least one online purchase a year.</p> <p>In addition, the average person is spending more money on online purchases. In 2003, the average online shopper in the Unites States spent \$540. In 2004, that figure increased to \$585 per person. Current trends indicate that the average amount will increase to \$780 per person by 2008.</p>	5

Notably, these figures take into account only online purchases in the United States. Given the broad appeal of the Internet, it is likely that these figures could be duplicated worldwide.

## **2. Jurisdiction 101 – The Basics of Jurisdiction in the United States**

As the previous figures demonstrate, online purchases are rapidly becoming a preferred means of shopping. While presently not on par with traditional brick-and-mortar establishments, in the not-so-distant future, online retail sales may surpass sales from the more traditional retail methods. Additionally, online retailing in the United States is a multibillion-dollar industry where an unsuspecting online retailer could face jurisdictional issues in all 50 states. Therefore, it is increasingly important for online merchants and retailers to understand the basics of U.S. jurisdiction before embarking on an E-Commerce venture.

Jurisdiction is the power of a court to render a decision that will be recognized and enforced by authorities and other courts. There are two types of jurisdiction: jurisdiction over the parties (personal jurisdiction) and subject matter jurisdiction. A court must have both subject matter and personal jurisdiction before it can consider the case.<sup>2</sup> Because matters involving online transactions typically satisfy subject matter jurisdiction requirements, this section will focus on personal jurisdiction.

## **3. Jurisdiction Based on Internet Contacts**


The benchmark case dealing with Internet jurisdiction is *Zippo Manufacturing v. Zippo Dot Com*, 952 F. Supp.2d 1119 (W.D. Pa. 1997). In order to understand the rationale used by the court in determining the appropriateness of asserting personal jurisdiction over an out-of-state defendant based primarily on Internet contacts, it is helpful to look at the facts surrounding the *Zippo* case. Zippo Manufacturing is a Pennsylvania corporation that manufactures, among other things, "Zippo" lighters. Zippo Manufacturing holds the trademark on the name "ZIPPO." Zippo Dot Com Inc. is a California corporation that operates a Web site and an Internet news service, and held the rights to the domain names ZIPPO.COM, ZIPPO.NET and ZIPPONEWS.COM. Zippo Manufacturing brought suit against Zippo Dot Com, alleging that it had violated the Federal Trademark Act and various other Pennsylvania state intellectual property laws. Zippo Dot Com moved to dismiss the action on the grounds that the court lacked personal jurisdiction.

## **4. A Survey of Jurisdictional Decisions**

Each state is free to set its own requirements for personal jurisdiction subject to constitutional limits of due process. Therefore, a survey of decisions from the different circuit courts is useful to determine the amount of contact a particular state requires in order to properly assert personal jurisdiction over a nonresident defendant. What follows is a survey of the leading cases from each circuit. The

	survey focuses on whether the <i>Zippo</i> test was followed and there were contacts necessary to support a finding of personal jurisdiction over nonresident defendants.	
<b>3.</b>	<b>Attempt <i>Any three</i> of the following:</b>	15
<b>a.</b>	<p><b>Write a short note on cyber squatters.</b></p> <p><b>Answer:</b></p> <ul style="list-style-type: none"> <li>⇒ Registration of domain names are done on ‘first come – first serve’ basis. This gives rise to many problems as any person can register any domain name of their choice regardless of whether that name holds any trademark or goodwill of a commercial/business enterprise or represents any kind of organization. This lead to the reserving of many well-known trade names, brand names, company names, etc. by individual/corporations other the ones with a genuine interest in the domain name, with a view to trafficking/doing business on the said domain name to the genuine buyer<sup>5</sup>.</li> <li>⇒ Cyber-squatters, also known as “cyber-pirates”, beat a company to the punch by reserving a company name or trademark as a domain name in the hope of profiting when the company wants to reserve its own name.<sup>6</sup> Essentially, cyber squatters fraudulently obtain these domain names with the intent to sell it to the lawful owner of the name at a higher price or premium. The cyber squatters quickly sell the domain names to other non-related entities, thereby enabling passing off and diluting of famous trademark or trade names.<sup>7</sup> Passing off is a form of unfair trade practices in which one party seeks to profit from the other party’s reputation.</li> <li>⇒ The main problem lies in the fact that two owners cannot have the same domain name. Hence, although cyber squatters are not completely restricting corporations from registering any domain name of their choice, it can be argued that cyber squatters are not preventing the right of corporations to domain names. However, by registering the most obvious as a domain name (e.g., the name of the corporation itself), cyber squatters force corporations to find other ways to attract consumers to their Internet pages<sup>8</sup>. Instead of simply typing an obvious domain name for a corporation, customers are forced to use a search engine, which may cause additional confusion or delay when accessing the desired site.<sup>9</sup> Moreover, with the programming of search engines, often enough websites of the competitor’s with similar domain names pop up.</li> <li>⇒ Consumers seeking the page of a specified trademark owner will likely turn to a search engine because an initial attempt of typing in the domain name (For example, ‘www.trademark.com’) does not yield the desired result as a cyber-squatter has already registered that domain. Therefore, the trademark owner is injured in three ways<sup>10</sup>:</li> </ul> <p>1. using a search engine will inconvenience the consumer, because he may possibly have to wade through thousands of other sites to get to the desired site. Thus, this increases the customers search costs and makes it more</p>	5

	<p>likely that the customer will become frustrated with the trademark owner, regardless of the quality of her products or services.</p> <p>2. The search engine route likely will bring up many Internet sites of the trademark owner's competitors.</p> <p>3. The frustration that customers face with this problem may convince customers to use alternative, non-Internet means to get the desired products. This fact, combined with the likely frustration from the search engine process might make customers, originally searching to purchase the trademark owner's products, shift their purchases to the trademark owner's competitors.</p> <p>Consequently, protecting domain names and its identity has become important.</p> <p>The cases so far, have showed that the conflicting issue in related to the use of the goodwill of a trademark by an infringer in the domain name to divert the customers or potential customers of the owner of the trademark to a website not associated with that trademark, or use of meta tags resulting in dilution of trademark or unauthorized registration of the trademark as domain name with the intent to extort money or to prevent the owner from using the trademark.</p> <ol style="list-style-type: none"> <li>1. Cybersquatting, like Phishing, is also highly targeted. It's aimed at businesses and organizations and takes advantage of their success to extract money.</li> <li>2. Cybersquatting – the practice of registering names, especially well-known company or brand names, as Internet domains, in the hope of reselling them at a profit.</li> <li>3. The term is derived from “<u>squatting</u>“, which is the act of occupying an abandoned or unoccupied space or building that the squatter does not own, rent, or otherwise have permission to use.</li> <li>4. In essence, a cyber-squatter takes possession of your brand at some level. This criminal relies on your professional pride, your conscientious work ethic, and desire to protect customers as a motivating force to get you to comply with their demands.</li> </ol>	
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	<p>5. According to one <b>Forbes</b> contributor, the cost of a dislodging a cyber-squatter can start at \$100 and escalate past \$10,000 in hopes that the case won't go into litigation.</p>	
b.	<p><b>Explain the battle between freedom and control on the internet.</b></p> <p><b>Answer:</b></p> <ul style="list-style-type: none"> <li>➤ Networked individualism is reshaping social interaction as we renegotiate the balance between the one and the many.</li> </ul>  <ul style="list-style-type: none"> <li>➤ OUR social relationships are changing and technology is at the centre of this unfolding story.</li> <li>➤ Take stock of your own world. You probably have a few family members and friends who mean the world to you. Then there are the many acquaintances, contacts, “followers” and “consequential strangers” who you only interact with occasionally but who serve useful purposes when you have questions, need to make decisions or require a helping hand.</li> <li>➤ Your ties to all of them, especially those in the outer reaches of your network, are increasingly mediated through digital technology – from email to Facebook to Skype calls.</li> <li>➤ This new social operating system has been emerging for several generations but has accelerated in growth thanks to the recent triple revolution: the widespread adoption of <u>broadband</u>, <u>ubiquitous mobile connectivity</u> and the move from bounded groups – largely closed circles of interlinked contacts – to <u>multiple social networks</u>.</li> <li>➤ We have dubbed the result networked individualism because loose-knit networks are overtaking more densely knit groups and traditional hierarchies as the dominant structure of social interaction.</li> </ul>	5

	<ul style="list-style-type: none"> <li>➤ In the world of networked individuals, the individual is the focus, not the family, the work unit, the neighbourhood or the social group. Each person creates their own network tailored to their needs, maintaining it through their email address and address book, screen name, social and technological filters, and cellphone number.</li> <li>➤ <u>Networks</u> are thriving. People have more strong ties as well as weak ones. The number of people on the periphery of each network is growing. In this Web 2.0 world, community-building can take new forms. Hobbyists, the civic minded, caregivers, spiritual pathfinders and many others have the option of plugging into existing communities or building their own – which they often do.</li> <li>➤ This revolution doesn't mean physical isolation, as some fear. People still value neighbours, because they remain important for everyday socialising and emergencies. Yet neighbours are only about 10 per cent of our significant ties. While people see co-workers and neighbours often, the most important contacts tend to be with people who live elsewhere in the city, region, nation – and abroad.</li> <li>➤ The new media are able to facilitate such contact, and, in effect, have become the neighbourhood. And it is heavily populated. Data from the Pew Research Center's <u>Internet &amp; American Life Project</u> suggests that more than two-thirds of American adults and three-quarters of teenagers have become online content creators through social media and rankings, ratings, commenting and remixing applications. In this world, people can easily locate and connect with others who share their tastes, lifestyles, politics, spiritual practices, ailments or professional aspirations.</li> <li>➤ With such a fundamental social shift linked to still-developing technology, how it unfolds needs to be considered. We think there are two possible scenarios.</li> </ul> <p><b>“With such a fundamental social shift we need to consider how the future of all this might unfold”</b></p> <ul style="list-style-type: none"> <li>➤ In the first, virtual assistants operating in a semantic web – one in which machines can better assess the ocean of information – seamlessly mesh a user's life logistics and interests, allowing people to be more productive and more effective at integrating their needs. The merger of data and the physical environment, especially in augmented reality apps, enriches people's experiences as they can summon information about the things they are observing – a landscape, buildings in an unfamiliar city or even faces of those they encounter.</li> <li>➤ In this benign world, the challenges of information overload are reduced as these smart agents perform filtering and relevance tests. This lets people interact with their social networks and growing information stores in productive and socially beneficial ways.</li> </ul>
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	<ul style="list-style-type: none"> <li>➤ In the second scenario, a walled online world of tight corporate permissions and Big Brotherish surveillance by business and the state limits networked life. Personal agents turn out to be double agents, feeding back information on users that can be sold. People are limited in what they can do with their media and networks by those determined to prevent pirating of content.</li> <li>➤ Moreover, tech firms and their advertising allies scan users' behaviour for commercial exploitation. People's social network practices are quarantined inside filter bubbles that assume they want homogenised content and contact with like-minded individuals, rather than a diversified, broad outreach.</li> <li>➤ Which will unfold? The future will likely include parts of each. The architecture of the internet – dominated by the hacker ethic – will facilitate open networks and all the social connection that goes with them. Legal struggles over content ownership and the cost of access may lead to restrictions that could limit the capacity for users to do what they want.</li> <li>➤ Evolving social norms will push both ways. Some will encourage openness as people want to connect; others will encourage limits as the hassled and hard-pressed withdraw occasionally.</li> <li>➤ In short, the world will fragment, with some parts moving towards the brighter side of networked individualism and other parts moving towards gated communities and more <u>tightly controlled information flows</u>.</li> <li>➤ The triple revolution has given rise to far-reaching consequences, though it is not yet clear what the outermost points of impact will be. What is evident is that networked individualism is tightly tied to technological changes on the horizon and that the time is ripe to contemplate the shape of things to come.</li> </ul>	
c.	<p><b>What is copyright? Explain copyright Act, 1957.</b></p> <p><b>Answer:</b></p> <ul style="list-style-type: none"> <li>➤ A <b>copyright</b> in a <b>work</b> is created when the <b>work</b> is created and given a material form, provided it is original. However, the Act provides for a procedure of <b>copyright</b> registration. Such registration does not confer any special rights or privileges with respect to the registered <b>copyrighted work</b>.</li> <li>➤ <b>Works in which copyright subsists:</b></li> </ul> <p>(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say-</p> <p style="padding-left: 40px;">a. original, literary, dramatic, musical and artistic works,</p>	5



	<p>b. cinematograph films, and</p> <p>c. [(Note: Subs. by Act 38 of 1994, S.2 (w.e.f. a date to be notified) for "records" sound recordings.]</p> <p>(2) Copyright shall not subsist in any work specified in sub section (1), other than a work to which the provisions of Section 40 or Section 41 apply, unless-</p> <p>i. in the case of published work, the work is first published in India, or where the work is first published</p> <p>outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India,</p> <p>ii. in the case of an unpublished work other than a [(Note: Subs. by Act 38 of 1994, S.2 (w.e.f. for "records") work of architecture], the author is at the date of making of the work a citizen of India or domiciled in India, and</p> <p>iii. in the case of a [(Note: Subs. by Act 38 of 1994, S.2 (w.e.f. for "records")) work of architecture , the work is located in India</p> <p><b>Explanation-</b> In the case of a work of joint authorship, the conditions conferring copyright specified in this sub section shall be satisfied by all the authors of the work.</p> <p>(3) Copyright shall not subsist-</p> <p>a. in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work,</p> <p>b. in any [(Note: Subs. by Act 38 of 1994, S.2 (w.e.f. for "records")) sound recording made in respect of a literary, dramatic or musical work, it in making the [(Note: Subs. by Act 38 of 1994, S.2 (w.e.f. for "records")) sound recording, copyright in such work has been infringed.</p> <p>(4) The copyright in a cinematograph film or a [(Note: Subs. by Act 38 of 1994, S.2 (w.e.f. for "records")) sound recording shall not affect the separate copyright in any work in respect of which a substantial part of which, the film, or as the case may be, the [(Note: Subs. by Act 38 of 1994, S.2 (w.e.f. for "records")) sound recording is made.</p> <p>(5) In the case of a work or architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods or construction.</p> <p>❖ <b>"Original" Meaning :</b></p> <p>➤ The word 'original' does not in this connection mean that the work must be the expression or original or inventive though, Copyright Acts are not</p>
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	<p>concerned with the origin of ideas, but with the expression of thought; and in the case of 'literary work' with the expression of thought in print or writing. The originality which is required relates to the expression of the thought; but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work - that it should originate from the author.</p> <p>➤ In order to obtain copyright production for literary, domestic, musical and artistic works, the subject dealt with need not be original, nor the ideas expressed be something novel. What is required is the expenditure of original skill or labor in execution and not originality of thought.</p>	
e.	<p><b>Explain liability of ISPs for copyright violation in the cyber world.</b></p> <p><b>Answer:</b></p> <p>ISP: Internet Service Providers are companies or corporations that enable clients to connect to the Internet. Just as in any other business, ISPs may range from conglomerates to small companies having only a handful of clients. Quite often, the ISPs provide their clients with facilities to create client literature or other articles and make them available over the Internet to the general public - a function ISPs proudly term as a "value-added service." Typically, an ISP provides its clients with more than just an email account and access to the web; it offers facilitation to upload files (including web pages) to the ISP's publicly accessible servers, enabling users to access these files.</p> <p>ISP LIABILITY IN INDIA:</p> <p>In India, the law applicable to the infringer depends upon which part of law deals with that particular infringement. Therefore, due to the absence of such law, the Copyright Act and the Information Technology Act includes the liability of ISP's:</p> <p>➤ <b>Copyright act 1957</b></p> <p>As per Section 51(a)(ii) of the Copyright Act;</p> <p>"the Indian Copyright Act, the act of infringement is when, a person without any licence by the registrar or the owner of the particular copyright, does an act that is in the contravention of the conditions of a that licence or condition imposed by a competent authority under this Act permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he is unaware as and had no</p>	5

	<p>reason to believe that the particular communication to the general public would result in copyright infringement.”</p> <p>Nowadays the Internet service providers, instruct their servers transmit and store their users data across the network. This act of ISP's helps them to hold any third party liable in case of any infringement. In order to be liable for the infringement, it is very necessary that the ISP should benefit financially from it. The ISP's earn even if they offer some copyrighted illegal material because of the advertisements that come along with it. Therefore, an ISP can be held liable not only when they transmit such infringed material but they are liable even if they store it.</p> <p>➤ Criminal Liability:</p> <p>An ISP can be held criminally liable when, he does an act of infringement or abets infringement of:</p> <p>(a) the copyright in a work, or</p> <p>(b) any other right conferred by this Act,</p> <p>If a person does such an act than the Copyrights Act provides for the punishment to be given to him, i.e of imprisonment which may extend to one year, or with fine, or with both.</p> <p>However, the Copyright Act clearly states that the ISP can be held liable only in the case he was unaware infringing material stored or being transmitted through their servers. This provides an exception to the liability.</p>	
f.	<p><b>Explain computer software piracy with its different types.</b></p> <p><b>Answer:</b></p> <ul style="list-style-type: none"> <li>▪ Piracy is rampant in India, but you knew that</li> </ul> <p>Software piracy is the unauthorised use and distribution of computer software. Software developers work hard to develop these programs, and piracy curbs their ability to generate enough revenue to sustain application development. This affects the whole global economy as funds are relayed from other sectors which results in less investment in marketing and research.</p> <p>The following constitute software piracy:</p>	5

	<ul style="list-style-type: none"> <li>• Loading unlicensed software on your PC</li> <li>• Using single-licensed software on multiple computers</li> <li>• Using a key generator to circumvent copy protection</li> <li>• Distributing a licensed or unlicensed (“cracked”) version of software over the internet and offline</li> </ul> <p>⇒ “Cloning” is another threat. It happens when someone copies the idea behind your software and writes his own code. Since ideas are not copy protected across borders all the time, this isn’t strictly illegal. A software “crack” is an illegally obtained version of the software which works its way around the encoded copy prevention. Users of pirated software may use a key generator to generate a “serial” number which unlocks an evaluation version of the software, thus defeating the copy protection. Software cracking and using unauthorised keys are illegal acts of copyright infringement.</p> <p>⇒ Using pirated material comes with its own risks. The pirated software may contain Trojans, viruses, worms and other malware, since pirates will often infect software with malicious code. Users of pirated software may be punished by the law for illegal use of copyrighted material. Plus you won’t get the software support that is provided by the developers.</p> <p>⇒ Thanks to the internet and torrents, you can find almost any movie, software or song from any origin for free. Internet piracy is an integral part of our lives which knowingly or unknowingly we all contribute to. This way, the profits of the resource developers are being cut down. It’s not just about using someone else’s intellectual property illegally but also passing it on to your friends further reducing the revenue they deserve.</p> <p><b>Types of software piracy include:</b></p> <ul style="list-style-type: none"> <li>• <b>Soft lifting:</b> Borrowing and installing a copy of a software application from a colleague.</li> <li>• <b>Client-server overuse:</b> Installing more copies of the software than you have licenses for.</li> <li>• <b>Hard-disk loading:</b> Installing and selling unauthorized copies of software on refurbished or new computers.</li> <li>• <b>Counterfeiting:</b> Duplicating and selling copyrighted programs.</li> </ul>
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	<ul style="list-style-type: none"> <li>• <b>Online piracy:</b> Typically involves downloading illegal software from peer-to-peer network, Internet auction or blog. (In the past, the only place to download software was from a <u>bulletin board system</u> and these were limited to local areas because of long distance charges while online.)</li> </ul>	
4.	<b>Attempt <u>Any three</u> of the following:</b>	15
a.	<p><b>Explain the concept of Permanent Establishment.</b></p> <p><b>Answer:</b></p> <ul style="list-style-type: none"> <li>▪ Internationally, two basic principles of taxation are followed- the residence based taxation and the source based taxation. Most of the countries, including India, tax their residents on their global income under residence based taxation. They tax non-residents on their income sourced in that country under source based taxation.</li> <li>▪ When a resident of one country earns income from a source in another country, the possibility of double taxation arises because one country may tax that income on the source principle whereas the other country may tax it on the residence principle. Generally, following the source based taxation, the Source Country is allocated the right to tax the income arising therein. While the Residence Country also taxes the income following the residence based taxation. The Residence Country mitigates the effect of <u>double taxation</u> either by way of tax exemption or by way of tax credit.</li> </ul> <p><b><u>Concept of Permanent Establishment:-</u></b></p> <p>The most important issue in the treaty based international fiscal law is the concept of Permanent Establishment (PE). All the three model conventions namely, UN (United Nations) Model, OECD (Organisation for Economic Co-operation and Development) Model and US (United States of America) Model use PE as the main instrument to establish taxing jurisdiction over a foreigner's business activities.</p> <p>✓ <u>Same need to be under stand in depth with following:</u></p> <p>According to the concept of PE, the profits of an enterprise of one Contracting State are taxable in the other state, only if the enterprise maintains a PE in the later state and only to the extent that profits are attributable to the PE. Thus, a legal concept, PE is a compromise between source state and residence state for purposes of taxation of business profits. The term must be understood so as to arrive at that degree of economic penetration, which according to treaty partners, justifies a nation in treating a foreign person in the same manner as domestic persons. Profit attributable to a PE, in the State of Source are either exempted in State of Residence or the State of Residence allows credit of taxes paid by the PE on such profits. To this extent, the taxing jurisdiction by the State of Residence is said to be transferred to the State of Source, where the person needs to file his return of income and comply with domestic tax laws.</p>	5

	<p>In a landmark decision i.e. <i>CIT Vs. Vishakhapatnam Port Trust [(1983), 144-ITR-146 (AP)]</i> on the subject of “Permanent Establishment”, the Andhra Pradesh High Court has observed as under:</p> <p>“The words “Permanent Establishment” postulate the existence of a substantial element of an enduring or permanent nature of a foreign enterprise in another, which can be attributed to a fixed place of business in that country. It should be of such a nature that it would amount to a virtual projection of the foreign enterprise of one country onto the soil of another country.”</p> <p>The UN Model not only re-affirms the concept but also supplements it with the new concept of a “fixed base”, to be used in the case of professional services or other activities of an independent character.</p>	
b.	<p><b>Explain Income Tax Act 1961.</b></p> <p><b>Answer:</b></p> <ul style="list-style-type: none"> <li>⇒ <b>The Income Tax Act 1961</b></li> <li>✓ The Income Tax Act, focusing on the rules and regulations of tax regulation, was initially put into existence in the year 1961. Under this act, everything related to taxation and more are mentioned which also includes collection and levy!</li> <li>✓ The Income Tax Act was enacted in the year 1961 and is the statute under which everything related to taxation is listed. This includes levy, collection, administration and recovery of income tax. The act basically aims to consolidate and amend the rules related to taxation in the country.</li> <li>✓ The Income tax Act contains a long list of sections, each of which deal with different aspects of taxation in the country. Let us look into each of these chapters of the IT Act and their related sections and sub-sections.</li> </ul> <p><b>Chapter I:</b> This is the first section and is hence for introducing the IT Act and to give a basic idea about the same.</p> <p><b>Chapter II:</b> This chapter talks about the commencement and the extent of the Income Tax Act.</p> <p><b>Chapter III:</b> The third chapter of the IT Act is basically about the charge of <u>income tax</u>, the scope of total income, dividend income, and income arising as a result of working abroad and so on.</p> <p><b>Chapter IV:</b> This chapter deals with all forms of income that do not form part of the total income. These include income from property, trusts, institutions, incomes of political parties etc.</p> <p><b>Chapter V:</b> The fifth chapter is about incomes of other individuals that form part of the assessee’s income. This includes income from <u>capital gains</u>, from businesses, from house property etc.</p>	5

	<p><b>Chapter VI:</b> This deals with the transfer of income when there is no actual transfer of assets. This includes transfer as well as revocable transfer.</p> <p><b>Chapter VII:</b> Chapter VII is basically about the deductions that are applicable on certain payments and certain incomes</p> <p><b>Chapter VIII:</b> Chapter VIII deals with rebates and share of member in an association or body</p> <p><b>Chapter IX:</b> This talks about double taxation relief that is rebate on income tax and relief in income tax</p> <p><b>Chapter X:</b> This is about special provisions where payment of income tax is avoided. This includes agreements with foreign countries and also information about those countries with which there exists no agreement on tax payment</p>	
c.	<p><b>Explain who is non-resident Indian? Explain non-resident Indian under Income Tax Act 1961.</b></p> <p><b>Answer:</b></p> <p><b>Tax Agents of Non-Residents under the Income Tax Act, 1961:</b></p> <p><b>Non Resident Indian under Income Tax Act, 1961</b></p> <ol style="list-style-type: none"> <li>1. Non Resident Indian is abbreviated by NRI. The Person of Indian Origin (PIO) who is residing outside India permanently is called as NRI. In another way, NRI is Indian citizen migrated to another country. Income Tax Act has not directly defined NRI. Section 6 contains detailed criteria of who is considered as Resident in India and provides that anyone who doesn't meet these criteria is Non-Resident. Liability to pay tax in India does not depend on the nationality or domicile of the Tax payer but on his residential status.</li> </ol> <p>The status of a person as a resident or non-resident depends on his period of stay in India. The period of stay is counted in number of days for each financial year beginning from 1st April to 31st March (known as previous year under the Income-tax Act).</p> <p>In the new DTC (The New Direct Tax Code (DTC) is said to replace the existing Income Tax Act of 1961 in India. DTC bill was tabled in parliament on 30th August, 2010.) , the 182-day requirement has been reduced to 60 days. This change could impact the residential status for select NRIs, say tax experts. But it has not been implemented yet.</p> <p>“Under the Direct Tax Code, NRIs who have historically been spending significant time in India stand to become residents the moment their stay in India exceeds 60 days in the financial year” says Amitabh Singh, Partner, Tax &amp; Regulatory Services, Ernst and Young.</p> <p>A resident becomes 'ordinarily resident' under the Income Tax Act if he was resident in India in nine out of the ten previous years and has been in India for 730 days or more during the seven years preceding that year.</p>	5



	<p>In such cases, even global income of these NRIs could be added to the Indian income.</p> <ol style="list-style-type: none"> <li>1) Income from the Indian salary</li> <li>2) Income from the bank interest(from the India Resident savings account)</li> <li>3) Income from pension</li> <li>4) Income from agriculture</li> <li>5) Income from house rental income</li> <li>6) Income from sale of stocks or mutual funds</li> <li>7) IPO or employee stock options(ESOP)</li> <li>8) Income from sale of house property</li> </ol> <p><b>Who is a Non-Resident Indian?</b> An Indian abroad is popularly known as Non-Resident Indian (NRI). NRI is legally defined under the Income Tax Act, 1961 and the Foreign Exchange Management Act, 1999 (FEMA) for applicability of respective laws.</p> <p><b>NRI as per Income Tax Act</b> Income Tax Act has not directly defined NRI. Section 6 contains detailed criteria of who is considered as Resident in India and provides that anyone who doesn't meet these criteria is Non-Resident.</p> <p>The status of a person as a resident or non-resident depends on his period of stay in India. The period of stay is counted in number of days for each financial year beginning from 1st April to 31st March (known as previous year under the Income-tax Act).</p> <p><b>Resident</b> An individual will be treated as a Resident in India in any previous year if he/she is in India for:</p> <ol style="list-style-type: none"> <li>1. Atleast 182 days in that year, <b>OR</b></li> <li>2. Atleast 365 days during 4 years preceding that year <b>AND</b> atleast 60 days in that year.</li> </ol> <p>An individual who does not satisfy both the conditions as mentioned above will be treated as "non-resident" in that previous year.</p> <p>Definition of Resident is relaxed by dropping Condition 2 given above (i.e. only Condition 1 is applicable), for the following cases:</p> <ol style="list-style-type: none"> <li>1. An Indian citizen who leaves India in any year for the purpose of employment outside India or as a crew member of an Indian ship,</li> <li>2. An Indian citizen or a person of Indian origin who resides outside India and who comes on a visit to India. Note that a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India.</li> </ol> <p>Following examples will make the rules more clear:</p> <ol style="list-style-type: none"> <li>1. Ajay leaves India for the first time on 1st August, 2006 and remains out of India in the remaining part of the financial year. His period of stay in India in the previous year 2006-07, being less than 182 days, he is not a resident for that year.</li> </ol>
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	2. Divya leaves India in December 2006 and continues to remain abroad in the remaining part of the financial year. Her period of stay in India being more than 182 days, she will be a 'resident' in the previous year 2006-07.	
d.	<p><b>Explain section 80QQB-Royalty Income deduction under 80QQB.</b></p> <p><b>Answer:</b></p> <p><b>Deduction for Royalty Income of Authors</b></p> <p>Authors write books and give it to publishers. Publishers publish them and earn profit on selling those. They pay an agreed percentage of profit or sales made to the authors as a reward or compensation for writing books. This reward or compensation is called Royalty.</p> <p>While the Income tax department charges tax on this income under "Profit and Gains of Business or Profession" or "Other Sources" head of Income, it also provides a deduction on the same that can be claimed by the authors to save tax. This deduction is covered under 80QQB of the Income Tax Act, 1961.</p> <p><b>1. Amounts Included in Royalty Income</b></p> <ol style="list-style-type: none"> <li>Any Income earned by an author for practicing his profession</li> <li>Any Income earned as a lump sum payment for assignment (or grant) of any of his interests in the copyright of any book based on literary, artistic or scientific in nature or of royalty or copyright fees for author's book</li> <li>Any Income received as advance payment of royalties/ copyright fees (amount which is non-refundable)</li> </ol> <p><b>2. Amount of Deduction</b></p> <p>Deduction available will be lower of the following:</p> <ol style="list-style-type: none"> <li>Rs 3 lakhs or</li> <li>The amount of royalty income received</li> </ol> <p><b>3. Conditions to avail the benefit of Sec 80QQB</b></p> <p><b>a. Following are certain conditions to be satisfied for income earned in India and outside India</b></p> <ol style="list-style-type: none"> <li>Individual claiming the deduction must be a resident in India or resident but not ordinarily resident in India.</li> <li>Individual must have authored or co-authored a book that falls under the category of literary, artistic or scientific work.</li> <li>Individual must file his income tax return to claim the deduction.</li> </ol>	5

	<p>iv) If an Individual has not received a lump sum amount , 15% of the value of the books sold during the year (before allowing any expenses) should be ignored.</p> <p>v) Individual must obtain <b><u>FORM 10CCD</u></b> from the person responsible for making the payment.</p> <p>Books here doesn't include Journals, guides, newspapers, textbooks for school students, pamphlets, dairies and other publications of similar nature.</p> <p><b>b. Additional requirement for Income Earned outside India</b></p> <p>i) Individual is allowed deduction on income earned outside India when the income is brought to India in convertible foreign exchange within 6 months from the end of the year or within the period allotted by RBI or other competent authority for this purpose. Individual must obtain a certificate in <b><u>FORM 10H</u></b>.</p> <p><b>4. Examples</b></p> <p>a) Ms. Komal is very passionate about writing. She is a resident of India and a recognized author who writes books on Literature and art work. She earns Rs. 550,000 as her royalty income and she has a business where her profits are Rs. 200,000 p.a. Her net income will be as under :</p> <table><tr><th>Particulars</th><th>Amounts</th></tr><tr><td>Income from Profits and Gains of Business (550,000 + 200,000)</td><td>750,000</td></tr><tr><td>Gross Total Income</td><td>750,000</td></tr><tr><td>Less : Deductions</td><td></td></tr><tr><td>Sec 80QQB</td><td>300,000</td></tr><tr><td>Net Income</td><td>450,000</td></tr></table>	Particulars	Amounts	Income from Profits and Gains of Business (550,000 + 200,000)	750,000	Gross Total Income	750,000	Less : Deductions		Sec 80QQB	300,000	Net Income	450,000	
Particulars	Amounts													
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Net Income	450,000													
e.	<p><b>Explain digital signature certificate.</b></p> <p><b>Answer:</b></p> <p>Digital signatures are based on three pointers for authentication – Privacy, Non repudiation and Integrity in the virtual world, while the objectives of digital certificate are the authentication of documents, and bind the person who is putting</p>	5												

<p>the digital signature, which based on public key cryptography requires two separate keys, as secret and public. However, both the keys are linked together, one key encrypts the plain text, and another decrypts the cipher text, and neither key can perform both the functions. The other difference is digital signature is an electronic process of signing an electronic document while a Digital Certificate is a computer based record which is the identification of certifying agency or the identity of subscriber</p> <p>➤ <b>The Indian Evidence Act and Digital Signature:</b></p> <ul style="list-style-type: none"> <li>✓ After the IT Act 2000, it was necessary to make an applicable amendment in the Indian Evidence act, to make it compatible.</li> <li>✓ Section 3 in the definition of “Evidence”, for the words “all documents produced for the inspection of the Court”, the word “all document including electronic records produced for the inspection of the Court”</li> </ul> <p><b>Certifying Authority to issue Digital Signature Certificate.</b></p> <p>Any person may make an application to the Certifying Authority for the issue of a Digital Signature Certificate in such form as may be prescribed by the Central Government</p> <p>Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:</p> <p>Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applicants'.</p> <p><b>Representations upon issuance of Digital Signature Certificate.</b></p> <p>A Certifying Authority while issuing a Digital Signature Certificate shall certify that--</p> <ul style="list-style-type: none"> <li>it has complied with the provisions of this Act and the rules and regulations made thereunder.</li> <li>it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it.</li> <li>the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate.</li> </ul> <p><b>Suspension of Digital Signature Certificate.</b></p> <p>Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate -</p> <ol style="list-style-type: none"> <li>1. on receipt of a request to that effect from -       <ol style="list-style-type: none"> <li>1. the subscriber listed in toe Digital Signature Certificate, or</li> <li>2. any person duly authorised to act on behalf of that subscriber</li> </ol> </li> <li>2. if it is of opinion that the Digital Signature Certificate should be suspended in public interest</li> </ol>	
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	<p><b>Revocation of Digital Signature Certificate.</b></p> <p>A Certifying Authority may revoke a Digital Signature Certificate issued by it -</p> <ol style="list-style-type: none"> <li>1. where the subscriber or any other person authorised by him makes a request to that effect, or</li> <li>2. upon the death of the subscriber, or</li> </ol> <p>upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.</p> <p><b>Notice of suspension or revocation.</b></p> <p>Where a Digital Signature Certificate is suspended or revoked under section 37 or section 38, the Certifying Authority shall publish a notice of such suspension or revocation, as the case may be, in the repository specified in the Digital Signature Certificate for publication of such notice.</p> <p>Where one or more repositories are specified, the Certifying Authority shall publish notices of such suspension or revocation, as the case may be, in all such repositories.</p>	
f	<p><b>Write a short note on A Warning to Babudom!</b></p> <p><b>Answer:</b></p> <p>✓ <u>After Demonetization a Good Governance from Babudom is Urgently Required for Transformation of India</u></p> <p>The decision of the Prime Minister to demonetize Rs 500 and Rs 1000 notes is a historic step lauded in general by people. The government hopes to win a decisive war against menace of corruption, black money and terrorism in near future. The Prime Minister has earlier also launched many initiatives and schemes like the 'Digital India', 'Skill India', 'Beti Bachao-Beti Padhao' and 'Make in India' for fast pace development of India. However their progress and outcome has to be closely monitored to realise the desired benefits.</p> <p>No single person can succeed in the agenda of good governance unless the entire bureaucracy, the delivery mechanism of the government, is honestly involved and works diligently. Consider India's lowly 130 rank in World Human Development Index (HDI) in the United Nations Human Development Report 2015. The assessment is based on vital parameters like Life Expectancy at birth, GDP per capita, People below Poverty Line, Infant Mortality Rate, Maternal Mortality Rate, Population using Sanitation, Population with access to Clean Water and Percentage of Children Malnourished. India is far behind developed countries in productivity and institutional development, so even modest reforms can yield great leaps forward. However, democracy and economic reforms are not enough. We need an effective and efficient bureaucracy and strong institutions that deliver results, accountability and justice. Then alone will we attain our potential. No less than a razor strike by the Indian 'Babudom' on the evils of good governance can achieve success in implementation of the transformation reforms and development programs initiated by the government. "Minimum Government - Maximum Governance" has been one</p>	5

	<p>of the promises of the Modi government during its campaign in the run-up to the 2014 parliamentary elections.</p> <p>What is Babudom? Since early 20<sup>th</sup> century, the term 'Babu' is frequently used to refer to bureaucrats of Indian Administrative Service (IAS) and other government officials, while the Indian bureaucracy is called "Babudom". Actually it would include each employee responsible for delivery of government's policies and programs to the people and getting paid out of public funds. This classification will comprise of the members of Parliament and State assemblies, bureaucrats, university and school teachers, doctors, Municipal Corporations employees, Public Sector employees, scientific community, Police officials, Postal and Railways services, Judiciary and many more categories. So we have some sort of a definition of who is a Babu, in place to carry the paper forward from here.</p> <p>Democracy in India is the most powerful engine of all, and all it has to channelize its potent power is the political system as it exists today. Increasingly imagined through the lens of power rather than through what the power is meant to achieve, it has become a self-serving instrument for those in or even around the driver's seat. The more democracy becomes about fulfilling the desires of those that can help form electoral majorities rather than about connecting some larger ideals with the hopes and aspirations of people, the more it ends up reinforcing things as they are rather than fighting for things as they should be.</p>	
<b>5.</b>	<b>Attempt <i>Any three</i> of the following:</b>	15
<b>a.</b>	<p><b>Explain the Indian evidence act of 1872.</b></p> <p><b>Answer:</b></p> <p>The <b>Act. The Indian Evidence Act</b>, identified as <b>Act no. 1 of 1872</b>, and called <b>the Indian Evidence Act, 1872</b>, has eleven chapters and 167 sections, and came into force 1 September <b>1872</b>. At that time, <b>India</b> was a part of the British Empire.</p> <p>The <b>Indian Evidence Act</b> originally passed in <u>India</u> by the <u>Imperial Legislative Council</u> in 1872, during the <u>British Raj</u>, contains a set of rules and allied issues governing admissibility of evidence in the <u>Indian</u> courts of law.</p> <p>Over a period of more than 125 years since its enactment, the Indian Evidence Act has basically retained its original form except certain amendments from time to time.</p> <p><b>Amendments:</b></p> <p>The Criminal Law Amendment Act, 2005</p> <p><b>Applicability:</b></p> <p>When India gained <u>independence</u> on 15 August 1947, the Act continued to be in force throughout the <u>Republic of India</u> and <u>Pakistan</u>, except the <u>state of Jammu and Kashmir</u>. Then, the Act continues in force in India, but it was repealed in Pakistan in 1984 by the Evidence Order 1984 (also known as the "Qanun-e-Shahadat"). It</p>	5

	<p>also applies to all judicial proceedings in the court, including the court martial. However, it does not apply on affidavits and arbitration.</p> <p>This Act is divided into three parts and there are 11 chapters in total under this Act.</p> <p><b>Part 1</b></p> <p>Part 1 deals with relevancy of the facts. There are two chapters under this part: the first chapter is a preliminary chapter which introduces to the Evidence Act and the second chapter specifically deals with the relevancy of the facts.</p> <p><b>Part 2</b></p> <p>Part 2 consists of chapters from 3 to 6. Chapter 3 deals with facts which need not be proved, chapter 4 deals with oral evidence, chapter 5 deals with documentary evidence and chapter 6 deals with circumstances when documentary evidence has been given preference over the oral evidence.</p> <p><b>Part 3</b></p> <p>The last part, that is part 3, consists of chapter 7 to chapter 11. Chapter 7 talks about the burden of proof. Chapter 8 talks about estoppel, chapter 9 talks about witnesses, chapter 10 talks about examination of witnesses, and last chapter which is chapter 11 talks about improper admission and rejection of evidence.</p>	
b.	<p><b>Explain proof of electronic agreement in Indian Evidence act.</b></p> <p><b>Answer:</b></p> <p>The E-Sign Act and UETA treat <b>electronic</b> transactions and signatures the same as conventional ink and paper documents and transactions. ... However, these laws do not prescribe all of the requirements for admitting <b>electronic agreements</b> and other <b>electronic</b> documents into <b>evidence</b> in a court proceeding.</p> <p><b>Validity Of Electronic Contracts</b> In India. Under the provisions of the Information Technology Act, 2000 particularly Section 10-A, an <b>electronic</b> contract is <b>valid</b> and enforceable.</p> <ul style="list-style-type: none"> <li>➤ Under the provisions of the Information Technology Act, 2000 particularly Section 10-A, an electronic contract is valid and enforceable.</li> <li>➤ The only essential requirement to validate an electronic contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872.</li> <li>➤ Also, the courts in India give due regard to electronic contracts under the provisions of the Indian Evidence Act, 1872.</li> <li>➤ The provisions of the Information Technology Act, 2000 (<b>IT Act</b>) give legal recognition to an electronic (<b>E -Contract</b>) particularly section 10-A of the IT Act which states:</li> </ul>	5



**"Section 10-A: Validity of contracts formed through electronic means. -**

- *Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."*
- The above provision was introduced by the Information Technology (Amendment Act), 2008 after recognizing the growing dependence on electronic means to reach commercial agreements. This applies where contract formation, communication of the proposal and acceptance is carried out electronically.

**How E - Contracts Can Be Entered Into:** E-Contracts can be entered into through modes of communication such as e-mail, internet and fax. The only essential requirement to validate an E-Contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872. Which are:

- **Offer and Unconditional Acceptance** - Which may be made online or by e-mail communication.
  - **Lawful Purpose and Consideration** - A contract is enforceable by law only when it is made for a lawful purpose and for some consideration. It must not defeat any provision of law and must not be fraudulent in nature.
  - **Capacity of Parties and Free Consent** - Parties to a contract are capable of entering into a contract, if they satisfy the requirements of Section 11 and 12 of the Indian Contract Act, 1872 (capacity to contract), and consent of the parties must be free as per Section 13 of the Indian Contract Act, 1872.
- The simplicity of the execution of an E-Contract being confounding, many sometimes wonder about its validity, especially when compared to a traditional written contract. The simple truth lies in the fact that the Indian Contract Act, 1872 has not specifically laid out any specific way of communicating an offer and what constitute its acceptance. The same can be achieved verbally, in writing or even through conduct. This shows that even in its simplicity, an E-Contract is as valid as a traditional written contract; the only condition/ requirement being that an E-Contract should possess all the essentials of a valid contract as mentioned above.
  - Unless an inference can be drawn from the facts, that the parties intend to be bound only when a formal agreement has been executed, the validity of an agreement would not be affected by its lack of formality. Hence, once the parties are at *consensus-ad-idem*, then the formal execution of the contract is secondary. Therefore, once an offer is accepted through modes of communication such as e-mail, internet and fax then a valid contract is formed unless otherwise specifically provided by law in force in India; such as the Registration Act, 1908, the various Stamp Acts etc. Also, Section

	<p>1(4) of the IT Act lists out the instruments to which the IT Act, does not apply, which are as follows:</p> <ol style="list-style-type: none"> <li>1. Negotiable Instruments;</li> <li>2. Powers of Attorney;</li> <li>3. Trust deeds;</li> <li>4. Wills;</li> <li>5. Contracts for Sale or Transfer of Immovable Property</li> </ol>	
c.	<p><b>Explain bankers' books evidence act 1891.</b></p> <p><b>Answer:</b></p> <p>➤ <b>Amendments to the Bankers' Books Evidence Act, 1891:</b></p> <p><b>1. In section 2,-</b></p> <p>(a) for clause (3), the following clause shall be substituted, namely:- (3) "bankers" books "include ledgers, day-books, accounts-books and all other books used in the ordinary business of a bank whether kept in the written form or as printouts of data stored in floppy, disc, tape or any other form of electro-magnetic data storage device:</p> <p>(b) for clause (8), the following clause shall be substituted, namely:- (8) "certified copy" means when the books of a bank,-</p> <p>(a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, and where copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and</p> <p>(b) consist of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2A;</p> <p>2. After section 2, the following section shall be inserted, namely:- "2A". Conditions in the printout.-A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:-</p>	5

	<p>(a) A certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and</p> <p>(b) A certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of-</p> <ul style="list-style-type: none"> <li>(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorized person;</li> <li>(B) the safeguards adopted to prevent and detect unauthorized change of data;</li> <li>(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;</li> <li>(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;</li> <li>(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;</li> <li>(F) the mode of identification of such data storage devices;</li> <li>(G) the arrangements for the storage and custody of such storage devices;</li> <li>(H) the safeguards to prevent and detect any tampering with the system; and</li> <li>(I) any other factor which will vouch for the integrity and accuracy of the system.</li> </ul> <p>(c) A further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data."</p>	
<b>d.</b>	<p><b>Explain unfair trade practices.</b></p> <p><b>Answer:</b></p> <p>UTPs encompass a broad array of torts, all of which involve economic injury brought on by deceptive or wrongful conduct. The legal theories that can be asserted include claims such as trade secret misappropriation, unfair competition, false advertising, palming-off, dilution and disparagement. UTPs can arise in any line of business and frequently appear in connection with the more traditional intellectual property claims of patent, trademark and copyright infringement. Specific types of UTPs prohibited in domestic law depend on the law of a particular</p>	5

<p>country. The World Bank (WB) and the Organisation for Economic Cooperation and Development (OECD) Model Law, for example, lists the following trade practices to be unfair:</p> <p># distribution of false or misleading information that is capable of harming the business interests of another firm;</p> <p># distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, and suitability for use, or quality of goods; false or misleading comparison of goods in the process of advertising;</p> <p># fraudulent use of another's trade mark, firm name, or product labelling or packaging;</p> <p># unauthorized receipt, use or dissemination of confidential scientific, technical, production, business or trade information.</p> <p>The dictionary meaning of 'unfair trade practice' is: a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive.</p> <p><b>Definition of Unfair Trade Practice Under Consumer Protection Act, 1986</b></p> <p>Section 2(1) (r) of Consumer Protection Act, 1986 also defines the term 'unfair trade practice'. It reads:</p> <p>"unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;—</p> <p>(1) the practice of making any statement, whether orally or in writing or by visible representation which,—</p> <p>(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;</p> <p>(ii) falsely represents that the services are of a particular standard, quality or grade;</p> <p>(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;</p> <p>(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;</p>
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	<p>(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;</p> <p>(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;</p> <p>(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;</p> <p>Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;</p> <p>(viii) makes to the public a representation in a form that purports to be—</p> <p>(i) a warranty or guarantee of a product or of any goods or services; or</p> <p>(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;</p> <p>(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;</p> <p>(x) gives false or misleading facts disparaging the goods, services or trade of another person.</p>	
e.	<p><b>Define the consumer terms under the consumer protection Act 1986.</b></p> <p><b>Answer:</b></p> <p>The Consumer Protection Act, 1986 was enacted for better protection of the interests of consumers. The provisions of the Act came into force with effect from 15-4-87. Consumer Protection Act imposes strict liability on a manufacturer, in case of supply of defective goods by him, and a service provider, in case of deficiency in rendering of its services. The term “defect” and “deficiency”, as held in a catena of cases, are to be couched in the widest horizon of there being any kind of fault, imperfection or shortcoming. Furthermore, the standard, which is required to be maintained, in services or goods is not to be restricted to the statutory mandate but shall extend to that claimed by the trader, expressly or impliedly, in any manner whatsoever.</p>	5

	<p>○ The salient features of the Act are:</p> <p>(I) it covers all the sectors whether private, public, and cooperative or any person. The provisions of the Act are compensatory as well as preventive and punitive in nature and the Act applies to all goods covered by sale of goods Act and services unless specifically exempted by the Central Government;</p> <p>(II) It enshrines the following rights of consumers:</p> <p>(a) right to be protected against the marketing of goods and services which are hazardous to life and property; (b) right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices; (c) right to be assured, wherever possible, access to a variety of goods and services at competitive prices; (d) right to be heard and to be assured that consumers' interests will receive due consideration at the appropriate fora; (e) right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and (f) right to consumer education;</p> <p>(III) The Act also envisages establishment of Consumer Protection Councils at the central, state and district levels, whose main objectives are to promote and protect the rights of consumers; (v) To provide a simple, speedy and inexpensive redressal of consumer grievances, the Act envisages a three-tier quasi-judicial machinery at the national, state and district levels. These are: National Consumer Disputes Redressal Commission known as National Commission, State Consumer Disputes Redressal Commissions known as State Commissions and District Consumer Disputes Redressal Forum known as District Forum; and</p> <p>(IV) the provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force.</p> <p><u>Definition of 'Defect' and 'consumer':</u></p> <p>Under the CPA, Consumer Forums at the District, State and National level have been specifically constituted to adjudicate claims of consumers for any "defect" in goods. A "defect" has been defined in Section 2(1) (f) of the Act as "any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader (which includes the manufacturer) in any manner whatsoever in relation to any goods."</p> <p>It is important to mention herein that by virtue of Section 2 (1)(d) persons/entities who had purchased goods for 'commercial purpose' (other than those persons who have purchased goods for using them to earn their livelihood by means of self employment) are excluded from the scope of CPA; they cannot institute proceedings under the CPA even if there is any 'defect' in the goods purchased by them for using the goods for commercial purposes.</p> <p><u>Purview of a 'complaint':</u></p>	
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	<p>According to the CPA, 'Complaint' means any of the following allegations made in writing by a complainant-</p> <ul style="list-style-type: none"> <li>i. any unfair trade practice or a restrictive trade practice has been adopted by a trader,</li> <li>ii. the goods hired or bought suffer from one or more defects</li> <li>iii. The goods hired or availed of are deficient in any respect</li> <li>iv. A trader has charged price in excess of price fixed by law or displayed on the goods or any package containing goods</li> <li>v. Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law requiring traders to display information in regard to the contents, manner and effect or use of such goods.</li> </ul> <p>➤ <u>Grant of Reliefs under CPA:</u></p> <p>On arriving at a finding of defect in the goods according to Section 14 CPA, the jurisdictional Consumer Forum may direct one or more of the following: (i) to remove the defect; (ii) to replace the goods with new goods of similar description which shall be free from any defect; (iii) to return to the complainant the price; (iv) to pay such amount as may be awarded as compensation to the consumer for the loss or injury suffered by the consumer due to the negligence of the opposite party; (v) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them; (vi) to cease and desist manufacture of hazardous goods; (vii) to pay such sums as orders if injury/loss is suffered by a large number of consumers not identifiable conveniently; (viii) to issue corrective advertisement for neutralizing effect of misleading advertisement; (ix) not to offer the hazardous goods for sale; (x) to withdraw the hazardous goods from being offered for sale; (xi) to provide for adequate costs to parties (the Complainant).</p>	
f.	<p><b>Explain Reserve bank of India Act, 1934.</b></p> <p><b>Answer:</b></p> <p><b>Reserve Bank of India Act, 1934 :</b></p> <p>Reserve Bank of India Act, 1934 was enacted on 6 March, 1934 to constitute the Reserve Bank of India. This law commenced from April 1, 1935. It provides framework for the supervision of banks and other related matters.</p> <p>➤ <u>Important Provisions:</u></p> <ul style="list-style-type: none"> <li>✓ Section-3 Section 3 of the RBI act provides for establishment of Reserve Bank of India for taking over the management of the currency from Central Government and of carrying on the business of banking in accordance with the provisions of this Act.</li> <li>✓ Section 4 Section 4 of the RBI Act defines the capital of RBI which is Rs. five crore.</li> </ul>	5



	<ul style="list-style-type: none"> <li>✓ Section 7 of the RBI Act empowers the central government to issue directions in public interest from time to time to the bank in consultation with RBI Governor. This section also provides power of superintendence and direction of the affairs and business of RBI to Central Board of Directors.</li> <li>✓ Section 17 This section deals with the functioning of RBI. . The RBI can accept deposits from the central and state governments without interest. It can purchase and discount bills of exchange from commercial banks. It can purchase foreign exchange from banks and sell it to them. It can provide advances to the central government and state governments. It can buy or sell government securities. It can deal in derivative, repo and reverse repo.</li> <li>✓ Section 18 This section describes emergency loans to banks.</li> <li>✓ Section 21 This section assigns RBI the duty of being banker to the central government and manage public debt.</li> <li>✓ Section 22 This section grants power to RBI to issue the currency</li> <li>✓ Section 24 This section has provision that highest denomination note could be ₹10,000</li> <li>✓ Section 28 This section empowers the RBI to form laws concerning the exchange of damaged and imperfect notes</li> <li>✓ Section 31 this section provides that in India RBI and central government only can issue and accept promissory notes that are due on request.</li> <li>✓ Section 42(1) This section provides that every scheduled bank need to hold an average daily balance with the RBI</li> </ul> <p>Definition of commercial banks The RBI defines the scheduled banks which are mentioned in the 2nd Schedule of the Act. These are banks which have paid up capital and reserves above 5 lakh.</p>	
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