SIDDHARTH INSTITUTE OF ENGINEERING & TECHNOLOGY: PUTTUR
(AUTONOMOUS)
Siddharth Nagar, Narayanavanam Road –517583
QUESTION BANK (DESCRIPTIVE)

Subject with Code: INTELLECTUAL PROPERTY RIGHTS (20HS0814)
Course & Branch: B.Tech – Common to all **Regulation:**R20
Year & Sem: III-B.Tech &II-Sem

UNIT –I

INTRODUCTION TO INTELLECTUAL PROPERTY

1	a)	**What is Intellectual Property Rights (IPR)?**	**[L1] [CO1]**	**[3M]**
		Intellectual property (IP) is a term referring to creation of the intellect (the term used in studies of the human mind) for which a monopoly (from greek word monos means single polein to sell) is assigned to designated owners by law. Some common types of intellectual property rights (IPR), in some foreign countries intellectual property rights is referred to as industrial property, copyright, patent and trademarks, trade secrets all these cover music, literature and other artistic works, discoveries and inventions and words, phrases, symbols and designs. Intellectual Property Rights are themselves a form of property called intangible property. Although many of the legal principles governing IP and IPR have evolved over centuries, it was not until the 19th century that the term intellectual property began to be used and not until the late 20th century that it became commonplace in the majority of the world.		
	b)	**What are the different types of IPR, explain who is benefitted from each type of IPR and how?**	**[L2] [CO2]**	**[9M]**
		The term intellectual property is usually thought of as comprising four separate legal fields: **1. Trademarks and Service Marks:** A trademark or service mark is a word, name, symbol, or device used to indicate the source, quality and ownership of a product or service. A trademark is used in the marketing is recognizable sign, design or expression which identifies products or service of a particular source from those of others. The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher or on the product itself. For the sake of corporate identity trademarks are also being.		

		General Logos:  **2.Copyrights:**General Definition of copyright "Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right. The manner and medium of fixation are virtually unlimited. Creative expression may be captured in words, numbers, notes, sounds, pictures, or any other graphic or symbolic media. The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic, audiovisual, and architectural works. Copyright protection is available to both published and unpublished works. **3.Patents:** A patent for an invention is the grant of a property right to the In ventor, issued by the United States Patent and Trademark Office. Generally, he term of a new patent is 20 years from the date on which the application for he patent was filed in the United States or, in special cases, from the date an arlier related application was filed, subject to the payment of maintenance fees. J.S. patent grants are effective only within the United States, U.S. territories, nd U.S. possessions. Under certain circumstances, patent term extensions or djustments may be available. **4.Trade Secrets:** A trade secret consists of any valuable business nformation. The business secrets are not to be known by the competitor. There s no limit to the type of information that can be protected as trade secrets; **For Example:** Recipes, Marketing plans, financial projections, and methods of onducting business can all constitute trade secrets. There is no requirement that trade secret be unique or complex; thus, even something as simple and ontechnical as a list of customers can qualify as a trade secret as long as it ffords its owner a competitive advantage and is not common knowledge.		
2	**a)**	**Explain with an example why Intellectual Properties need to be protected**	**[L2] [CO2]**	**[6M]**
		Intellectual property can consist of many different areas, from logos and corporate identity through to products, services and processes that differentiate your business offering. It's when these ideas are used without permission that an organisation can suffer. **1.Keeping your ideas safe :**When you have a great idea for a product or service, there will always be people who will want to duplicate your success		

		and sell your ideas as their own. Depending on individual circumstances, you can use patents, trademarks or copyrights – all of which cover different areas of intellectual property. These can be used to prevent competitors or anyone else from using your ideas for their own profit without your consent. **2Protect business growth:**If you are a small business, it's very important to protect any unique products or services that you own as competitors can use your success to take away market share, resulting in slow growth or loss of revenue. Losing market share early on in a business's development can be devastating and time consuming if trying to chase up the guilty party without any legal protection. It's important to remember that no one else will check to see if your intellectual property has been infringed; it's your responsibility to ensure that no one else is using your assets **3.It's easier than you think:**It may seem initially daunting or time consuming, but protecting your IP is well worth the time and effort and isn't as difficult as you may think. Whilst you cannot protect an idea itself, can protect the means by which you put the idea into operation and this is what you would protect using Intellectual Property (IP). For copyright, there is no actual registration procedure to follow as protection is free and automatic. Although copyright does not actually protect an idea itself, it can protect the way the idea has been represented - for example brochures, presentations, websites, flyers etc. **Example :**IP is protected in law by, for example, **patents, copyright and trademarks**, which enable people to earn recognition or financial benefit from what they invent or create.		
	b)	**Explain about International Organizations, Agencies and Treaties.**	**[L2] [CO1]**	**[6M]**
		International Trademark Association (INTA) is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. More than 4000 (***Present 6500 member***) companies and law firms more than 150 (***Present 190 countries***) countries belong to INTA, together with others interested in promoting trademarks. INTA offers a wide variety of educational seminars and publications, including many worthwhile materials available at no cost on the Internet. INTA members have collectively contributes almost US $ 12 trillion to global GDP annually.		

		World Intellectual Property Organization (WIPO) was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world andto administer 23 treaties (Present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967, to encourage creative activity, to promote the protection of Intellectual Property throughout the world. More than 175 (***Present 188***) nations are members of WIPO. Its headquarters in Geneva, Switzerland, current Director General of WIPO is ***Francis Gurry*** took charge on October 1, 2008. **Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention)** An International copyright treaty called the convention for the protection of Literary and Artistic works signed at Berne, Switzerland in 1886 under the leadership of ***Victor Hugo*** to protect literary and artistic works. It has more than 145 member nations. The United States became a party to the Berne Convention in 1989. The Berne Convention is administered by WIPO and is based on the precept that eachmember nation must treat nation must treat nationals of other member countries like its own nationals for purposes of copyright (the principle of "nation treatment"). **Madrid Protocol** It is a legal basis is the multilateral treaties Madrid (it is a city situated in Spain) Agreement concerning the International Registration of Marks of 1891, as well as the protocol relating to the Madrid Agreement 1989. The Madrid system provides a centrally administered system of obtaining a bundle of trademark registration in separate jurisdiction. **Paris Convention** The Paris convention for the protection of Industrial Property, signed in Paris, France, on 20th March 1883, was one of the first Intellectual Property treaties, after a diplomatic conference in Paris, France, on 20 March 1883 by Eleven (11) countries. **North American Free Trade Agreement (NAFTA)** came into effect on January 1, 1994, and is adhered to by the United States, Canada, and Mexico. The NAFTA resulted in some changes to U.S. trademark law, primarily with regard to marks that include geographical terms.		
3		**Explain why the International Organization, Agencies and Treaties were established? Give any Five International agreements and treaties that**	**[L2] [CO1]**	**[12M]**

		affect Intellectual property?		
		International organizations, agencies and treaties: There are a number of International organizations and agencies that promote the use and protection of intellectual property. Although these organizations are discussed in more detail in the chapters to follow, a brief introduction may be helpful: **1,International Trademark Association (INTA**) is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. More than 4000 (Present 6500 member) companies and law firms more than 150 (Present 190 countries) countries belong to INTA, together with others interested in promoting trademarks. INTA offers a wide variety of educational seminars and publications, including many worthwhile materials available at no cost on the Internet. INTA members have collectively contributes almost US $ 12 trillion to global GDP annually. **2.World Intellectual Property Organization (WIPO)** was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and to administer 23 treaties (Present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967, to encourage creative activity, to promote the protection of Intellectual Property throughout the world. More than 175 (Present 188) nations are members of WIPO. Its headquarters in Geneva, Switzerland, current Director General of WIPO is Francis Gurry took charge on October 1, 2008. **3.Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention)** An International copyright treaty called the convention for the protection of Literary and Artistic works signed at Berne, Switzerland in 1886 under the leadership of ***Victor Hugo*** to protect literary and artistic works. It has more than 145 member nations. The United States became a party to the Berne Convention in 1989. The Berne Convention is administered by WIPO and is based on the precept that each member nation must treat nation must treat nationals of other member countries like its own		

nationals for purposes of copyright (the principle of "nation treatment"). In addition to establishing a system of equal treatment that internationalized copyright amongst signatories, the agreement also required member states to provide strong minimum standards for copyrights law. It was influenced by the French "right of the author".

4.Madrid Protocol It is a legal basis is the multilateral treaties Madrid (it is a city situated in Spain) Agreement concerning the International Registration of Marks of 1891, as well as the protocol relating to the Madrid Agreement 1989. The Madrid system provides a centrally administered system of obtaining a bundle of trademark registration in separate jurisdiction. The protocol is a filing treaties and not substantive harmonization treaty. It provides a cost-effective and efficient way for trademark holder. It came into existence in 1996. It allows trademark protection for more than sixty countries, including all 25 countries of the European Union.

5.Paris Convention The Paris convention for the protection of Industrial Property, signed in Paris, France, on 20th March 1883, was one of the first Intellectual Property treaties, after a diplomatic conference in Paris, France, on 20 March 1883 by Eleven (11) countries. According to Articles 2 and 3 of this treaty, juristic (one who has through knowledge and experience of law) and natural persons who are either national of or domiciled in a state party to the convention. The convention is currently still force. The substantive provisions of the convention fall into three main categories: National Treatment, Priority right and Common Rules.

6.North American Free Trade Agreement (NAFTA) came into effect on January 1, 1994, and is adhered to by the United States, Canada, and Mexico. The NAFTA resulted in some changes to U.S. trademark law, primarily with regard to marks that include geographical terms. The NAFTA was built on the success of the Canada-U.S Free Trade Agreement and provided a compliment to Canada's efforts through the WTO agreements by making deeper commitments in some key areas. This agreement has brought economic growth and rising standards of living for people in all three countries.

7.North American Free Trade Agreement (NAFTA) came into effect on

January 1, 1994, and is adhered to by the United States, Canada, and Mexico. The NAFTA resulted in some changes to U.S. trademark law, primarily with regard to marks that include geographical terms. The NAFTA was built on the success of the Canada-U.S Free Trade Agreement and provided a compliment to Canada's efforts through the WTO agreements by making deeper commitments in some key areas. This agreement has brought economic growth and rising standards of living for people in all three countries.

Give any Five International agreements and treaties that affect Intellectual property:

Paris Convention for the protection of Industrial Property:

These practical problems constituted a strong objective to overcome such problems in the case of IPR. In the late nineteenth century, the development of a more international-oriented flow of technology and increased international trade increased the need for harmonization of industrial property laws in both the patent and trademark sectors. The Paris Convention is also administered by WIPO. It came into existence to provide some international harmony in intellectual property laws and was adopted on March 20, 1883, at Paris and enforced on July 7, 1884. It provides basic guidelines for the protection of intellectual property such as patents, utility models, industrial designs, trademarks, service marks, trade names, sources of information or signs of appeal, and some provisions for harassment and national treatment of unfair competition.

Berne Convention (Protection of Literary and Artistic Works):

Copyright protection on the international level took its first step in the middle of the nineteenth century on the basis of bilateral treaties. India became a signatory of the Berne Convention on April 1, 1928. A number of such treaties providing for mutual recognition of rights were concluded but they were neither comprehensive enough nor of a uniform pattern. The need for a uniform system led to the formation of the Berne Convention for the preservation of Literary and Artistic Works. The Berne Convention is the primeval international treaty in the field of copyright. It is open to all states. Adopted on September 9, 1886, at Berne and entered into force on December 4, 1887.

		The Universal Copyright Convention (UCC): The Universal Copyright Convention (UCC), was first created in 1952 in Geneva, as an alternative to the Berne Convention. Some countries were not in favour of certain articles in the Berne Convention and did not agree to sign the terms of the Berne Convention. Particularly, the United States who was the only one at the time who provided protection on a fixed term registration basis via the Library Of Congress, and required that copyright works must always show the © symbol. This stated that the US had to make several changes to its laws before it could follow the Berne Convention. **World Intellectual Property Organisation:** The World Intellectual Property Organization (WIPO) is an international organization which grants worldwide protection to the rights of creators and owners of intellectual property. It was adopted on July 14, 1967, at Stockholm and enforced on April 26, 1970. WIPO came into establishment under this Convention with two main objectives: For the promotion of the protection of intellectual property worldwide and;to safeguard administrative cooperation among the intellectual property Unions established by the treaties which are under WIPO administration. **International treaties administered by world intellectual property organization:** • Berne convention • Brussels convention • Budapest treaty • Film register treaty • Hague agreement • Lisbon agreement		
4	**a)**	**Describe the importance of intellectual property rights?**	**[L2] [CO1]**	**[6M]**
		Intellectual property (IP) contributes enormously to our national and state economies. Dozens of industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. We believe IP rights are worth protecting, both domestically and abroad.		

1.Intellectual Property Creates and Supports High-Paying Jobs

- IP-intensive industries employ over 55 million Americans, and hundreds of millions of people worldwide.
- Jobs in IP-intensive industries are expected to grow faster over the next decade than the national average.

2.Intellectual Property Drives Economic Growth and Competitiveness

- America's IP is worth $5.8 trillion, more than the nominal GDP of any other country in the world.
- IP-intensive industries account for over 1/3– or 38%– of total U.S. GDP.

3.Strong and Enforced Intellectual Property Rights Protect Consumers and Families

- Strong IP rights help consumers make an educated choice about the safety, reliability, and effectiveness of their purchases.
- Enforced IP rights ensure products are authentic, and of the high-quality that consumers recognize and expect.

	b)	**Explain the design holder and the associated rights: an insight.**	**[L1] [CO2]**	**[6M]**

Under the Design Act, 2000 for a design to be registered and protected under the Act, the following are essential elements that need to be fulfilled: Original and new design. This means that it should not have been used or published previously in any country before the date of application of registration

After obtaining registration **under Section 5 of the Designs Act, 2000**, the proprietor of designs is conferred with 'copyright in design' for a period of 10 years. According to Section 2(i) of the aforementioned statute, 'copyright in design' signifies an exclusive right to apply a design to an article in any class with which the design has been registered.

After a design has been registered, the two rights that are made entitled to the registered proprietor are:

1. Right to exclusive use of the registered design;
2. Right to protect the design from infringement (which in the language of Design Act, 2000 means piracy of designs).

Rights available to the defendant in case of piracy of design

		The defences that the defendant can raise in an infringement suit are provided hereunder: 1. The defendant can claim that the design of the plaintiff has not been registered. 2. The defendant may set up defences to show that the plaintiff's design registration has to be cancelled as the same is not original by nature. 3. The defendant may claim that the plaintiff approached the court without a bona fide intention. 4. The defendant may claim that the plaintiff's design's registration period had expired. 5. The defendant can show to the court of law that his or her design is also registered.		
5		**Describe the functions and Role of UNO in development of WIPO?**	**[L2] [CO1]**	**[12M]**
		Functions of WIPO : The World Intellectual Property Organisation (WIPO) was established with the intent to perform the following functions: • To assist the development of campaigns that improve IP Protection all over the globe and keep the national legislations in harmony. • Signing international agreements related to Intellectual Property Rights (IPR) protection. • To implement administrative functions discussed by the Berne and Paris Unions. • To render legal and technical assistance in the field of IP. • To conduct research and publish its results as well as to collect and circulate information. • To ensure the work of services that facilitate the International Intellectual Property Protection. • To implement other appropriate and necessary actions. **Role of UNO in development of IPR** The majority countries who are the members of UNO take different approaches for the protection and development of Intellectual Property Rights with the aim of encouraging innovations and creativity which are considered to be an		

		important source of long- run economic growth. UNO plays a very important role in the development and protection of IPR with the help of the World Intellectual Property Organization (WIPO) which is one of the most significant and important organizations among the 16 organizations working under UNO in different sectors. WIPO aims to promote and protect IPR worldwide and to insure, utility model, mark or industrial design. **Common rules**: The Convention lays down a few common rules that all Contracting States must follow. The most important are: **Patents**: Patents granted in different Contracting States for the same invention are independent of each other: the granting of a patent in one Contracting State does not oblige other Contracting States to grant a patent; a patent cannot be refused, annulled or terminated in any Contracting State on the ground that it has been refused or annulled or has terminated in any other Contracting State. The inventor has the right to be named as such in the patent. Each Contracting State that takes legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exclusive rights conferred by a patent may do so only under certain conditions. **Marks**: The Paris Convention does not regulate the conditions for the filing and registration of marks which are determined in each Contracting State by domestic law. **Industrial Designs**: Industrial designs must be protected in each Contracting State, and protection may not be forfeited on the ground that articles incorporating the design are not manufactured in that State. **Trade Names**: Protection must be granted to trade names in each Contracting State without there being an obligation to file or register the names. **Indications of Source**: Measures must be taken by each Contracting State against direct or indirect use of a false indication of the source of goods or the identity of their producer, manufacturer or trader. **Unfair competition:** Each Contracting State must provide for effective		

		protection against unfair competition.		
6	**a)**	**Discuss the need to protect it as an intellectual Property and define Industrial Design**	**[L2] [CO2]**	**[12M]**
		Industrial design is a process of design applied to physical products that are to be manufactured by mass production. It is the creative act of determining and defining a product's form and features, which takes place in advance of the manufacture or production of the product. **Protection of industrial design** In most countries, in order to be protected under industrial design law, an industrial design is required to be registered as a 'registered design'. In few countries, industrial designs are protected as 'design patents' under patent law. A kind of design, industrial designs may also be protected depending on the particular national law under copyright law as works of art. **Keeping your ideas safe** When you have a great idea for a product or service, there will always be people who will want to duplicate your success and sell your ideas as their own. Depending on individual circumstances, you can use patents, trademarks or copyrights – all of which cover different areas of intellectual property. These can be used to prevent competitors or anyone else from using your ideas for their own profit without your consent. **Protect business growth** If you are a small business, it's very important to protect any unique products or services that you own as competitors can use your success to take away market share, resulting in slow growth or loss of revenue. Losing market share early on in a business's development can be devastating and time consuming if trying to chase up the guilty party without any legal protection. **It's easier than you think** It may seem initially daunting or time consuming, but protecting your IP is well worth the time and effort and isn't as difficult as you may think. Whilst you cannot protect an idea itself, can protect the means by which you put the idea into operation and this is what you would protect using Intellectual Property (IP).		
	b)	**Describe about IPR. What is the need of IPR and Explain?**	**[L2] [CO1]**	**[6M]**
		Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time.These legal rights confer an exclusive right to the inventor/creator or his assignee to		

		fully utilize his invention/creation for a given period of time. ▪ **Encourages innovation:** The legal protection of new creations encourages the commitment of additional resources for further innovation. ▪ **Economic growth:** The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life. ▪ **Safeguard the rights of creators:** IPR is required to safeguard creators and other producers of their intellectual commodity, goods and services by granting them certain time-limited rights to control the use made of the manufactured goods. ▪ It promotes innovation and creativity and **ensures ease of doing business**. ▪ It **facilitates the transfer of technology** in the form of foreign direct investment, joint ventures and licensing.		
7		**Why Should you obtain Geographical Indication Protection? Explain Benefits of Geographical Indications.**	**[L2] [CO2]**	**[12M]**
		A **Geographical Indication** (GI) refers to a sign, name, or symbol used on products having a specific geographical origin and possessing qualities or reputation that are due to that origin itself. A GI tag represents a geographical indication. To achieve the GI tag, both the product and its quality must depend on the geographical place of production. Why Should You Obtain Geographical Indication Protection? Many people and associations across the globe often get confused while thinking about whether it is worthwhile to obtain GI protection or not. Some of the benefits of registering a geographical indication are as follows, which will help you in understanding its importance. **1- ENHANCES ECONOMIC GROWTH** The protection of geographical indications leads to the overall economic prosperity of the manufacturers and producers. Furthermore, the marketing and promotion of the products with the GI tags enhance the secondary economic activities in that specific region, which in turn boosts the regional economic development. Last but not least, the protection of geographical indications creates a positive image and reputation of the product in the minds of the		

		consumers and rewards the producers with incentives and better ROI. **2- PREVENTS UNAUTHORIZED USE OF GI TAGS** The registered holder of the GI tag has all the legal rights to prevent anyone not belonging to the GI region from using their GI tags. The owners can also initiate legal proceedings against the unauthorized user to save their reputation from being damaged. **3- EXPANDS BUSINESS** The prime purpose of registering a geographical indication is to seek protection for specific products produced in a particular geographical region, which further encourages and motivates the marketers to expand their business at a global level. Furthermore, the protection of geographical indications boosts exports and helps the producers in earning well for themselves. **4- INCREASES TOURISM** The protection of GI tags builds a global reputation for the products. People around the world notice various GI products from different regions and get motivated to visit those regions and use such products. Therefore, it helps in the growth of the tourism industry of that particular region as well. **BENEFITSOF GEOGRAPHICAL INDICATIONS** The organizations or companies who register their geographical indications enjoy various advantages from the registration, including: 1. Registered geographical indications have the exclusive right to access or use G.I.'s products during the business. 2. AuthorizedAuthorized users enjoy the right to sue for infringement. 3. It provides legal protection to geographical signs in India. 4. Prevents unauthorized use of registered geographical indications by others. 5. It provides legal protection to Indian geographical signals which in turn promotes exports. 6. It promotes the economic prosperity of producers of goods produced in a geographical area.		
8		**What is a Geographical Indication (GI)? Describe the Registration process**	**[L1] [CO1]**	**[12M]**

		of Geographical Indications.		
		A geographical indication is a sign used on products that has a specific geographic origin and includes the qualities or reputation of that origin. A geographical indication is given mainly to agricultural, natural, manufactured, handicraft arising from a certain geographical area. Geographical indications (G.I.) are one of the forms of IPR which identifies a good as originating in the respective territory of the country, or a region or locality in that particular territory, where a given quality, reputation or other characteristic related to good is essentially attributable to its geographical origin. **Registration process of Geographical Indications** **Step 1: Application filing:**Please check if the Indication falls within the definition of Section 2(1)(e) of Gl Act.The association of individuals or producers or any association or authority should represent the interest of the producers of the goods concerned and file an affidavit as to how the Applicant claims to represent their respective interests. • Applications must be made in triplicate. • The Application must be signed by the Applicant or his agent and must be accompanied by a description of the case. • Describe the special features and how those standards are maintained. • Three certified copies of GI-related field maps. • Description of the inspection structure if there is an area for regulating the use of G.I. • Provide details of all applicants with the address. If there are a large number of manufacturers, then collective reference applications for all producers of goods and G.I. should be made. If registered, it should be indicated accordingly in the register. The Application must be sent in a respective address in India. **Step 2 and 3: Preliminary Examination and Examination** • The examiner will check the Application for any deficiencies. • The Applicant should take measures in this regard within one month of communication.		

- The content of the case description is evaluated by an advisory group of experts who will master the subject.
- Furnished will ascertain the correctness of the description.
- After that, an examination report will be issued.

Step 4: Show cause notice

- If the Registrar has any objection to the Application, he shall file such objection.
- Applicant must reply within two months or apply for a hearing.
- The decision will be duly communicated. If the Applicant wants to appeal, he can request it within a month.
- The RegistrarRegistrar also has the right to withdraw an application, if it is mistakenly accepted, after giving it on the occasion of a hearing.

Step 5: Publication in Geographical Indication Journal

Every Application, within three months of acceptance, will be published in the Geographical Indications Journal.

Step 6: Resist Registration

- Any person opposing the G.I. application, published in the journal, can file a notice of protest within three months (another month upon request which is to be filed before three months).
- The RegistrarRegistrar will provide a copy of the notice to the Applicant.
- Within two months, the Applicant will send a copy of the counter statement.
- If he does not do so, he is believed to have dropped his Application. Where a counter-claim has been filed, the RegistrarRegistrar will serve a copy on the person giving notice of the protest.
- Thereafter, both parties will lead their respective evidence through

		affidavits and supporting documents. • After this, the date of hearing of the case will be fixed. **Step 7: Registration of Application** • Where an application for G.I. has been accepted, the RegistrarRegistrar will register the Geographical Indication. If the date of filing the Application after being registered will be considered as the date of registration. • The RegistrarRegistrar will issue a certificate to the Applicant with the seal of the Geographical Indicators Registry. **Step 8: Renewal of Application** A registered G.I. will be valid for 10 years and can be renewed on payment of a renewal fee. **Step 9: Additional Security for Notified Goods** An application can be made to the RegistrarRegistrar for respective goods which are notified by the Central Government for additional protection for the registration of geographical Indication in Form GI-9, there will be three copies of the case details and three copies of issued notification. The Application will be made jointly by the registered owner of Geographical Indication in India and jointly by all the producers of Geographical Indication. **Step 10: Appeal** Any person who is aggrieved by an order or decision which may prefer an appeal to the Intellectual Property Appellate Board (IPAB) within three months.		
9	**a)**	**How to provide protection for industrial designs?**	**[L2] [CO2]**	**[6M]**
		In most countries, in order to be protected under industrial design law, an industrial design is required to be registered as a 'registered design'. In few countries, industrial designs are protected as 'design patents' under patent law. A kind of design, industrial designs may also be protected depending on the particular national law under copyright law as works of art.		

		Requirements for protection 1. Must be new/ novelty 2. Must be original 3. Should not be disclosed anywhere to the public in India or in any other countries by any publication in palpable (tangible) form 4. Should not be used prior to the date of filing or where the application for registration is applicable on the priority date. 5. Significantly differs from known designs or combinations of known design features. 6. Should not be conflicting with public order or morals or integrity. 7. Not be prejudicial to the security of India. 8. Design cannot include a trademark, property mark, or any artistic rights as defined under the Copyright Act, 1957. 9. Should not contain any profane or scandalous matter. Intellectual property can consist of many different areas, from logos and corporate identity through to products, services and processes that differentiate your business offering. It's when these ideas are used without permission that an organization can suffer.		
	b)	**Discuss the prohibition of registration of certain Geographical Indication.**	**[L2] [CO4]**	**[6M]**
		The prohibition of registration of certain Geographical Indications (GIs) refers to the legal restrictions placed on the registration of specific GIs in intellectual property systems. Geographical Indications are indications that identify a product as originating from a particular geographical location, where the quality, reputation, or other characteristics of the product are essentially attributable to its geographic origin. Here are some common reasons for prohibiting the registration of certain GIs: **Generic terms:** If a term has become generic and lost its association with a specific geographical origin, it may be ineligible for GI protection. GIs are meant to protect distinctive regional products, and if a term has become widely used and generic, it no longer serves the purpose of indicating a specific origin. **Deceptive or misleading terms:** GIs should not mislead consumers about the true origin or qualities of a product. If a term falsely suggests a specific		

		geographical origin or misrepresents the characteristics of a product, it may be prohibited from GI registration to prevent consumer confusion. **Offensive or controversial terms:** Certain GIs may be prohibited if they contain offensive, derogatory, or controversial terms. This restriction aims to prevent the use of terms that could harm the reputation of a particular region or offend cultural or social sensitivities. **Conflict with prior rights:** If a GI is already protected by another form of intellectual property right, such as a trademark or a patent, it may not be eligible for separate GI registration. This avoids overlapping protection and ensures a balanced intellectual property system. **Non-compliance with legal requirements:** Each country or jurisdiction may have specific legal requirements for GI registration. If a GI fails to meet these requirements, such as lacking evidence of a specific geographical connection or not conforming to the necessary criteria, it may be prohibited from registration. It's important to note that the specific prohibitions on GI registration can vary among countries and intellectual property systems. The regulations and criteria for GI protection are typically outlined in national laws, regional agreements, or international treaties, such as the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Regenerate response.		
10		**Explain the copy right: an essential element of intellectual property rights.**	**[L2] [CO1]**	**[12M]**
		Copy right: an Essential element of intellectual property rights. **1. Patent** Patent is a form of intellectual property right granted to the inventor for his invention or creation to exclude others from making or selling his product. The product can be used by others only after getting permission from the patent owner. The patent right is provided under the Indian Patent Act, 1970. Patent rights are not available to some inventions, according to section 3 of the Indian Patent Act, the inventions which are harmful to the environment and inventions related to atomic energy are not patentable. The period of the patent right is 20 years, after tenure, it has to be renewed from time to time. **2. Trademark** Trademark is an exclusive right granted to the sign or logo of a company. The trademark helps the entrepreneur to distinguish his company's goods and services from other companies. For a company the trademark registration is done under the Trademark Act, 1999. The tenure of the trademark is 10 years. **3. Geographical Indications (GI)** Geographical Indication is a sign given to the particular product which is produced within a particular region or territory. The goods which are protected under Geographical Indication have a specific geographical origin. The goods which are protected under G.I are agriculture, natural or manufactured goods,		

handicraft and industrial goods like a foodstuff. The tenure of the Geographical indication is 10 years; afterwards, it has to be renewed from time to time.

4. Industrial designs

The industrial designs are offered to manufacture products. The three-dimensional products like industrial products or engineered products can get industrial designs. The tenure of this right is 10 years.

5. Trade secrets

Trade secrets are a type of intellectual property right, any information that is generally not known outside of the company and the information gives an economical advantage to the company over their competitor is kept as a trade secret. However, the process of evolving a trade secret needs more skills. For example, the formula of Coca-Cola, it kept under trade secret.

6. Copyright

Copyright is an exclusive right offered to authors or creators for his literacy or creativity. The right also produces the ideas of the author, the idea is protected under the Patent Act and not under the Copyright Act. The works like musical work, artistic work, photographic work, motion pictures and computer programs are governed under the Copyright Act.

Rights of the copyright owner

Right of communication

The owner only has the right to make his product available to the public. For example, if a person has the copyright for his film, then without his permission it is not telecasted among the people.

Right of adoption

Any alterations or changes can be done by the owner. The Copyright Act defines the right of adoption; the owner can convert a dramatic work into non-dramatic work and can convert a literacy work into dramatic work.

Right to reproduction

The owner of the copyright can have the right of reproduction of his work. Other than the owner no one has the right to reproduce it.

Right of translation

The owner of the product has the right to translate his work into any languages. The person other than the owner cannot translate his work without his permission.

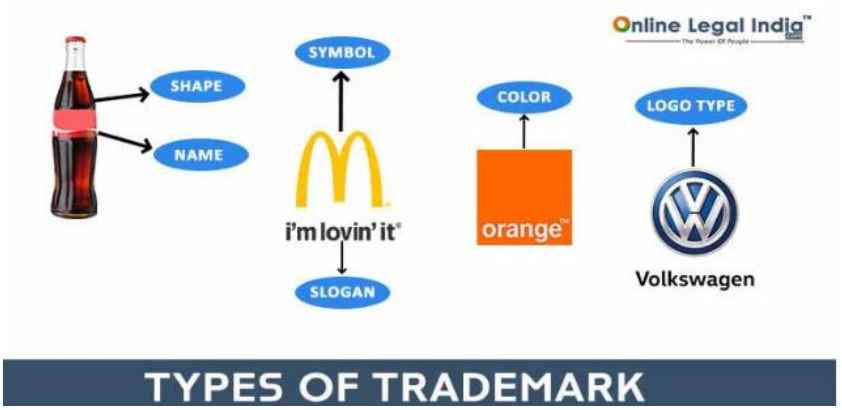
Moral rights

Moral rights are available only to the individual authors that are related to economic rights.

UNIT –II
TRADE MARKS

<table>
<tr><td>1</td><td>a)</td><td>What is Trademark? Differentiate between Trademark and design registration.</td><td>[L2] [CO3]</td><td>[6M]</td></tr>
<tr><td></td><td></td><td>A trademark in India is a symbol, brand, or logo that separates one business or organization from everyone else. In other words, it’s a powerful tool that offers brand image and safeguards to the goods and services it really is connected to. Having mark that is a combination of letters/ numbers/ words’/ phrase/or has a graphical representation,or in different circumstances has a sound registered as a trademark allows a business or individual to use it to identify its goods or services. A registered trademark offers a legal defense against infringement.
Design refers to the aesthetic qualities of a good, such as its pattern, arrangement, shape, ornament, the structure of lines or colors, or their combination, implemented to it by an industrial process. A design maker, originator, or craftsperson could apply for design registration in India as the owner of the design to prevent others from using the same design on their goods without their approval.A design’s ability to stand out from the competition is protected by a design registration, which also serves as a distinctive selling point for an item. Customers occasionally buy products for both their appearance and their intended use. The product’s outward appearance is legally protected thanks to the design registration.
<table>
<tr><th>TRADEMARK REGISTRATION</th><th>DESIGN REGISTRATION</th></tr>
<tr><td>The logo that represents the company is protected by trademark registration.</td><td>Design registration safeguards the unique appearance of the goods that acompany sells.</td></tr>
<tr><td>Based on the class as well as the name the applicant chooses, their trademark registration application is assessed.</td><td>During the procedure of registering a design, the examiner assesses the item's novelty, creativity and appeal in the applied class.</td></tr>
<tr><td>The Trademark needs to be Distintive (inherent or acquired) for being able to be registered.</td><td>The Design Application has to be filed with the statement of Novelty as well as a disclaimer if needed for succesful registration.</td></tr>
<tr><td>Trademarks are safeguarded by the Trademark Act,1999.</td><td>Design is protected under the Design Act,2000.</td></tr>
<tr><td>The Trademark Registry, oversees trademark registration in India.</td><td>The Patent office oversees design registration in India.</td></tr>
<tr><td>In India, trademark registrations are valid for ten years and can be renewed indefinitely after that.</td><td>The registration of a design is good for 10 years. It may be prolonged for an additional five years only.</td></tr>
<tr><td>For Eg: the red and white logo of coca cola</td><td>For Eg: the shape of the bottle of coca-cola</td></tr>
</table></td><td></td><td></td></tr>
<tr><td></td><td>b)</td><td>Explain the different types of trademarks with examples.</td><td>[L2] [CO3]</td><td>[6M]</td></tr>
<tr><td></td><td></td><td>The Trademark Act of 1999 helps register different types of trademarks</td><td></td><td></td></tr>
</table>

such as words and services marks, certification marks, collective marks, series marks, logos and symbols and much more. The different types of trademarks that can you can register in India are:



Trademark

The term trademark thus refers to some physical and tangible good, and service mark refers to an intangible service, in common usage the term *trademark* is often used to refer to marks for both goods and service. The purpose of a trademark is to visually represent a person, company, or product, and trademark should be designed to provide easy and definite recognition.

Collective marks: When the marks are linked with a group of people or services collectively It is said to be the Collective Mark. The trademark is owned by the organization but it can be used by multiple people.

The goods and services of a company or group of companies like Godrej or Hindustan unilever Ltd.

Series Marks: These are the marks which are registered to use before or after a chain of products where there would be a common suffix / prefix or symbol.

		Example: service marks are used by hotel services, restaurant, Airlines and tourism angencies.  **The Certification mark:**This is a mark which proves that the company has met with the standards and quality of the products. This would make the public aware of the fact that a particular company's product has met the standards laid down by the certifying body. It is always advisable to register your Trademark to save the same from unauthorized use by some one else. Example : Geographical origin, ingredients and so on such as ISI, AGMARK, FPO and FSSAI  		
2	**a)**	**Explain about purpose and functions of Trademark?**	**[L2] [CO3]**	**[6M]**
		A trademark is a brand name or logo associated with the company's goods, products or services. The consumers who buy the goods or avail of the services recognise it with its brand. The brand or trademark may consist of words or numerals, designs or a combination of all. A trademark can distinguish the goods or services of one person or company from those of others. They are intellectual property rights in India. The Trademarks Act, 1999, regulates the registration and functions of a trademark. **Primary Functions of Trademarks** A trademark primarily serves the purpose of identifying the origin or source of goods, products or services. In India, a trademark performs the following functions:		

- It identifies the product and its origin
- It proposes to guarantee the quality of the product
- It advertises the product as it represents the product
- It creates the image of a product in the minds of the public, especially the consumers or the prospective consumers of the product

Product Differentiation Function

Trademarks serve as the basic means of achieving product or service differentiation. The trademarks enable a customer to distinguish goods, products or services in the market without confusion and make him/her arrive at a decision on what to purchase.

For example: The advertisers of the brand 'Surf' seek to build an image that the 'Surf' brand has qualities that cannot be replaced by any other detergent and all the other detergents like 'Ariel' or 'RIN' possess different quality or characteristics. A message is built up that the customer is looking for the product 'Surf' and not just a detergent.

Identification of Source and Origin Function

One of the most important functions of a trademark is to serve as information to the customers for identifying the origin or source of a product. The trademark guarantees the identity of the origin of the trademarked services or goods to the consumer or end-user. It enables the consumer to distinguish the trademarked goods or services from others that have another origin without any confusion.

For example: The trademark 'Brooke Bond' identifies tea originating from a company manufacturing tea and marketing it under that trademark.

Quality Function

A trademark ensures customers of the quality of the trademarked products or services. Customers select goods or services known for their quality. Thus, trademarks help the customers decide the products they need to purchase or the service they need to avail of. Reputation and identification of quality are the key features of trademarks.

For example: The quality of tea sold in the packs trademarked as 'Brooke Bond' would be similar, but they would be different from tea labelled with the trademark 'Taj Mahal'.

Advertising Function

The trademark represents a product or service. Another significant

		function of trademarks is promoting products and services, thus providing an effective mode of advertising them. The intention of the use of trademarks is to make consumers aware of the trademark and attract their attention to the trademarked products or services. Customers can be attracted through advertisements, which reinforce the image of a product or service. **For example:** The trademark of 'Sony' is associated with electronic items. Thus, customers associate the trademark 'Sony' with a particular quality of a particular class of goods. It advertises the product while distinguishing them from the products of Sony's competitors.		
	b)	**Explain Federal Registration of Trademarks?**	**[L2] [CO4]**	**[6M]**
		Federal registration of a trademark is the process for filing for federal protection of a mark representing a business or commercial activity. The federal statutes governing the registration of trademarks are found in 15 USC, sections 1051-1127. This group of laws is known as the Lanham Act. The registration process is managed by the US Patent and Trademark Office, a federal administrative agency. The USPTO issues regulations and rules that govern the trademark registration and maintenance process. Federal courts addressing trademark law create law (common law) that also guides or controls the body of trademark law. The common law generally applies to disputes as to ownership and enforceability of trademark rights. Federal registration affords the trademark user additional protections beyond the statutory and common law protections afforded under state law. Some of the major advantages of federal registration of a trademark are as follows: • Protection in every jurisdiction across the United States; • Creates a presumption that the registration is valid in the event of a dispute over trademark rights; • Provides notice to third-parties that the mark is in use; • Allows for a federal cause of action against an infringer (and there is a presumption of willful infringement); • Aids in the process of international registration; and • Allows for the mark to be registered with the US Border and		

		Customs Administration to prevent the importation of counterfeit goods. The benefits of federal registration are not exclusive. An individual with federal trademark rights may also secure state-law protections.		
3	**a)**	**Explain about acquisition of Trademark rights.**	**[L2] [CO5]**	**[6M]**
		In a global scope, obtaining a trademark right through Use or through Registration are two major legislative models of system for the grant of trademark rights. • By Us e • By Registration The "use" model is based on the objective facts of trademark use, and decides the ownership of a trademark according to the time that the trademark was first used. While the "registration" model grants trademark rights according to registration and the first applicant will obtain the trademark right. In history, the earliest trademark legislations all took "use" principle, for instance, the first statue of trademark-Law of Manufacturing Signs and Trademarks concerning the Content of Use and Non-examination Principle enacted by France in 1857 took the "use" model. . However, since there are many defects of the "use" principle, France abandoned this principle which was already implemented for more than one hundred years in 1964 and shifted to adopt the "**registration**" model which was succeeded by the current Code of Intellectual Property. Article 712-1 of the code provides: "trademark rights shall be obtained through registration". **In India one can acquire and claim a Trademark only by Registration and not by Use** The registration of a trade mark confers on the registered proprietor of the trade mark the exclusive right to use the trade mark in relation to the goods or services in respect of which the trade mark is registered. While		

registration of a trade mark is not compulsory, it offers better legal protection for an action for infringement.

Key amendments to the Lanham Act

1. North American Free Trade Agreement (NAFTA)
2. Trade-Related Aspects of Intellectual Property Rights (TRIPS)
3. Trademark Law Treaty Implementation Act (TLTIA)
4. Anti- cybersquatting Consumer Protection Act
5. Madrid Protocol
6. Federal Trademark Dilution Revision Act
7. Prioritizing Resources and Organization for Intellectual Property Act ("PRO-IP Act").

North American Free Trade Agreement (NAFTA) • NAFTA became effective in 1994 as an agreement among Canada, Mexico, and the United States. • NAFTA precludes registration of marks that are primarily geographically deceptively misdescriptive. Trade Marks : Dr. B.Rajalingam15 May 2020 15

Trade-Related Aspects of Intellectual Property Rights (TRIPS) • TRIPS, a treaty signed by the United States in 1994, bars registration of a mark for wine or liquor if the mark identifies a place other than the origin of the goods and was first used after 1996. • Thus, a new wine cannot use the mark "Napa" unless the product originates in that region of California. • TRIPS also increased the period of time of nonuse of a mark that would result in abandonment from two years to three years

Trademark Law Treaty Implementation Act (TLTIA) • TLTIA (which implemented the 1994 Trademark Law Treaty), effective in late 1999, simplified several requirements relating to trademark registration and maintenance. • For example, at present, the applicant need only submit one specimen showing how a mark is used rather than three, as was previously required. • Additionally, a trademark applicant need no longer state the manner in which the mark is used. • Finally, TLTIA established a six-month grace period for filing a renewal for a trademark registration.

Anti-cybersquatting Consumer Protection Act. • The Anticybersquatting Consumer Protection Act was signed into law in late 1999 and is intended to protect the public from acts of Internet cybersquatting, a term used to describe the bad faith, abusive registration

		of Internet domain names, such as the registration of www .juliaroberts.com by one with no affiliation with Julia Roberts **Madrid Protocol** • The Madrid Protocol became effective in November 2003 and allows trademark applicants or registrants to file a single international trademark application and obtain protection in any of the more than 80 countries that are parties to the Protocol. • The Protocol thus facilitates efficient and cost-effective protection for marks on an international basis. **Federal Trademark Dilution Revision Act.** • The Federal Trademark Dilution Revision Act protects famous marks by preventing others from using marks (even on unrelated goods) if they are likely to cause dilution of the famous mark either by "blurring" (causing the famous mark to lose its distinctiveness) or "tarnishment" (harming the reputation of the famous mark). • Thus, for example, the owner of NIKE may prevent another individual or entity from using the NIKE mark in connection with doughnuts or in connection with pornography. Trade Marks : Dr. B.Rajalingam15 May 2020 20 **Prioritizing Resources and Organization for Intellectual Property Act ("PRO-IP Act").** • The PRO-IP Act of 2008 created a new White House Intellectual Property Enforcement Coordinator or "Czar" to oversee and coordinate domestic and international IP enforcement activities, increased the range of penalties available in counterfeiting cases, and provides money so state and local governments can train law enforcement and educate the public about counterfeiting.		
	b)	**Explain how the trademarks and service marks properly identified and Used?**	**[L2] [CO3]**	**[6M]**
		Trademark: A trademark is a brand or logo containing words, numbers, devices, symbols or a combination of words, numbers, devices and symbols. They help identify and distinguish a commercial product from the other products or goods available in the market. A trademark helps build the business's image and protect them from unauthorised use by third parties. Thus, third parties cannot copy a registered trademark that has demand in the market for their own goods or products. Some examples of a trademark are – Nike, Bata, Pepsico, etc.		

Service Mark: A service mark is similar to a trademark, but a service mark is used to distinguish the services of one company from another provider. It can be associated only with services and not goods or products. It is often slogans for a service provided by a company.

For example, a plumber can register a service mark 'Leak Fixers' for the plumbing service he provides, with or without a distinctive logo. When the service mark is registered, others cannot use the same service mark for their services. Some well-known service mark are – American Express, United Airlines, Facebook, etc.

Trademark	Service Mark
A trademark can be used for anything unique in the market.	A service mark can be used only for the services provided.
A trademark indicates the source of a product produced or sold by a company.	A service mark indicates the source of origin of a specific service offered by a service providing company or institution.
The symbol 'TM' is used with a trademark when a trademark registration application for products is submitted.	The symbol 'SM' is used with a service mark when a trademark application for services is submitted.
The trademark registration application is submitted for a product categorised under the trademark classes of 1 to 34 of the Act.	The trademark registration application is submitted for a service categorised under the trademark classes of 35 to 42 of the Act.
A trademark is associated with commodities or goods such as bread, mobile apps, hammers, etc.	A service mark is associated with services offered such as coaching, gardening, legal services, etc.

4 **Explain about protectable matters of Trademark.** **[L2] [CO2]** **[12M]**

Slogans, Letters and Numbers: A word or other groupings of letters is the most common type of mark **For Examples**: APPLE, SILICON, GRAPHICS, NETSCAPE, IBM, NBC. Slogans from advertising campaigns are also used as trademarks. Example slogans which have strong trademark rights attached

Logos and Symbols: Logos are probably the next most common form of mark. A logo can be described as a design which becomes a mark when used in close association with the goods or services being marketed. The logo mark does not need to be elaborate; it need only distinguish goods and services sold under the mark from other goods and services. Examples of logo marks are:

McDonald's double arches:

NBC's peacock style design:

Apple Computer's Apple:

Names of performing Artists : A mark that merely serves to identify an artist or entertainer is not registrable. However, if the owner of the mark has controlled the quality of the goods or services, and the name of the artist or group has been used numerous times on different records (thereby representing an assurance of quality to the public), the name may be registered as a trademark, Thus, GOO GOO DOLLS and BOB BYLAN have been registered for musical sound recordings.

Shapes and Containers

A product or container shape can also serve a source identifying function and therefore can be an enforceable trademark. A product or container shape may also be subject to a design patent (see the BitLaw discussion of design patents to see an analysis of the similarities and differences between design patents and trademark protection for product shapes).

Coca-cola Bottle

Apple's Ipod

Trade Dress

Trade dress is the overall commercial image (look and feel) of a product or service that indicates or identifies the source of the product or service and distinguishes it from those of others. It may include the design or configuration of a product; the labeling and packaging of goods; and/or the décor or environment in which services are provided.

		Fragrances, Sounds, and Moving Images A sound can also be a trademark or a service mark. The three tone chime of NBC has been registered as a service mark. Sound trademarks recently were in the news when Harley-Davidson announced that it was attempting to register the exhaust sound of a Harley- ***Design and Ornamentation*** A design can function as a trademark as long as it is distinctive rather than merely functional or ornamental. Some designs are protected on their own, such as Nike's famous "swoosh" design, the alligator that appears on shirts, and Betty Crocker's spoon. Serialized Literary and Movie Titles The title of a single book or movie title is generally not protectable. The title of a serialized work, such as THE BRADY BUCH or NEWSWEEK, however, can be protected as a trademark or service mark.		
5	**a)**	**Discuss the process of evaluating trademark?**	**[L2] [CO4]**	**[6M]**
		Selecting and evaluating a trademark is an important step in establishing a brand identity and protecting your intellectual property. Here are some key factors to consider when selecting and evaluating a trademark: **A Generic Mark** Generic "marks" are devices which actually name a product and are incapable of functioning as a trademark. Unlike descriptive marks, generic devices will not become a trademark even if they are advertised so heavily that secondary meaning can be proven in the mind of consumers. The rationale for creating the category of generic marks is that no manufacturer or service provider should be given exclusive right to use words that generically identify a product. A valid trademark can become generic if the consuming public misuses the mark sufficiently for the mark to become the generic name for the product. The prime examples of former trademarks that became the generic name for a product areASPIRIN, XEROX and CELLOPHANE. **A Descriptive mark** (or more properly, "merely descriptive marks") are devices which merely describe the services or goods on which the mark is used. If a device is merely descriptive, it is not a mark at all,		

since it does not serve to identify the source of the goods or services. No trademark rights are grantedto merely descriptive marks. Misdescriptive marks are equally weak. As explained in connection with suggestive marks above, descriptive marks are often difficult to distinguish from suggestive marks. Suggestive marks require some imagination, thought, or perception to reach a conclusion as to the nature of the goods. Descriptive marks allow one to reach that conclusion without such imagination, thought or perception. Putting this distinction into practice can be very difficult. Merely descriptive marks can be registered federally on the Supplemental Register (see the Bit Law discussion on federal registration of trademarks for more information).

For Example: The following imaginary marks could be considered merely descriptive for computer peripherals:

- ✓ FAST BAUD for modems (describing the quickness of the modem);
- ✓ 104 KEY for computer keyboards (describing the number of keys on a keyboard);
- ✓ LIGHT for portable computers (describing the computer's weight); and
- ✓ TUBELESS for computer monitors (even if misdescriptive for a monitor that contains tubes).

A Suggestive mark are marks that suggest a quality or characteristic of the goods and services. Despite the fact that suggestive marks are not as strong as fanciful or arbitrary marks, suggestive marks are far more common due to the inherent marketing advantage of tying a mark to the product in a customer's mind. Suggestive marks are often difficult to distinguish from descriptive marks (described below), since both are intended to refer to the goods and services in question. Suggestive marks require some imagination, thought, or perception to reach a conclusion as to the nature of the goods. Descriptivemarks allow one to reach that conclusion without such imagination, thought or perception.

		Putting this distinction into practice clearly is one of the most difficult and disputed areas of trademark law. **The following marks can be considered suggestive:** ✓ MICROSOFT (suggestive of software for microcomputers) ✓ NETSCAPE (suggestive of software which allows traversing the "landscape" of the ✓ Internet) ✓ SILICON GRAPHICS (suggestive of graphic oriented computers) **Arbitrary Marks** An arbitrary mark utilizes a device having a common meaning that has norelation to the goods or services being sold. **Examples of arbitrary marks include:** ✓ APPLE (for computers) ✓ LOTUS (for software) ✓ SUN (for computers) ✓ CROWN (For Television) **Fanciful Marks** are devices which have been invented for the sole purpose of functioning as a trademark and have no other meaning than acting as a mark. Fanciful marks are considered to be the strongest type of mark. Examples of fanciful marks are: EXXON, KODAK and XEROX.		
	b)	**Explain trademark registration processes in India?**	**[L2] [CO4]**	**[6M]**
		• Investing your time and money to build a particular brand and seeing the same brand name being used by another, robbing you of your hard-earned brand reputation is not an agreeable state of affairs. • Many a time, trademark (TM) owners end up in protracted litigation because when the time was right, they did not do trademark registration in India of their brand name. • Trademark registration process of the brand name is not a difficult task. • A few simple steps, as explained below and you would have the		

much-needed legal protection of your brand name registration in India.

A trademark application can be made by:

- Private firms
- Individuals
- Companies- Limited Liability Partnership, OPC, Private limited, Public, Partnership, etc.
- NGO's

Note: In the case of NGOs and LLP companies the trademark has to be applied for registration in the name of the concerned business or a company.

Any person, pretending to be the proprietor of a trademark used or intended to be applied by him, may apply in writing in a prescribed manner for registration. The application must include the trademark, the goods or services, name and address of the candidate with power of attorney, the time of use of the mark. The application must be in English or Hindi. It must be registered at the appropriate office.

Step 1: Trademark Search

- ✓ Many entrepreneurs do not comprehend the importance of a TM search.
- ✓ Having a unique brand name in mind is not good enough reason to avoid a TM search.
- ✓ TM search helps you to know if there are similar trademarks available and it gives you a fair picture of where your trademark stands, sometimes, it also gives you a forewarning of the possibility of trademark litigation.
- ✓ Why waste your money in time-consuming trademark litigation later when you can choose to avoid it in the first place?

Step 2: Filing Trademark Application

- ✓ Based on the nature of product a class is chosen among 45 classes of trademark.

- ✓ Once the chosen brand name or logo is not listed in the Trademark Registry India, then we can opt for registering the same.
- ✓ The first step is to file a trademark application at the Trademark Registry India through online / offline.
- ✓ Once the application is filed, an official receipt is immediately issued for future reference with TM application number.

Step 3: Examination

- ✓ The examination might take around 12-18 months.
- ✓ The examiner might accept the trademark absolutely, conditionally or object.
- ✓ If accepted unconditionally, the trademark gets published in the Trademark Journal.
- ✓ If not accepted unconditionally, the conditions to be fulfilled or the objections would be mentioned in the examination report and a month's time would be given to fulfill the conditions or response to the objections.
- ✓ Once such response is accepted, the trademark is published in the Trademark Journal.
- ✓ If the response is not accepted, one can request a hearing. If in the hearing, the examiner feels that the trademark should be allowed registration, it proceeds for publication in the Trademark Journal.

Step 4: Publication

- ✓ The step of publication is incorporated in the trademark registration process so that anyone who objects to the registering of the trademark has the opportunity to oppose the same.
- ✓ If, after 3-4 months from publication there is no opposition, the trademark proceeds for registration.
- ✓ In case there is opposition; there is a fair hearing and decision are given by the Registrar.

Step 5: Registration Certificate

		Once the application proceeds for trademark registration, following publication in Trademark Journal, a registration certificate under the seal of the Trademark Office is issued. **Step 6: Renewal** The trademark can be renewed perpetually after every 10 years. Hence, your logo or brand name registration can be protected perpetually. **While filing for the trademark registration, the documents required to provide are as follows:** Identity and business proofs: The trademark owner or the person who is approved by the trademark owner requires presenting their identity proof. It can be your Aadhar Card, Driving License, Passport, Ration card, or Voter's ID. **Using Logo with Tagline:** If a trademark application is prepared for a tagline with only words, then there is no requirement for a logo. In cases where a logo is applied, then it must be submitted in black and white format. The number of words in the logo must exactly be the same as specified in the application for a trademark. Brand Name & Logo: The logo must have the brand name. **User Affidavit:** If a particular user data is to be claimed, the user affidavit is expected to be submitted. **Proof of TM use:** To demand specific user date, documentary proof like invoices, registration certificates, etc. with the brand name must be given. **MSME or Start-up Recognition:** A partnership firm or Corporate entities can give a certificate of registration under MSME or Start-up India scheme to get a 50% rebate on the Government fee **Signed Form TM – 48:** M-48 is a lawful document that enables the attorney to file the trademark on your behalf with the trademark registry. The document will be made by LW professionals for the signature.		
6	**a)**	**How to protect the prior-used trademarks in the system of acquisition -Through-registration?**	**[L2] [CO2]**	**[6M]**
		rademark registration is the publication procedure of obtaining a trademark right. It is the identification but not grant of a right. Therefore		

		according to the basic theory and principles of civil law, only use but not register a trademark does not violate laws. Unless there is a special provision in law, the civil behavior of using an unregistered trademark is legal. Interests arise from a legal civil behavior are also legal. Legal interests are certainly protected by laws. **The establishment of the trademark registration system is just to improve the efficiency, operability and practicality through setting up a mechanism of searching, identifying and publishing trademarks,** in order to keep the marks of different marketers compatible and harmonious. However, it does not mean that a trademark is illegal if it was not registered. As the legal system regulating social relationships arising from the demonization of trademarks, the Trademark Law naturally deals with both the relationships generating from registered trademarks and the legal problems caused by unregistered trademarks. No doubt that the legal status of registered trademarks and unregistered trademarks should have some differences. On the one hand, the Trademark Law should encourage people to register trademarks as many as possible to reduce disputes, save social resources and make the trademark undisputedly protected by law. It is the programmatic and leading function of the Trademark Law. On the other hand, the justified rights and interests of unregistered trademarks should also be admitted and appropriately protected to guarantee the good business order and trade rules, and reflect the core value of Trademark Law as a civil legal system which pursues and maintains justice. Thus the prior used trademark can be protected under the framework of the Trademark Law, with the supplement of Anti-unfair Competition Law. If the prior used trademark already established certain market reputation by use, other person's registration or use may be liable to be identified as unfair competition, so relevant provisions of Anti-unfair Competition Law can be applied.		
	b)	**Explain the origin function of trademark?**	**[L2] [CO3]**	**[6M]**
		A trademark is a brand name or logo associated with the company's goods, products or services. The consumers who buy the goods or avail of the services recognise it with its brand. The brand or trademark may consist of words or numerals, designs or a combination of all. A trademark can distinguish the goods or services of one person or		

company from those of others. They are intellectual property rights in India. The Trademarks Act, 1999, regulates the registration and functions of a trademark.

Primary Functions of Trademarks

A trademark primarily serves the purpose of identifying the origin or source of goods, products or services. In India, a trademark performs the following functions:

It identifies the product and its origin

It proposes to guarantee the quality of the product

It advertises the product as it represents the product

It creates the image of a product in the minds of the public, especially the consumers or the prospective consumers of the product

Product Differentiation Function

Trademarks serve as the basic means of achieving product or service differentiation. The trademarks enable a customer to distinguish goods, products or services in the market without confusion and make him/her arrive at a decision on what to purchase.

In perfect competition, trademarked services or products of various sellers are the perfect substitutes for a buyer. But in product differentiation competition, such trademarked services or products are just close substitutes. The competition takes place in building brand loyalty and advertising effort based on the non-substitutability of the services or products.

For example: The advertisers of the brand ‘Surf’ seek to build an image that the ‘Surf’ brand has qualities that cannot be replaced by any other detergent and all the other detergents like ‘Ariel’ or ‘RIN’ possess different quality or characteristics. A message is built up that the customer is looking for the product ‘Surf’ and not just a detergent.

Identification of Source and Origin Function

One of the most important functions of a trademark is to serve as information to the customers for identifying the origin or source of a product. The trademark guarantees the identity of the origin of the trademarked services or goods to the consumer or end-user. It enables the consumer to distinguish the trademarked goods or services from others that have another origin without any confusion.

For example: The trademark 'Brooke Bond' identifies tea originating from a company manufacturing tea and marketing it under that trademark.

Quality Function

A trademark ensures customers of the quality of the trademarked products or services. Customers select goods or services known for their quality. Thus, trademarks help the customers decide the products they need to purchase or the service they need to avail of. Reputation and identification of quality are the key features of trademarks.

For example: The quality of tea sold in the packs trademarked as 'Brooke Bond' would be similar, but they would be different from tea labelled with the trademark 'Taj Mahal'.

Advertising Function: The trademark represents a product or service. Another significant function of trademarks is promoting products and services, thus providing an effective mode of advertising them. The intention of the use of trademarks is to make consumers aware of the trademark and attract their attention to the trademarked products or services. Customers can be attracted through advertisements, which reinforce the image of a product or service.

successfully by using a logo or slogan.

For example: The trademark of 'Sony' is associated with electronic items. Thus, customers associate the trademark 'Sony' with a particular quality of a particular class of goods. It advertises the product while distinguishing them from the products of Sony's competitors.

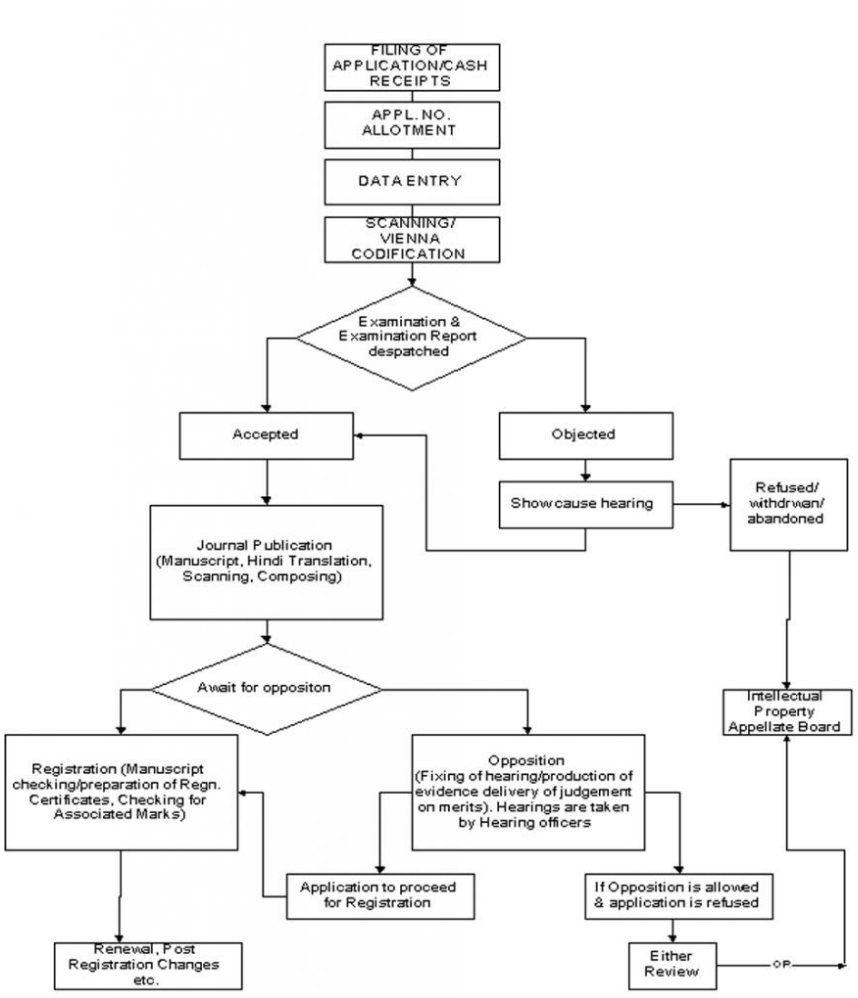
Creation of Image Function: Trademarks create an image of the product or service they are associated with. Trademarks essentially function to create goodwill for the company. The goodwill embodied in a trademark constitutes a company's intellectual property or asset. The prolonged usage of a trademark associated with a particular business helps the business gain reputation and goodwill regarding its particular trademark.

In due course of time, the general public gains the knowledge and is aware of the trade name or brand name and associates the particular trademark with the specific services or goods. Thus, trademarks gain reputation and goodwill, which eventually expands to a larger area making the trademarks known globally.

For example: The mark 'M' which represents the food items originating

		from the American fast-food chain 'McDonalds', creates a reputation and image for food items offered by it for sale in the market.		
7		**Explain the procedure for Trademark registration process?**	**[L2] [CO2]**	**[12M]**
		Investing your time and money to build a particular brand and seeing the same brand name being used by another, robbing you of your hard-earned brand reputation is not an agreeable state of affairs. Many a time, trademark (TM) owners end up in protracted litigation because when the time was right, they did not do trademark registration in India of their brand name. □ Trademark registration process of the brand name is not a difficult task. □ A few simple steps, as explained below and you would have the much-needed legal protection of your brand name registration in India. A trademark application can be made by: □ Private firms □ Individuals □ Companies- Limited Liability Partnership, OPC, Private limited, Public, Partnership, etc. □ NGO's Note: In the case of NGOs and LLP companies the trademark has to be applied for registration in the name of the concerned business or a company. Any person, pretending to be the proprietor of a trademark used or intended to be applied by him, may apply in writing in a prescribed manner for registration. The application must include the trademark, the goods or services, name and address of the candidate with power of attorney, the time of use of the mark. The		

application must be in English or Hindi. It must be registered at the appropriate office.



Step 1: Trademark Search

 Many entrepreneurs do not comprehend the importance of a TM search.

 Having a unique brand name in mind is not good enough reason to avoid a TM search.

 TM search helps you to know if there are similar trademarks available and it gives you a fair picture of where your trademark stands, sometimes, it also gives you a forewarning of the possibility of trademark litigation.

Step 2: Filing Trademark Application

 Based on the nature of product a class is chosen among 45 classes of trademark.

		□ Once the chosen brand name or logo is not listed in the Trademark Registry India, then we can opt for registering the same. □ The first step is to file a trademark application at the Trademark Registry India through online / offline. □ Once the application is filed, an official receipt is immediately issued for future reference with TM application number. **Step 3: Examination** □ The examination might take around 12-18 months. □ The examiner might accept the trademark absolutely, conditionally or object. □ If accepted unconditionally, the trademark gets published in the Trademark Journal. □ If not accepted unconditionally, the conditions to be fulfilled or the objections would be mentioned in the examination report and a month's time would be given to fulfill the conditions or response to the objections. □ Once such response is accepted, the trademark is published in the Trademark Journal. □ If the response is not accepted, one can request a hearing. If in the hearing, the examiner feels that the trademark should be allowed registration, it proceeds for publication in the Trademark Journal. **Step 4: Publication** □ The step of publication is incorporated in the trademark registration process so that anyone who objects to the registering of the trademark has the opportunity to oppose the same. □ If, after 3-4 months from publication there is no opposition, the trademark proceeds for registration.		

In case there is opposition; there is a fair hearing and decision are given by the Registrar.

Step 5: Registration Certificate

 Once the application proceeds for trademark registration, following publication in Trademark Journal, a registration certificate under the seal of the Trademark Office is issued.

Step 6: Renewal

 The trademark can be renewed perpetually after every 10 years. Hence, your logo or brand name registration can be protected perpetually. While filing for the trademark registration, the documents required to provide are as follows:

Identity and business proofs: The trademark owner or the person who is approved by the trademark owner requires presenting their identity proof. It can be your Aadhar Card, Driving License, Passport, Ration card, or Voter's ID.

Using Logo with Tagline: If a trademark application is prepared for a tagline with only words, then there is no requirement for a logo. In cases where a logo is applied, then it must be submitted in black and white format. The number of words in the logo must exactly be the same as specified in the application for a trademark.

Brand Name & Logo: The logo must have the brand name.

User Affidavit: If a particular user data is to be claimed, the user affidavit is expected to be

submitted.

Proof of TM use: To demand specific user date, documentary proof like invoices, registration certificates, etc. with the brand name must be given.

MSME or Start-up Recognition: A partnership firm or Corporate

		entities can give a certificate of registration under MSME or Start-up India scheme to get a 50% rebate on the Government fee. **Signed Form TM** – 48: M-48 is a lawful document that enables the attorney to file the trademark on your behalf with the trademark registry. The document will be made by LW professionals for the signature. professionals for the signature.		
8	**a)**	**How to handle the relationship of registered trademarks and prior rights?**	**[L2][CO5]**	**[6M]**
		It can be analyzed from the following three aspects: **First, define the meaning of "prior rights".** There is no definite provision of the concept of "prior rights" in Trademark Law, Implementation Regulations f the Trademark Law and Supreme Court's judicial interpretations. From the view of the original meaning of the concept, "prior rights" correspond with "later rights", and the difference between them is the early or late time that the right was generated. However, the prior and later rights should be originated from the same object, while the rights can be obtained according to the same law or different laws. Therefore, to avoid the improper interpretation of "prior rights", avoid the formulation of erroneous area of "prior rights", and prevent the abuse of "prior rights", we should define the meaning of "prior rights" as soon as possible. **Second, mark off the boundaries of "prior rights".** Using the object of "prior rights" as a trademark is a change of quality in using method and legal nature. In using method, it transfers the object of other rights to a commercial mark, which has an alternation of function. In legal nature, it shifts from former legal relationship to the relationship of trademark property right, which is beyond the domination and control of the prior right owner. The new using method based on this mark formulates new property relationship or property right-trademark right. Compared with prior rights, it is also a quality change. Under this premise, the utilization of the object of prior rights has no relationship with "prior rights" and does not contain the prior right owner's interest as long as it does not beyond the scope of trademark use. **Third, define the content of "damage".** Besides defining the meaning of "prior rights", it is necessary to determine the content of "damage" in law before we apply the "prior rights" article. It should be clarified that		

		whether this “damage” refers to the “damage” caused by the application of trademark registration or also include the “damage” caused by the use of trademark after the registration.		
	b)	**Describe the uses of acquisition of Trademark rights?**	**[L2] [CO5]**	**[6M]**
		In a global scope, obtaining a trademark right through Use or through Registration are two major legislative models of system for the grant of trademark rights. • By Us e • By Registration The “use” model is based on the objective facts of trademark use, and decides the ownership of a trademark according to the time that the trademark was first used. While the “registration” model grants trademark rights according to registration and the first applicant will obtain the trademark right. In history, the earliest trademark legislations all took “use” principle, for instance, the first statue of trademark-Law of Manufacturing Signs and Trademarks concerning the Content of Use and Non-examination Principle enacted by France in 1857 took the “use” model. . However, since there are many defects of the “use” principle, France abandoned this principle which was already implemented for more than one hundred years in 1964 and shifted to adopt the “registration” model which was succeeded by the current Code of Intellectual Property. Article 712-1 of the code provides: “trademark rights shall be obtained through registration”. In India one can acquire and claim a Trademark only by Registration and not by Use The registration of a trade mark confers on the registered proprietor of the trade mark the exclusive right to use the trade mark in relation to the goods or services in respect of which the trade mark is registered. While registration of a trade mark is not compulsory, it offers better legal protection for an action for infringement. As per Section 17 of the Act, the registration of a trade		

		mark confers the following rights on the registered proprietor: (i) It confers on the registered proprietor the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered. (ii) It entitles the registered proprietor to obtain relief in respect of infringement of the trade mark in the manner provided by the Trade Marks Act, 1999 when a similar mark is used on (a) same goods or services, (b) similar goods or services, (c) in respect of dissimilar goods or services. (iii) Registration of a trade mark forbids every other person (except the registered or unregistered permitted user) to use or to obtain the registration of the same trade mark or a confusingly similar mark in relation to the same goods or services or the same description of goods or services in relation to which the trade mark is registered. (iv) After registration of the trade mark for goods or services, there shall not be registered the same or confusingly similar trade mark not only for the same goods or services but also in respect of similar goods or services by virtue of Section 11(1) of Trade Marks Act, 1999. (v) Moreover, after registration of the trade mark for goods or services, there shall not be registered the same or confusingly similar trade mark even in respect of dissimilar goods or services by virtue of Section 11(2) in case of well-known trademarks. (vi) Registered trade mark shall not be used by anyone else in business papers and in advertising. Use in comparative advertising should not take undue advantage of the trade mark. Such advertising should not be contrary to honest practices in industrial or commercial matters. The advertising should not be detrimental to the distinctive character or reputation of the trade mark. (vii) There is a right to restrain use of the trade mark as trade name or part of trade name or name of business concern dealing in the same goods or services. The registered trade mark continues to enjoy all the rights which vest in an unregistered trade mark. By registration the proprietor of an unregistered trade		

		mark is converted into proprietor of the registered trade mark. An application for registration may be based on a trade mark in use prior to such application and such a trade mark is already vested with rights at Common law from the time the use of the mark was commenced.		
9		**Explain the reasons for protecting trademarks in the system of acquisition?**	**[L2] [CO5]**	**[12M]**
		Trademarks are important because they serve as a symbol of the source of goods or services, allowing consumers to easily identify and distinguish between different brands. Trademarks also provide legal protection for the owners, preventing others from using similar logos or names that may confuse or deceive consumers. By establishing trademark rights, businesses can secure the exclusive use of their brand, allowing them to build brand recognition, credibility, and customer loyalty. This in turn helps businesses to increase their competitiveness and maintain their market share. Here are 7 reasons why trademark registration is important for startups: **1. Identity: They Create Brand Recognition** Trademarking grants startups, the security of their brand. By trademarking a company name, one makes its services and products distinctive in terms of its competitors, becoming its intellectual property. In doing so, it prevents rivals from copying or stealing their brand. **2. It's an Incentive for Employees to Join** It's important for startups to preserve a positive reputation when they have a trademark. If a business maintains a good reputation, people are inclined to work with and for them. This applies even more so when an expansion is concerned. As a startup, more employees are a must if a company intends to grow. This brings about the need for a budget, making the trademark a crucial asset when being granted a business loan. **3. Legal Protection: It Averts Legal Issues in the Future** Not registering a trademark leaves a business open to lawsuits from companies who did register one under the same name, sign, slogan, or design. If that does occur, a business will be forced to deal with altering all it came up with, such as the campaign, website material, and to a large extent, its brand identity. *By registering a trademark, a startup would protect itself from another*		

		company using their name as well as from imitation of its products or services. **4. Long-term value: A Trademark is for Life** A trademark is permanent, with a need only for periodic renewal. Consider the aforementioned behemoth companies of Pampers and Jacuzzi; they have been power-houses in their respective domains for decades and will continue to thrive for decades to come. This brings about the importance of conducting thorough trademark research to ensure the governing body doesn't deny a startup's application. Therefore, it is wise to use the services of a renowned Intellectual Property service provider with a good reputation who will assist you with trademarking your business. **5. Competitive Advantage: It is A Company's Greatest Asset** It can act as a catalyst for increasing value as a startup business matures, more so, if the startup continues to expand. Thus, it is important to use a trademark for marketing strategies to aid the enhancement of brand recognition and to draw in more consumers. Once a startup has attained positive repute for its product or service, consumers will associate its trademark with how the business is running. Trademarks are significantly beneficial when a business wants to: • Diversify its products or services, • Branch into franchising through licensing, and Attain more value by putting itself up for sale.		
10		**Which subject matter is protected by IPR under WIPO?**	**[L2] [CO2]**	**[12M]**
		Slogans, Letters and Numbers: A word or other groupings of letters is the most common type of mark **For Examples**: APPLE, SILICON, GRAPHICS, NETSCAPE, IBM, NBC. Slogans from advertising campaigns are also used as trademarks. Example slogans which have strong trademark rights attached   ***For Example: Nike*** Alphanumeric symbols (letters and numbers) may be protectable as		

long as they are not merely descriptive. If the numbers or letters describe something about the product or service offered under the mark, however, they will not be registrable unless proof of secondary mining is shown. Thus, the mark "VT220" for computer hardware peripherals was held merely descriptive and unregistrable because "VT" Video Terminal and 220 was a mere model number.

Logos and Symbols: Logos are probably the next most common form of mark. A logo can be described as a design which becomes a mark when used in close association with the goods or services being marketed. The logo mark does not need to be elaborate; it need only distinguish goods]4and services sold under the mark from other goods and services. Examples of logo marks are:

McDonald's double arches:

NBC's peacock style design:

Apple Computer's Apple:

Names of performing Artists : A mark that merely serves to identify an artist or entertainer is not registrable. However, if the owner of the mark has controlled the quality of the goods or services, and the name of the artist or group has been used numerous times on different records (thereby representing an assurance of quality to the public), the name may be registered as a trademark, Thus, GOO GOO DOLLS and BOB BYLAN have been registered for musical sound recordings.

Domain Names

Domain names, for example, www.ibm.com, are registrable as trademark or service marks only if they function as an identification of the source of goods and service. Thus, www.oakwood.com has been registered for real estate leasing service and www.eilberg.com was

refused registration because the mark merely indicated the location on the Internet where the applicant's web site appeared and it did not separately identify the applicant's legal services. Another complication with domain name registration is that the PTO has held that businesses that create a web site for the sole purpose of advertising their own products or services cannot register a domain name used to identify that activity. Thus, www.amazon.com is registered for providing online chat rooms and bulletin boards. It is not registered in connection with offering books or other goods for sale.

Shapes and Containers

A product or container shape can also serve a source identifying function and therefore can be an enforceable trademark. A product or container shape may also be subject to a design patent (see the BitLaw discussion of design patents to see an analysis of the similarities and differences between design patents and trademark protection for product shapes). Historically, trademark protection was not granted to product shapes until the consuming public recognized the shape as indicating the source of the product. In other words, the product shape was required to obtain secondary meaning. However, recent court decisions may mean that an inherently distinctive product shape can be a protectable trademark even before secondary meaning is obtained. Examples of product shapes and configurations that likely enjoy trademark status include:

Coca-cola Bottle

Apple's Ipod

Trade Dress : Trade dress is the overall commercial image (look and feel) of a product or service that indicates or identifies the source of the product or service and distinguishes it from those of others. It may

include the design or configuration of a product; the labeling and packaging of goods; and/or the décor or environment in which services are provided. Trade dress can consist of such elements as size, shape, color and texture tothe extent such elements are not functional. In many countries, trade dress is referred to as "get-up" or "product design". Only nonfunctional trade dress can be protected. Because trade dress is often protected through the law of unfair competition.

Color: The color of an item can also function as a trademark. The Supreme Court held in the 1995 case of Qualitex Co. v. Jacobson Products Co., 115 S.Ct. 1300 (1995) that the green-gold color of a dry cleaning press pad can function as a trademark. Before this decision, the argument was often made that color alone could not be considered a trademark, since granting trademark status to colors would soon lead to the depletion of the number of colors available for an object. The Court in Qualitex rejected arguments based on this depletion theory, reasoning that alternative colors would usually be available for competitors. In those cases where alternative colors were not available, courts could deny trademark protection in those circumstances where color depletion may actually occur

Fragrances, Sounds, and Moving Images

A sound can also be a trademark or a service mark. The three tone chime of NBC has been registered as a service mark. Sound trademarks recently were in the news when Harley-Davidson announced that it was attempting to register the exhaust sound of a Harley- Davidson motorcycle with the U.S. Patent and Trademark Office (USPTO). Harley-Davidson was reacting to moves by competitors to duplicate the Harley sound in competing motorcycles. Hearings in front of the USPTO have been scheduled to determine whether Harley-Davidson can register the sound. A fragrance can function as trademark if it is distinctive and not functional. For example: in In re Clarke, 17 U.S.P.Q.2d 1238 (T.T.A.B.1990), a floral fragrance was allowed as a trademark for sewing thread and embroidery yarn and was not functional when used in connection with those goods. The roar of the MGM lion and Woody Woodpecker's distinctive laugh are

		also registered. Finally, the Internet has given rise to applications for marks that consist of moving images,such as Microsoft company's spinning EXPLORER GLOBE. ***Design and Ornamentation*** A design can function as a trademark as long as it is distinctive rather than merely functional or ornamental. Some designs are protected on their own, such as Nike's famous "swoosh" design, the alligator that appears on shirts, and Betty Crocker's spoon. If the design is merely back ground material, however, and does not create a separate commercial impression, or if it consists solely of some simple geometric shape, such as an oval or square, it cannot be protected without proof of secondary meaning. **For example,** the PTO refused registration of two parallel colored bands placed at the top of socks as pure ornamentation. Merely decorative subject matter and pure ornamentation cannot be registered because theydo not identify and distinguish goods or services and thus cannot function as trademark.		

UNIT –III
LAW OF COPY RIGHTS

1	a)	**Describe Copyright and the works protected under copyright act.**	**[L2] [CO3]**	**[6M]**

The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea.

Exhaustive lists of works covered by copyright are usually not to be found in legislation. Nonetheless, broadly speaking, works commonly protected by copyright throughout the world include:

- literary works such as novels, poems, plays, reference works, newspaper articles;
- computer programs, databases;
- films, musical compositions, and choreography;
- artistic works such as paintings, drawings, photographs, and sculpture;
- architecture; and
- advertisements, maps, and technical drawings.

Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. Copyright may or may not be available for a number of objects such as titles, slogans, or logos, depending on whether they contain sufficient authorship.

In the case of cinematograph film and sound recording:

(i) making a copy of the film including a photograph of any image or making any other sound recording embodying it;

(ii) selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and

(iii) communicating the film/sound recording to the public.

		In the case of a sound recording: (i) To make any other sound recording embodying it • (ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording (iii) To communicate the sound recording to the public		
	b)	**Briefly explain the process of obtaining copyright.**	**[L2] [CO4]**	**[6M]**
		Now that we understand who is entitled to get a copyright and what essential documents they must have to get it registered, let's see how you can register your original work with the copyright registrar under Chapter X of the Indian Copyright Act,1957 and Rule 70 of the Copyright Rules' 2013. The steps involved in the registration process are: **Step 1: File an application** In the first step: The author of the work, copyright claimant, owner of an exclusive right for the work or an authorized agent file an application either physically in the copyright's office or through speed/registered post or through e-filing facility available on the official website (copyright.gov.in). For registration of each work, a separate application must be filed with the registrar along with the particulars of the work. Along with this, the requisite fee must also be given, Different types of work have different fees. For example, getting the copyright for an artistic work registered, the application fees is INR 500, while for getting the copyright for a cinematograph film registered is INR 5000. The application fees range from INR. 5000 to INR. 40000. It can be paid through a demand draft (DD) or Indian postal order (IPO) addressed to the Registrar of Copyright Payable at New Delhi or through e-payment facility. This application must be filed with all the essential documents. At the end of this step, the registrar will issue a dairy number to the applicant. **Step 2: Examination** In the next step, the examination of the copyright application takes place.		

		Once the dairy number is issued, there is a minimum 30 days waiting period. In this time period, the copyright examiner reviews the application. This waiting period exists so that objections can arise and be reviewed. Here the process gets divided into two segments: In case no objections are raised, the examiner goes ahead to review and scrutinize the application to find any discrepancy. If there is no fault and all the essential documents and information is provided along with the application, it is a case of zero discrepancies. In this case, the applicant is allowed to go forward with the next step. In case some discrepancies are found, a letter of discrepancy is sent to the applicant. Based upon his reply, a hearing is conducted by the registrar. Once the discrepancy is resolved, the applicant is allowed to move forward to the next step. In case objections are raised by someone against the applicant, letters are sent out to both parties and they are called to be heard by the registrar. Upon hearing if the objection is rejected, the application goes ahead for scrutiny and the above-mentioned discrepancy procedure is followed. In case the objection is not clarified or discrepancy is not resolved, the application is rejected and a rejection letter is sent to the applicant. For such applicant, the copyright registration procedure ends here. **Step 3: Registration** The final step in this process can be termed as registration. In this step, the registrar might ask for more documents. Once completely satisfied with the copyright claim made by the applicant, the Registrar of Copyrights would enter the details of the copyright into the register of copyrights and issue a certificate of registration. The process registration of copyright completes when the applicant is issued the Extracts of the Register of Copyrights (ROC).		
2	**a)**	**Explain the fundamental of Copyright Law?**	**[L2] [CO3]**	**[6M]**
		Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (Kartar Singh Giani v. Ladha Singh & Others AIR 1934 Lah 777). Section 14 of the Act		

defines the term Copyright as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof, namely

In the case of literary, dramatic or musical work (except computer programme):

(i) reproducing the work in any material form which includes storing of it in any medium by electronic means;

(ii) issuing copies of the work to the public which are not already in circulation;

(iii) performing the work in public or communicating it to the public;

(iv) making any cinematograph film or sound recording in respect of the work; making any translation or adaptation of the work. Further any of the above mentioned acts in relation to work can be done in the case of translation or adaptation of the work.

<u>In the case of a computer programme:</u>

(i) to do any of the acts specified in respect of a literary, dramatic or musical work; and

(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

<u>In the case of an artistic work:</u>

(i) reproducing the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) communicating the work to the public;

		(iii) issuing copies of work to the public which are not already in existence; (iv) including work in any cinematograph film; making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.		
	b)	**Describe the Rights afforded by Copyright Law?**	**[L2] [CO3]**	**[6M]**
		Copyright law seeks to promote human creativity and confers several rights on the copyright owner. International agreements, among which the most important is the Berne Convention, 1886, seeks to standardize the rights available to copyright holders across different countries. The following rights will therefore be looked at as given in the Berne Convention to which most countries are signatories and whose provisions they have incorporated in their local laws as well. **Requirement of Originality:** For any work to be eligible for copyright protection, the work needs to be original. The standard of originality is measured by the investment of labour, skill and judgement. In common law jurisdictions like United Kingdom and India, the standard of originality is low and even a low degree of investment in labour, skill and judgement will qualify for copyright protection. However, civil law jurisdictions like France and Germany demand certain minimum amount of creativity and author's intellectual expression. **Right of Reproduction:** The most prominent is the right to reproduce, which implies making copies of the work in any form (Article 9). In the modern context copying a song on a CD would amount to reproduction. Sound and visual recordings are also considered as copying. Copying would amount to infringement unless it can be classified under one of the fair use defences. It is necessary to show that the person copying does not intend to make any commercial benefit out of it. In all other cases **permission of the author is required.** **Right to Distribute:** An off-shoot right of reproduction is the right of distribution. The copyright owner may distribute his work in any manner he deems fit, he can even license it if he wishes or give it out on rent. The owner is at liberty to assign certain specific rights to somebody while retaining the rest; for example he may assign the right to make		

translations.

Right to make Derivative Works: Another important right that the owner has is to use the work in various ways, for instance while making adaptations (modifications in a work to suit some other requirements) (Article 12) or translations (converting from one language to another) (Article 11). Examples of adaptations would include making a movie based on a novel. Nobody else can make these derivative works without the owner's consent. Authors of literary and artistic works also have an additional right to make cinematographic adaptations and distribute the same (Article 14). In this context, related rights of the owner are also important, for instance, the right to integrity which protects the owner against distortion, mutilation or modification of his work in a way that it is harmful for his reputation.

Right to Publicly Perform: The copyright owner also has the right to publicly perform his works. Example, he may perform plays based on his work or perform at concerts, etc. Public does not have to be of a specific strength; even a large group of people would amount to performing before the public (Article 11).

Right to Broadcast: A copyright owner also has the right to broadcast his work. Broadcasting would mean using of any means to make the work available to the public. In the modern context, this would extend to making the work accessible on the Internet. The terms and conditions of access will be decided by the copyright holder (Article 11bis).

Right of Public Recitation: Authors of literary works are additionally conferred with the right to publicly recite their works (Article 11ter).

Right to Follow: A special right granted to authors is the right to obtain a percentage in the subsequent sales of his work and is called Droit de Suite or Right to Follow. The right is also available to artists on resale of their work. (Article 14ter)

Moral Rights: The moral rights required to be protected under the Berne Convention, Article 6bis are the "Right of Paternity" and the "Right of Integrity." These rights have been primarily adopted from the civil law jurisdictions which are more author centric, like France and Germany. They consider copyright to be more of a personal right of the author of the

		work, giving him credit for his intellectual effort and creativity. The Right of Paternity or Attribution gives the copyright owner a right to claim authorship of the work and the Right of Integrity gives the owner a right to prevent any distortion of the work which would be potentially harmful to the reputation and honour of the right holder. Under the Right of Paternity, a copyright owner can claim due credit for any of his works. Thus, if a movie has been based on a book by an author, but he hasn't been given due credit in it, he can sue the makers to acknowledge his work.		
3	**a)**	**Explain the originality of material in copyright.**	**[L2] [CO4]**	**[6M]**
		There are three basic requirements for copyright ability: □ A work must be original □ A work must be fixed in a tangible form of expression; and □ A work must be a work of authorship To be eligible for copyright protection, material must be original, meaning that it must have been independently created and must possess a modicum of creativity. The requirement of originality should not be confused with novelty, worthiness, or aesthetic appeal. The requirement is rather that the material must be an independent product of the author and not merely some copy or minimal variation of an existing work. A work can be original even if it is strikingly similar or identical to that of another. The Copyright Act only requires originality, meaning independent creation by the author. Originality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying. To illustrate, assume that two poets, each ignorant of the other, compose identical poems. Neither work is novel, yet both are original, and, hence, copyrightable. "Originality" thus does not mean "first"; it merely means "independently created" rather than copied from other works. ***<u>Fixation of Material</u>:*** The Copyright Act protects works of authorship that are "fixed in any tangible medium of expression." A work is "fixed" when		

it is embodied in a copy or phonorecord and is sufficiently permanent or stable to permit it to be perceived, reproduced, or communicatedfor a period of more than transitory duration.

There are thus two categories of tangible expression in which works can be fixed: "copies"
and " phonorecords."

- A copy is a material object from which a work can be perceived, reproduced, or communicated, either directly by human perception or with the help of a machine.
- A phonorecord is a material object in which sounds are fixed and from which the sounds can be perceived, reproduced, or communicated either directly by human perception or with the help of a machine.

Works of Authorship: (17 U.S.C§102)

 The copyright act provides that copyright protection subsists [support oneself]in original works of authorship fixed in any tangible medium of expression, now known or here after developed ,from which they can be perceived, reproduced or otherwise communicated either directly or with the aid of a machine.

 17 U.S.C. § 102. Section 102 then lists eight categories of protectable works. The list is preceded by the phrase that works of authorship "include" those categories, demonstrating that the listed categories are not the only types of works that can be protected, but are illustrative only.

The eight enumerated categories are as follows:

1. Literary works,
2. Musical works (including accompanying words)
3. Dramatic works (including accompanying music)
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works
6. Motion pictures and other audiovisual works
7. Sound recordings

		8. Architectural works		
	b)	**Explain about right of reproduction.**	**[L2] [CO3]**	**[6M]**
		The reproduction right is one of the exclusive rights granted to the owner of a copyright by the Copyright Act. Under this right, no one other than the copyright owner may make any reproductions or copies of the work. Under the Copyright Act, the copyright owner has the exclusive right to reproduce the copyrighted work or to authorize its reproduction. Examples of unauthorized acts which are prohibited under this right include photocopying a book, copying a computer software program, using a cartoon character on a T-shirt, and incorporating a portion of another's song into a new song. The Copyright Act covers reproduction in any form. The right of reproduction commonly means that no person shall make one or more copies of a work or of a substantial part of it in any material form including sound and film recording without the permission of the copyright owner. The most common kind of reproduction is printing an edition of a work. Reproduction occurs in storing of a work in the computer memory. ***The most fundamental of the rights granted to copyright owners is the right to reproduce the work*** ➢ A violation of the copyright act occurs whether or not the violator profits by the reproduction ➢ Only the owner has the right to reproduce the work Secretly taping a concert, taking pictures at a performance, or recording all violate the owner's right to reproduce ➢ The suggestion of congress, in 1978 a group of authors, publishers and users established a not-for-profit entity called Copyright Clearance Center[CCC] ➢ CCC grants licenses to academic, government and corporate users to copy anddistribute the works ➢ It collects royalty fees, which are distributed to the authors ➢ Companies that photocopy articles from journals and magazines often enter into licensing arrangements with the CCC so they can make copies.		
4	**a)**	**Explain about right to perform the work publicly.**	**[L2] [CO3]**	**[6M]**

		he public performance right allows the copyright holder to control the public performance of certain copyrighted works. The scope of the performance right is limited to the following types of works: □ literary works, □ musical works, □ dramatic works, □ choreographic works, □ pantomimes, □ motion pictures, and □ audio visual works. Under the public performance right, a copyright holder is allowed to control when the work is performed "publicly." A performance is considered "public" when the work is performed in a "place open to the public or at a place where a substantial number of persons outside of a normal circle of a family and its social acquaintances are gathered." A performance is also considered to be public if it is transmitted to multiple locations, such as through television and radio. Thus, it would be a violation of the public performance right in a motion picture to rent a video and to show it in a public park or theater without obtaining a license from the copyright holder. In contrast, the performance of the video on a home TV where friends and family are gathered would not be considered a "public" performance and would not be prohibited under the Copyright Act. The public performance right is generally held to cover computer software, since software is considered a literary work under the Copyright Act. In addition, many software programs fall under the definition of an audio visual work. The application of the public performance right to software has not be fully developed, except that it is clear that a publicly available video game is controlled by this right.		
	b)	**Explain about copyright ownership issues.**	**[L2] [CO4]**	**[6M]**
		Copyright ownership issues arise when there are disputes or uncertainties regarding who owns the rights to a creative work protected by copyright. Copyright is a legal concept that grants exclusive rights to the creators of original works, such as literature, music, art, films, software, and other forms of expression. In general, the person or entity who creates a work is the initial owner of		

		the copyright. However, there are situations where determining the rightful owner can be complex. Here are some common copyright ownership issues: Authorship: Determining the author or creator of a work is crucial in establishing copyright ownership. In cases of collaborative works, it may be challenging to ascertain the contribution of each collaborator and allocate ownership accordingly. **Work for hire:** When a work is created by an employee within the scope of their employment, the employer is typically considered the owner of the copyright. This concept is known as "work for hire." However, disputes can arise when determining whether the work falls under this category. **Transfer and assignment:** Copyright ownership can be transferred or assigned from one party to another through agreements such as contracts or licenses. Issues may arise if there are conflicting claims or unclear terms in these agreements. **Joint authorship:** When two or more individuals contribute to a work with the intention of creating a single, integrated work, they may be considered joint authors. Each joint author has an equal share of the copyright unless agreed upon otherwise. Disputes can arise when determining whether a work qualifies as joint authorship and how the ownership shares are divided. **Derivative works:** Creating a new work based on an existing copyrighted work requires permission from the original copyright owner. Disputes may arise when determining whether a work is truly a derivative or transformative work, especially if it involves elements from multiple sources. **Licensing and royalties:** Licensing agreements play a significant role in copyright ownership. Issues can arise if there are disagreements over the scope of the license, royalty payments, or the expiration and termination of the license.		
5	**a)**	**Explain the Copyright registration process.**	**[L2] [CO4]**	**[6M]**
		A work is “created” when it is fixed in a copy or phonorecord for the first time.		

		□ Although not required to provide copyright protection for a work, registration of copyright with the Copyright Office in expensive, easy and provides several advantages, chiefly, that registration is a condition precedent for bringing an infringement suit for works of US origin. □ To register a work, the applicant must sent the following three elements to the Copyright Office: a properly completed application form, a filing fee, and a deposit of the work being registered. □ Registration may be made at any time within the life of the copyright **THE APPLICATION FOR COPYRIGHT REGISTRATION** □ The following persons are entitled to submit an application for registration of copyright: □ the author (either the person who actually created the work or, if the work is one made for hire, the employer or commissioning party) □ the copyright claimant (either the author or a person or organization that has obtained ownership of all of the rights under the copyright originally belonging to the author, such as a transferee) □ the owner of exclusive right, such as the transferee of any of the exclusive rights of copyright ownership (for example, one who prepares a movie based on an earlier book may file an application for the newly created derivative work, the movie); and □ the duly authorized agent of the author, claimant, or owner of exclusive rights (such as an attorney, trustee, or any one authorized to act on behalf of such parties) **Application Forms** □ The Copyright Office provides forms for application for copyright registration.		

		□ Eachformisone8½by11”(inchs) sheet, printed front and back. □ An applicant may use photocopies of forms □ The Copyright Office receives morethan 6,00,000 applications each year, each application must use a similar format to ease the burden of examination. □ The type of form used is dictated by the type of work that is the subject of copyright. For example: One form is used for literary works, while another is used for sound recording. Following are the forms used for copyright application. □ **Form TX** (Literary works, essays, poetry, textbooks, reference works, catalogs, advertising copy, compilations of information, and computer programs) □ **Form PA** (Pantomimes, choreographic works, operas, motion pictures and other audio visual works, musical compositions and songs. □ **Form VA** (Puzzles, greeting cards, jewelry designs, maps, original prints, photographs, posters, sculptures, drawings, architectural plans and blueprints. □ **Form SR** (Sound recording) □ **Form SE** (periodicals, news papers magazines, newsletter, annuals and Journals.Etc.		
	b)	**Describe the different types of Application Forms in Copyright?**	**[L2] [CO4]**	**[6M]**
		The copyright application process is three parts: (1) application form; (2) nonrefundable filing fee; and (3) a nonreturnable deposit of the work’s copy. In general, the copyright owner should submit a separate application for each work. However, the following exceptions apply for registering multiple works in one application: **Collective Works:** A **collective work** is the collation of a number of contributions that are separate and independent works and assembled into a collective whole. See *17 U.S.C. § 101; New York Times Co. v. Tasini*, 533		

U.S. 483, 494 (2001). The following list are examples:

1. Newspaper, magazine, or periodical with several articles, illustrations, and photographs
2. Anthology with several poems, short stories, or essays
3. Online encyclopedia with several articles, entries, or postings on different topics
4. Album with several sound recordings that embody musical works
5. DVD with a motion picture, theatrical trailers, deleted scenes, and audio commentaries by its director

Group Registration

There is a specific administrative process that permits **group registration** with one application. This type of registration includes all of the works that are outlined in the group as long as the applicant complies with the requirements. See *17 U.S.C. § 408(c)(1)*. The following types of works can be registered as a group:

1. Unpublished works
2. Serials
3. Newspapers
4. Newsletters
5. Contributions to periodicals
6. Published/Unpublished photographs
7. Database updates/revisions
8. Questions, answers, and other items prepared for use in a secure test

Unit of Publication: There is a specific administrative process that permits a unit of publication by registration of several published works in one application as long as the works were packaged or bundled together as a single unit and were published in that integrated unit. See *37 C.F.R. § 202.3(b)(4)(i)(A).* It should include a physical package that yields a series of separately fixed works that are placed together as one unit. The

		following types of works can be registered as a unit of publication: 1. A board game with playing pieces, game board, and written instructions 2. A bound volume published with a dust jacket 3. A book published with a CD-ROM 4. A multimedia kit containing a book, a compact disc, and a set of stickers 5. A compact disc containing multiple sound recordings packaged together with liner notes and cover artwork 6. A box set containing multiple compact discs containing multiple sound recordings, packaged together with a booklet containing liner notes and photographs 7. A physical package containing a computer program and a user's manual 8. A physical package containing a videogame, cover artwork, and written instructions 9. A package of greeting cards 10. A jewelry set of a necklace and earrings sold to the public as a single unit **Mutual Ownership:** As mentioned above, another exception is the mutual ownership option – i.e., when the copyright claimant for a sound recording and the musical, literary, or dramatic work embodied in the recording is the same individual or organization. In short, there are different types of copyright applications which can be discussed as an option with your legal counsel. Please contact our law firm to speak with a knowledgeable intellectual property attorney at your convenience.		
6	**a)**	**Explain the international Copyright Law.**	**[L2] [CO6]**	**[6M]**
		Each nation has its unique copyright laws that govern the use of information created outside of that nation's borders by its citizens. Artists, content owners, and citizens of numerous countries are all afforded		

		copyright protection by it. Information about Indian copyright protection, international copyright applications, and information on international copyright treaties are all discussed in this article. A term known **as "International copyright"** safeguards a writer's work all over the world. Depending on the national laws of a particular nation, protection is provided against unauthorized use in that nation. Nonetheless, many nations provide protection to foreign works under specific guidelines that have been considerably streamlined by international copyright conventions and treaties. To safeguard the creators and owners of works covered by foreign copyright and to provide protections that go beyond national borders, the International Copyright Order was created in 1999. **International copyright law just does not exist**! The scope and application of copyright law are both territorial and regional. The country's national laws will determine how to protect against illegal use of work there. A number of international copyright treaties and conventions have made the procedure of providing protection to foreign copyright holders significantly simpler. This has given content producers and owners worldwide exclusive rights to use their works. Due to international conventions and agreements (primarily the Berne Convention), which provide a common framework that national legislation must follow to ensure countries respect the rights of foreign authors, the fundamental rights are the same in the majority of countries even though the specifics of their national laws may vary. This indicates that copyright safeguards your creation automatically on a global scale. **Developments in technology create new industries and opportunities for reproduction and dissemination of works of authorship.** □ A number of new issues have arisen relating to the growth of electronic publishing, distribution, and viewing of copyrighted works. □ Along with new and expanded markets for works comes the ever-increasing challenge of protecting works form piracy or infringement. □ Copyright protection for computer programs □ Copyright protection for Automated Databases		

		□ Copyright in the Electronic Age □ The Digital Millennium Copyright Act		
	b)	**Discuss the Foundation of patent law?**	**[L2] [CO3]**	**[6M]**
		A patent is a government granted right for a fixed time period to exclude others from making, selling, using, and importing an invention, product, process or design, or improvements on such items. These exclusive, monopoly rights are powerful, and in return the inventor is required to describe the invention in writing. The main motive behind patent was to encourage **scientific research, new technology and industrial progress.** Patent law grants a monopoly to the inventor to use their patented product and allow the use of the same to someone with prior permission against certain consideration. Patent confers the right to manufacture, use, offer for sale, sell or import the invention for the prescribed period to the inventor. In short, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. Patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent. It protects against infringement of the patent i.e. if someone tries to replicate the invention or invents against an existing patent the original inventor can enforce their right against such duplicate product. The end result is a written description, accompanied by diagrams and drawings, that explains the invention. The public benefits because anyone can read the details of the invention and improve upon it. Importantly, the patent not only allows the public to gain an understanding of the invention, but also defines its limits. Once the patent term expires (generally 20 years from the application filing date), the technology covered by the patent becomes a part of the public domain and is essentially free to use by the		
7		**Comment on the Patent Act 1970 and its amendment. Explain in brief the Patent filing procedure.**	**[L2] [CO4]**	**[12M]**
		Three Amendments **First Amendment in 1999** □ Introduced transitional facility to receive and hold patent applications of pharmaceutical and agricultural chemical products (mail box) till 1 January 2005 and for grant of Exclusive Marketing Rights for 5 years or till grant of		

patent.

Second Amendment

• Bill introduced on 20 December 1999

• Report submitted on 19 December 2001

• Bill passed in 2002 • Major changes

 20 year patent period Reversal of burden of proof on the infringer

 Establishment of an Appellate Board Public interest safeguards and measures for protecting Traditional Knowledge.

Third Amendment • 2005 • Based on

 Widespread consultations through country wide interactive sessions with interest groups

 Extensive inter ministerial consultations • Removed transitory provisions

• Introduced various flexibilities provided in the TRIPS Agreement including the Doha Round..

Before you proceed with the filing of patent application you need to decide if you will be taking any help of patent professional or undertaking the patent process itself. Considering the no. of deadlines it is recommended that you hire a professional who has experience in the world of patent.

If you decide to take the help of professional make sure that you sign a NDA (Non Disclosure Agreement) with the patent professional before revealing about your invention.

Step 1 - Check the patentability of an invention

Before filling a patent application in India, First step is to do a detailed patentability search to determine whether a patent can be granted or not. It should include both patent and non-patent references. Based on the information discovered during the search, you have the option of calibrate your patent application so that you don't end up filing for a patent which already exists.

A patent should meet all the criteria as per Indian Patent Act:

Novelty

Inventiveness

Industrial Application

Enabling

Step 2 Drafting Patent Application (Provisional or Complete)

A patent application is filed in Form-1 with the prescribed fee mentioned in

Schedule 1 at a patent office in accordance with the jurisdiction. Each patent application is accompanied with patent specification (Form 2).

According to the state of invention, you can either file a provisional or complete application. If it is still in development mode it is recommended to file a provisional application to block all important filing dates. A complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not filed, the application shall be deemed to be abandoned.

A patent specification should include- Title of the patent invention, Background of the invention, Summary of the invention/ Object of the invention, Explanation if any of the patent drawings, Description of the invention, Patent Claims, Patent Abstract of the disclosure and Sequence listing.

Step 3 - Filling the Patent Application in India: First filing in India - Once the application is drafted, you need to file the patent application in India and secure the filling date. If Provisional application is filed then complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not filed within that time, the application shall be deemed to be abandoned.

Foreign filing decision If you are interested in protecting your invention in other foreign jurisdiction you have to file it within 12 months from your first filling date Based on the countries you are interested in.

Every application for patent needs to be filed in the forms mentioned below:

Form 1 Application for grant of a patent

Form 2 Provisional/Complete specification

Form 3 Statement and undertaking regarding foreign application under section 8 as per the Patent Act Herein after re offered to as,

The Act (only required if a corresponding patent application is filed in another country)

Form 5 Declaration as to inventor ship (only to be filed along with the complete application)

Form 26 Form for authorization of a patent agent (only required if you are using a patent agent to help you file the application)

Form 28 To be submitted by startup or small entity (only required if you

		are claiming startup or small entity status) Priority documents: In case you are claiming priority from a foreign patent application and entering India, you may be required to provide the priority document as well. **Step 4 Publication of Patent Application:** Ever application is published in the official journal after 18th months period from the date of filling of application or the date of priority of application whichever is earlier. There is a provision for early publication of an Indian Patent application by filling a formal request. The early publication rule does not apply if: Secrecy directions are imposed under Section 35 of The Act. Application has been abandoned under Section 9(1) of The Act. The applicant has withdrawn his application three months prior to the expiry of said prescribed period of 18 months **Step 5 Examination of Patent Application:** Every patent application is not examined; Applicant or any other third party has to file a request for examination under Form 18 and for expedited examination in Form 18A (under conditions as prescribed in the Rules). Process of Examination (Objections by examiner & responding to objections) Once the application is filed it will end up on the desk of examiner. During examination process examiner will scrutinize application that it is in accordance with Patent Act and Rules. The examiner creates first examination report of the application and will state ground for objections if any. Thereafter the applicant is required to comply with the requirements within a period of 6 months from the date of FER which can be extended by 3 months by filing Form4. **Step 6 Grant of Patent :**The order of grant is given when all the requirements of patent Act are complied and it will be published in Patent Journal. **Step 7 Renewal:** After the grant of patent it needs to be renewed from 3rd year onward by paying renewal fee as prescribed in Schedule 1. A Patent in India can be renewed for maximum period of 20 years from the date of filing.		

8	**a)**	**Illustrate patent searching process?**	**[L2] [CO5]**	**[6M]**
		The Need for a Search: □ Patentability requires novelty and non-obviousness. □ The patentability search, sometimes called a novelty search □ A search is recommended to determine the feasibility of obtaining a patent. □ A novelty search is somewhat limited in scope and is designed to disclose whether an application will be rejected on the basis of lack of novelty or obviousness. □ A novelty search can usually be completed for less than $1,000. □ If an invention is intended for immediate commercial use or sale, an additional search, call an infringement search or investigation, is often conducted concurrently with the novelty search. □ This novelty search is thus more expensive **Searching Methods:** □ The PTO provides public search facilities for patent searching. □ Searching is free and the PTO allows searchers to review issued patents, complete with drawings. □ Searching can be done either in the main public search room or in the examiners search areas where examiners will assist in searching. (The patent search room contains copies of all U.S. issued patents from 1790 to present as well as many foreign patents). □ The PTO employs a classification system that provides for the storage and retrieval of patent documents □ The patent examiners in the course of examining patent applications, the system is also used by searchers, and classification files are divided into subclasses. □ Most classes have approximately three hundred sub classes		
	b)	**Explain about ownership rights and transfer of patent.**	**[L2] [CO5]**	**[6M]**
		Ownership rights and the transfer of patents refer to the legal aspects of owning and transferring ownership of a patent. A patent is a form of intellectual property protection that grants exclusive rights to an inventor or applicant for a limited period. Let's explore ownership rights and the transfer process in more detail: **Ownership Rights of a Patent:**		

Inventor Ownership: By default, the inventor or inventors of an invention are the initial owners of the patent. The patent is initially granted to the individual or individuals who made the inventive contribution. In some cases, ownership may be shared among multiple inventors if they collaborated on the invention.

Employer Ownership: In some situations, when an invention is created by an employee as part of their job responsibilities or within the scope of their employment, the employer may have ownership rights over the patent. This typically occurs when there is an agreement or employment contract specifying that inventions made during employment belong to the employer.

Transfer of Patent Ownership:

Assignment: Patent ownership can be transferred through an assignment. An assignment is a legal agreement where the current owner (assignor) transfers their rights to another party (assignee). The assignment must be in writing and signed by both parties to be legally enforceable. Once the assignment is completed, the assignee becomes the new owner of the patent.

Licensing: Patent owners can grant licenses to others to use their patented invention. A license is a contractual agreement that allows a licensee to use the patented technology while the patent owner retains ownership. Licenses can be exclusive (granting rights only to one licensee) or non-exclusive (allowing multiple licensees). Licensing enables the patent owner to generate revenue through royalties or other agreed-upon terms.

Inheritance: Patent ownership can be transferred through inheritance if the patent owner includes it in their estate and specifies a successor in their will. The patent passes to the designated heir(s) upon the owner's death.

Merger or Acquisition: Patent ownership can be transferred through business transactions such as mergers, acquisitions, or asset transfers. When a company acquires another company, the patents owned by the acquired company may transfer to the acquiring company.

It's essential to note that the transfer of patent ownership must be recorded with the relevant patent office to ensure legal recognition of the new owner. This is typically done through a formal registration process or by

		updating the patent office records. It's advisable to consult with a patent attorney or intellectual property professional to ensure proper legal documentation and compliance with the specific laws and regulations governing patent ownership and transfers in your jurisdiction.		
9	**a)**	**Describe the advantages of Law of patent?**	**[L2] [CO3]**	**[6M]**
		The law of patents provides several advantages to inventors, businesses, and society as a whole. Here are some key advantages of patent law: **Exclusive Rights and Protection:** Patents grant inventors exclusive rights to their inventions for a limited period, typically 20 years from the date of filing. This exclusive right allows inventors to prevent others from making, using, selling, or importing their patented inventions without permission. It provides legal protection against unauthorized use or exploitation of the invention, encouraging inventors to disclose their inventions to the public without fear of losing control. **Incentive for Innovation:** Patents serve as an incentive for innovation by rewarding inventors for their creative efforts. The exclusive rights provided by patents allow inventors to commercialize their inventions and reap the financial benefits, which can encourage further research, development, and innovation. Patents stimulate inventors to invest time, resources, and effort into developing new and useful technologies, products, and processes. **Technological Progress and Economic Growth:** Patents promote technological progress and economic growth by fostering innovation. They encourage the dissemination of knowledge and technical advancements by requiring inventors to disclose their inventions in detail, enabling others to build upon existing knowledge. This facilitates the sharing of ideas, collaboration, and the development of new inventions. Patents also attract investments and promote competition, leading to economic development and job creation. **Market Exclusivity and Competitive Advantage:** Patents provide inventors with a temporary monopoly over their inventions, giving them a competitive advantage in the marketplace. This exclusivity allows inventors to capitalize on their inventions, attract investors, negotiate licensing agreements, and generate revenue through licensing or commercialization. It provides inventors with an opportunity to recoup		

		their research and development costs and realize a return on their investment. **Public Disclosure and Knowledge Expansion:** Patent applications require inventors to disclose their inventions in a detailed and comprehensive manner. This disclosure contributes to the expansion of knowledge, as the patent documents become part of the public record. Others can access and learn from the disclosed information, which can inspire further research, development, and innovation. Patents facilitate the dissemination of technological advancements, contributing to scientific and technological progress. **Legal Protection and Enforcement:** Patents provide inventors with legal remedies and enforcement mechanisms to protect their rights. Patent owners can take legal action against infringers and seek remedies such as injunctions, damages, and royalties. This legal protection strengthens the position of inventors and encourages investment in innovative technologies and industries. It's important to note that the advantages of patent law should be balanced with the need for access to knowledge, innovation diffusion, and the public interest. Patent systems aim to strike a balance between rewarding inventors and promoting societal benefits through limitations and exceptions to patent rights.		
	b)	**What are the differences between Product Patents and Process Patents?**	**[L1] [CO5]**	**[6M]**
		Product Patent? It is an exclusive right awarded to the product's original developer. This implies that no other creator can make the same product using the same or any other similar process. The inference being that the maker will not face competition since the product is patented. As a result, there will be no other patent holders. And hence, the Product Patent system offers a greater amount of protection to the innovator. The patent is issued to the product's original creator under this system. A Product Patent has the following characteristics: • When a product patent is granted, it means that no one other than		

the inventor may make the same product using the same or a similar technique.

- A product patent gives the creator a "True Monopoly" right.
- When compared to process patents, product patents are thought to provide a better level of protection.

Process Patent

A process patent, as the name suggests, is given to a specific method rather than the final product that is created as a consequence of that process. A process patent is issued for a specific manufacturing method rather than for the product itself. Any other creator can create the exact thing but by employing some other process by adjusting various parameters. Because of the potential of alternative production processes, we can infer that several producers for the same product can exist.

- The safeguarding is seen as a limited parent. This prohibits any other manufacturer from developing the same thing.
- A process patent offers the inventor a limited amount of protection. As a result, there's a good probability that competitors may reverse engineer the product.
- A single product might also have many method patents.

Basis	Product Patent	Process Patent
Terminology	The 'End Result' or 'the creation' is protected by a patent.	Only the method is protected by a process patent and not the actual 'creation'.
Legislature	The concept of Product Patents was primarily introduced by **The Patents (Amendment) Act, 2005.**	To recognize and acknowledge Process Patents in India, **The Indian Patent Act, 1970** was enacted.
Illustration	Not only will the changed DNA be protected, but the procedure will be protected as well.	The process of altering DNA is recognised by the **Indian Patents Act, 1970**. Hence, the patent will be granted to the procedure under this.

10	**a)**	**Differentiate between Copyright infringement and Trademark infringement.**	**[L2] [CO4]**	**[6M]**
		Whether your business is small, medium, or large, there is no doubt that you have worked incredibly hard to develop your intellectual property,		

therefore it is important you know how to protect it from theft. Thankfully, by understanding how you can use trademark and copyright law to your advantage, you can ensure that your intellectual assets are safe from misuse.

Copyright is another form of intellectual property and allows creators to protect their work from being copied or reproduced without permission. According to the Copyright, Designs and Patents Act, 1988 (CDPA 1988), copyright is a property right that covers:

- original literary work
- dramatic work
- musical work
- artistic work
- sound recordings
- films
- broadcasts, and;
- the typographical arrangement of published editions

Copyright infringement occurs when another party uses, copies, distributes, or otherwise uses work to which they are not entitled to do so. This may be in a physical or digital form. Some examples of copyright infringement may include:

- recording a film in a movie theatre and then creating copies for sale or to be shown publicly
- using copyrighted images gathered on the internet on a website
- too closely replicating existing works of art
- taking text from another website and using this without permission (misuse of images and text on the internet are among the most common forms of copyright infringement)

Trademark

Under the TMA 1994, trademarks may take any of the following forms in relation to goods or packaging:

- words / names
- designs
- letters
- numerals
- colours
- sounds
- shape

A trademark is infringed when another person or business uses a registered trademark without the permission to do so. Trademark

		infringements may include: ➢ using the same mark as a registered trademark on the same type of goods or similar goods ➢ using a similar name, product design, packaging design, or logo as an already established brand A recent example of trademark infringement is where a multi-national oat milk brand took a UK oat milk producer to court because of an alleged infringement of trademark law. They complained that the name and branding were too similar to its own. In this case, the High Court agreed and dismissed the claim of trademark infringement and 'passing off'.		
	b)	**Differentiate types of copyrights in cinema autography in India?**	**[L2] [CO4]**	**[6M]**
		In India, the copyright law pertaining to cinematographic works is governed by the Copyright Act, 1957. Under this Act, different types of copyrights are recognized in relation to cinematographic works. Here are the key types of copyrights in cinematography in India: **Copyright in the Film:** The copyright in the film as a whole is granted to the producer of the film. The producer is typically the person or entity responsible for organizing and financing the production of the film. This copyright encompasses the entire film, including the screenplay, dialogues, music, artistic elements, and audiovisual sequences. **Copyright in the Sound Recording:** A separate copyright is recognized for the sound recording used in the film. The sound recording copyright is distinct from the copyright in the film itself. It is typically owned by the person or entity responsible for recording the audio, such as the music composer, sound engineer, or record label. **Copyright in the Literary and Musical Works:** The Copyright Act provides for individual copyrights in the literary and musical works used in the film. These copyrights are distinct from the copyright		

UNIT –IV

TRADE SECRETS

1		**Why are trade secrets so significant and what is the negative aspect of trade secret?**	**[L1] [CO4]**	**[12M]**
		In general, trade secret protection confers owners the right to prevent the information lawfully within their control from being disclosed, acquired or used by others without their consent in a manner contrary to honest commercial practice. Trade secrets are valuable and significant for businesses due to several reasons: **Competitive Advantage:** Trade secrets provide a competitive edge by granting a company exclusive access to valuable, confidential information that is not known to its competitors. This can include formulas, manufacturing processes, customer lists, pricing strategies, marketing plans, and other proprietary knowledge. By keeping these secrets hidden, a company can maintain its unique position in the market and outperform competitors. **Cost-effectiveness:** Protecting trade secrets can be a more cost-effective strategy compared to other forms of intellectual property protection, such as patents or copyrights. Trade secrets do not require formal registration or disclosure, saving the costs associated with obtaining and maintaining patents. This makes trade secrets particularly attractive for businesses that deal with constantly evolving technologies or short product life cycles. **Longevity:** Unlike patents, which have a limited duration, trade secrets can potentially be protected indefinitely as long as the information remains confidential and is not publicly disclosed. This long-term protection allows companies to maintain their competitive advantage over an extended period. **Flexibility**: Trade secrets offer businesses greater flexibility in terms of the type of information that can be protected. While patents protect inventions and copyrights safeguard creative works, trade secrets can cover a wide range of valuable information, including non-technical and non-scientific knowledge. Despite their benefits, trade secrets also have some negative aspects:		

		Vulnerability to Misappropriation: Trade secrets are vulnerable to theft, misappropriation, and unauthorized disclosure. Employees, business partners, or competitors may attempt to access or use confidential information through illegal or unethical means. This risk necessitates the implementation of robust security measures and legal protections to safeguard trade secrets. **Limited Legal Recourse:** Unlike patents or copyrights, which have well-established legal frameworks for protection and enforcement, trade secret laws can vary across jurisdictions. This can make it challenging to pursue legal action against those who misappropriate trade secrets, particularly in cases involving international boundaries. **Lack of Exclusivity:** Trade secret protection does not prevent others from independently developing or discovering the same information. If a competitor independently obtains and uses the same trade secret without misappropriation, it may not be considered a violation of trade secret laws. This limits the exclusivity that trade secrets can provide. **Difficulties in Enforcement:** Proving the misappropriation of a trade secret can be challenging. Unlike patents or copyrights, which have tangible forms of documentation, trade secrets often rely on the ability to demonstrate that the information was indeed kept confidential and that misappropriation occurred. Gathering evidence and establishing a strong legal case can be complex and time-consuming. It is important for businesses to assess the value and risks associated with trade secrets and implement appropriate measures to protect and manage them effectively.		
2	**a)**	**Describe why Trade Secrets are necessary? How do they function?**	**[L2] [CO4]**	**[6M]**
		Trade secrets are intellectual property (IP) rights on confidential information which may be sold or licensed. In general, to qualify as a trade secret, the information must be: • commercially valuable because it is secret, • be known only to a limited group of persons, and • be subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidentiality agreements for business partners and employees. The unauthorized acquisition, use or disclosure of such secret		

		information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection. Trade secrets function by maintaining the confidentiality and secrecy of valuable information within a business. To effectively protect trade secrets, companies typically employ the following measures: **Identification and Classification:** Businesses identify and classify information that qualifies as trade secrets. This includes determining which information is valuable, confidential, and provides a competitive advantage. It is crucial to clearly identify and document trade secrets to ensure proper protection and management. **Confidentiality Measures:** Strict internal policies and procedures are implemented to ensure that trade secrets are kept confidential. This may involve limited access to the information, non-disclosure agreements (NDAs) with employees and business partners, secure storage and access controls, and regular training on the importance of confidentiality. **Physical and Digital Security:** Companies employ physical and digital security measures to prevent unauthorized access or disclosure of trade secrets. This can include secure storage facilities, restricted access areas, encryption, firewalls, secure servers, and other technological safeguards to protect digital assets. **Employee and Partner Awareness:** Employees and business partners are educated about the importance of trade secrets and the measures in place to protect them. This awareness includes training on the proper handling of confidential information, obligations under NDAs, and consequences for breaching confidentiality. **Legal Protection:** Companies may seek legal protection for trade secrets through contracts, such as NDAs or non-compete agreements, and through trade secret laws. While the specifics of trade secret laws may vary across jurisdictions, they generally provide remedies and legal recourse against those who misappropriate or disclose trade secrets without authorization. By implementing these measures, businesses can effectively safeguard their trade secrets, maintain a competitive advantage, and drive innovation while protecting their valuable intellectual property.		
	b)	**Explain briefly about Trade Secret Law**	**[L2] [CO4]**	**[6M]**

The type of information that must be kept confidential in order to retain its competitiveadvantage is generally called a "Trade Secret"

A trade secret is any information that can be used in the operation of a business or other enterprise that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.

Restatement (Third) of Unfair Competition § 39 (1995).

A recipe, a formula, a method of conducting business, a customer list, a price list, marketing plans, financial projection, and a list of targets for a potential acquisition canall constitute trade secrets.

Generally, to qualify for trade secret protection, information must

- ✓ be valuable;
- ✓ not be publicly known; and
- ✓ be the subject of reasonable efforts to maintain its secrecy

The rapid pace of technology advances the ease with which information can now be rapidly disseminated and the mobility of employees require businesses to devote significant effort to protecting their trade secrets.

If trade secrets were not legally protectable, companies would have no incentive for investing time money and effort in research and development that ultimately benefits the public at large.

Trade secrets law not only provides an incentive for companies to develop new methods and processes of doing business but also, by punishing wrongdoers, discourages improper conduct in the business environment.

The Law Governing Trade Secrets

Trademarks, copyrights, and patents are all subject to extensive federal statutory schemes for their protection, there is no federal law relating to trade secrets, and no registration is required to obtain trade secret protection.

Most trade secret law arises from common law principles, namely, judge-made case law.

The first reported trade secret case in the United States was decided in 1837 and involved manufacturing methods for making chocolate.

In 1939, the Restatement of Torts (a wrongful act or an infringement of a

		right) adopted a definition of a trade secret, and many states relied on that in developing their body of case law, leading to greater consistencyin the development of trade secrets law. Additionally 1979, the National Conference of Commissioners on Uniform State laws drafted the uniform Trade Secrets Act (UTSA) to promote uniformity among the stateswith regard to trade secrets law. The UTSA was amended in 1985. The following definition of trade secret has been adopted by the UTSA: ✓ Trade secret means information, including a formula, pattern, compilation, program, device, method, technique or process that: ✓ Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and ✓ Is the subject of efforts that are reasonable under the circumstance to maintain its secrecy.		
3	**a)**	**Explain in brief the historical perspective of trade secret**	**[L2] [CO4]**	**[6M]**
		The concept that so-called business or "trade secrets" were entitled to legal protection spread rapidly throughout the world. As early as the Renaissance, most European nation-States had laws that protected businesses (notably, the guild cartels) from those who used their secret processes and ideas without permission. The concept of trade secrets has existed for centuries, with historical evidence of their use dating back to ancient civilizations. Here is a brief historical perspective on trade secrets: **Ancient Times:** The protection of valuable information as trade secrets can be traced back to ancient times. Civilizations such as the Greeks and Romans recognized the importance of secrecy in maintaining economic advantage. For example, the ancient Greeks had laws prohibiting the disclosure of secret formulas for pottery glazes. **Medieval Guilds and Craftsmen:** During the Middle Ages, trade secrets played a significant role in the guild system. Craftsmen and		

		guilds closely guarded their knowledge and techniques, ensuring that their skills and expertise remained exclusive and competitive. This helped to establish and maintain trade monopolies. **Industrial Revolution:** The Industrial Revolution in the 18th and 19th centuries brought about significant advancements in technology and manufacturing processes. Companies in industries like textiles, machinery, and chemicals relied heavily on trade secrets to protect their innovations and maintain their market dominance. Industrial espionage became more prevalent during this time, with competitors attempting to steal trade secrets for their own advantage. **Emergence of Modern Trade Secret Laws:** The legal recognition and protection of trade secrets started to take shape in the late 19th and early 20th centuries. Countries began enacting laws to address trade secret misappropriation and unfair competition. For example, the United States introduced the Uniform Trade Secrets Act (UTSA) in 1979, which provided a model for trade secret laws across different states. **International Harmonization:** The importance of trade secrets gained global recognition, leading to efforts for international harmonization of trade secret laws. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), administered by the World Trade Organization (WTO), sets minimum standards for the protection and enforcement of trade secrets among member countries. **Digital Age:** With the advent of the digital age and the rise of information technology, trade secret protection faced new challenges. The ease of copying, transmitting, and storing vast amounts of data increased the risk of trade secret misappropriation. Legal frameworks had to adapt to address the complexities of trade secrets in the digital realm, including issues related to cyber security and data breaches. Today, trade secrets continue to be a vital form of intellectual property protection.		
	b)	**Explain in detail about determination of trade secrete status.**	**[L2] [CO4]**	**[6M]**
		Restatement of Torts (a wrongful act or an infringement of a right) §757 cmt.b lists six factors to be considered in determining whether information qualifies as a trade secret. Courts routinely examine these factors to determine whether a company's information constitutes a trade secret		

The extent to which the information is known outside the company

Although information may be known to other outside the company and still qualify as a trade secret, the greater the number of people who know the information, the less likely it is to qualify as a trade secret.Secrecy need not be absolute.

The extent to which the information is known within the company

- ✓ Although an employer or company is permitted to disclose confidential information tothose with a demonstrated "need to know" the information.
- ✓ If the information is widely known within the company, especially among those who have no business need to know the information, it may not qualify as a trade secret. Theextent of the measures taken by the company to maintain the secrecy of the information:
- ✓ One claiming trade secret protection must take reasonable precautions to protect the information.
- ✓ Courts are unlikely to protect information a company has not bothered to protect.
- ✓ A company is not obligated to undertake extreme efforts to protect information, but reasonable precautions are required.
- ✓ Some experts predict that courts will likely require advanced security measures to protect trade secrets transmitted via e-mail, including encryption and protocols to ensure confidentiality.

The extent of the value of the information to the company and its competitors

- ✓ If information has little value either to its owner or to the owner's competitors, it is less likely to qualify as a trade secret.
- ✓ Conversely, information that is valuable to a company, such as the recipe for its key menu product, and that would be of great value to the company's competitors is more likely to be protectable trade secret.

The extent of the expenditure of time, effort, and money by the

		company in developing theinformation The greater the amount of time, effort, and money the company has expended in developing or acquiring the information, the more likely it is to be held to be a protectable trade secret. **The extent of the ease or difficult with which the information could be acquired or duplicatedby other** ✓ If information is easy to acquire or duplicate, it is less likely to qualify a trade secret. ✓ Similarly if the information is readily ascertainable from observation or can be easily reproduced, it is less likely to be a trade secret. ✓ On the other hand, if it can be reverse engineered only with significar expenditures oftime, effort, and money, the product may retain its status as a trade secret.		
4		**Discuss the process involved in Maintaining Trade Secret.**	**[L2] [CO4]**	**[12M]**
		Maintaining trade secrets involves implementing a comprehensive process to protect the confidentiality of the valuable information within a business. Here are the key steps involved in maintaining trade secrets: **Identification and Classification:** Start by identifying and classifying the information that qualifies as trade secrets. Determine which aspects of your business are confidential and provide a competitive advantage, such as formulas, processes, customer lists, pricing strategies, or other proprietary knowledge. Clearly identify and document these trade secrets to ensure proper protection and management. **Internal Policies and Procedures:** Develop and implement internal policies and procedures that govern the handling of trade secrets. These policies should outline how the information should be accessed, stored, and shared within the organization. Employees should be made aware of the policies and trained on the importance of maintaining confidentiality. Restricted Access and Need-to-Know Basis: Limit access to trade secrets only to employees who need the information for their job responsibilities. Implement access controls, both physical and digital, to prevent unauthorized access. Use measures like secure storage facilities, restricted areas, passwords, encryption, and multi-factor authentication to protect the trade secrets from unauthorized disclosure.		

		Non-Disclosure Agreements (NDAs): Require employees, contractors, and business partners who have access to trade secrets to sign non-disclosure agreements (NDAs). NDAs establish legally binding obligations to maintain the confidentiality of the information and prevent its unauthorized use or disclosure. **Employee Training and Awareness:** Conduct regular training sessions to educate employees about the importance of trade secrets and the measures in place to protect them. Employees should be trained on their obligations under NDAs, the handling of confidential information, and the consequences of breaching confidentiality. Foster a culture of awareness and accountability regarding trade secrets throughout the organization. Physical and Digital Security Measures: Implement physical and digital security measures to safeguard trade secrets. This can include secure storage systems, locked cabinets, access controls, firewalls, encryption, secure servers, and regular backups. Regularly update and patch software to address security vulnerabilities. **Vendor and Partner Management:** Extend trade secret protection to vendors, contractors, and business partners who have access to the confidential information. Ensure that appropriate contractual agreements, such as NDAs, are in place to protect trade secrets when sharing them with third parties. **Monitoring and Auditing**: Regularly monitor and audit the access and usage of trade secrets within the organization. Track who has access to the information, how it is being used, and any changes or updates made. This helps detect any unauthorized access or potential breaches of confidentiality. **Incident Response and Remediation**: Establish an incident response plan to address trade secret breaches or unauthorized disclosures promptly. This includes investigating any suspected incidents, taking appropriate legal and disciplinary actions, and remediation measures to mitigate any damage caused. **Regular Review and Updates:** Conduct periodic reviews of trade secret protection measures to ensure they are up to date and effective. As technology and business practices evolve, it's essential to reassess and		

		update security measures accordingly. By following these steps, businesses can establish a robust process for maintaining trade secrets and reduce the risk of unauthorized access or disclosure. It is recommended to seek legal advice and consultation to ensure compliance with trade secret laws and regulations in your jurisdiction.		
5	**a)**	**Discuss why the trade secrets law is developed internationally?**	**[L2] [CO4]**	**[6M]**
		Trade secrets law is developed internationally to address the global nature of trade and commerce. Here are some reasons why trade secrets law is developed at an international level: **Harmonization and Consistency:** International trade secrets law aims to achieve harmonization and consistency among different countries' legal frameworks. This is important because businesses operate across borders, and inconsistent or conflicting trade secret laws can create legal uncertainties and challenges. Harmonization helps establish a level playing field for businesses and facilitates fair competition. **Protection of Intellectual Property:** Trade secrets are a valuable form of intellectual property, and protecting them internationally helps promote innovation, investment, and economic growth. By establishing international standards and minimum levels of protection, countries can encourage businesses to invest in research, development, and the creation of valuable trade secrets. **Cross-Border Misappropriation:** With the increasing globalization of businesses, trade secret misappropriation often involves cross-border activities. International trade secrets law provides mechanisms and legal frameworks for addressing trade secret theft, misappropriation, and unfair competition that transcend national borders. This allows businesses to seek remedies and enforcement against parties located in different jurisdictions. **Intellectual Property Rights Enforcement:** International trade secrets law contributes to a comprehensive intellectual property rights enforcement regime. Alongside patents, trademarks, and copyrights, trade secrets are recognized as an important form of intellectual property. Developing international trade secrets law helps establish a robust legal framework for the protection and enforcement of all forms of intellectual property rights. **Trade Agreements and Treaties:** International trade secrets law is often incorporated into trade agreements and treaties. These agreements provide a platform for countries to negotiate and establish common standards for the protection of trade secrets. For example, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),		

		administered by the World Trade Organization (WTO), includes provisions on the protection of trade secrets and encourages member countries to establish effective enforcement mechanisms. **Cross-Jurisdictional Collaboration:** International trade secrets law fosters collaboration and cooperation between countries in addressing trade secret misappropriation. Countries can share best practices, information, and intelligence to combat cross-border trade secret theft and establish mechanisms for cooperation in investigations, evidence gathering, and legal proceedings. **Economic and Market Integration:** Developing international trade secrets law supports economic and market integration by facilitating the flow of trade and investments. When businesses have confidence that their trade secrets will be protected globally, they are more likely to engage in cross-border activities, expand their operations, and contribute to economic development. Overall, the development of international trade secrets law aims to establish a global framework for the protection and enforcement of trade secrets. It recognizes the importance of trade secrets in fostering innovation, promoting fair competition, and encouraging cross-border trade and investment.		
	b)	**List out the liabilities for misapplication of Trade Secrets?**	**[L1] [CO4]**	**[6M]**
		Misappropriation of a trade secret occurs when a person possesses, discloses, or uses a trade secret owned by another without express or implied consent and when the person. ✓ Used improper means to gain knowledge of the trade secret; ✓ Knew or should have known that the trade secret was acquired by improper means; or ✓ Knew or should have known that the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy. The term improper means includes bribery, theft, and misrepresentation, breach of duty to maintain secrecy, or espionage (the practice of spying or of using spies, typically by governments to obtain political and military information) or other means. Thus, misappropriation occurs either when a trade secret is lawfully acquired but then improperly used or when the trade secret is acquired by improper means. **Absence of Written Agreement** ✓ A written agreement prohibiting misappropriation of trade secrets can be enforced through an action for breach of contract; a		

company's trade secrets can be protected against misappropriation even in the absence of any written agreement between the parties.

- ✓ A party owning trade secrets can bring an action in tort for breach of the duty of confidentiality, which duty can arise even without an express agreement.
- ✓ Courts will impose a duty of confidentiality when parties stand in a special relationship with each other, such as an agent-principal relationship (which includes employer- employee relationship) or other fiduciary (involving trust, especially with regard to the relationship between a trustee and a beneficiary) or good faith relationship
- ✓ Courts have consistently held that employees owe a duty of loyalty, fidelity, and responsibility to their employers.
- ✓ In fact, more trade secret cases are brought in tort for breach of confidentiality than in contract for breach of written agreements.

For example: If XYZ company is attempting to make a sale to Jones and informs Jones that the XYZ product is superior to that of competitors because it involves a new breakthrough in technology and explains the trade secret, courts would likely find that Jones is subject to a duty not to disclose the information. Similarly, if XYZ co., explains its trade secrets to its bankers in an attempt to obtain financing, the bankers would likely be precluded from disclosing or using the information. Such implied contracts to protect the information generally arise when the parties‟ conduct indicates they intended the information to be kept confidential or impliedly agreed to keep it confidential.

Misappropriation by Third Party

A number of other parties may also have liability for misappropriation of trade secrets if they knew or should have known they were the recipients of protected information.

For example:

1. Assume Lee is employed by XYZ co., In course of time Mr.Lee learns valuable trade secret information. If Mr.Lee resigns jobs and begins working for new company and it prohibited for both in using the information. He may not misappropriate the information because he was

		in an employee-employer relationship with XYZ Company. New company should not use the information if Mr Lee reveals, if it happen so, then XYZ Company would generally prefer to sue New Company inasmuch as it is far likelier to have deep pockets, meaning it is more able to pay money damages than is an individual such as Lee. 2. If New Company has no reason to know the information was secret or that Mr. Lee may not reveal it, New Company would not have liability for such innocent use of the information. Similarly, if trade secret information were innocently obtained by New Company by mistake, New Company would have no liability for subsequent use or disclosure of the information. **Written Agreement** Employers are generally free to require employee, independent contractors, and consultants to sign express agreements relating to the confidentiality of information. These agreements are usually enforced by courts as long as they are reasonable. The agreements usually include four specific topics: Ownership of Inventions Non-disclosure Provisions Non-solicitation Provisions Non-competition Provisions □ Purpose □ Reasonableness □ Consideration		
6	**a)**	**Explain briefly about trade secret litigation.**	**[L2] [CO4]**	**[6M]**
		Trade secret litigation involves a company's or individual's most confidential technical, financial, or business information, which the company or individual considers its "trade secrets." For example, the formula for Coca-Cola has been protected as a trade secret for over 100 years. For example, rumor has it that KFC moves its secret original recipe to a secure location via armored car and motorcade when it has to update its security systems. And Coca-Cola supposedly keeps its formula in a safe to which only two people know the combination. ✓ If a trade secret is disclosed in violation of a written confidentially agreement, and the parties cannot resolve the dispute themselves, an action for breach of contract may be brought, similar to any other breach of contract action. ✓ The plaintiff may add other causes of action as well, for example, for misappropriation in violation of a state trade secret law. If no		

written agreement exists, the plaintiff must rely upon case law or state statutes protecting trade secrets, or both.

- ✓ To protect itself against a lawsuit by another alleging trade secret violation, companies should require new employees who will have access to confidential information to acknowledge in writing that accepting employment with the new company does not violate any other agreement or violate any other obligation of confidentiality to which the employee may be subject.
- ✓ If grounds for federal jurisdiction exist (the parties have diverse citizenship and the claim exceeds $75000), the action may be brought in federal court.
- ✓ The UTSA [Uniform Trade Secrets Act] provides that an action for misappropriation must be brought within three years after misappropriation is discovered or reasonably should have been discovered.
- ✓ In federal court, the action will be governed by the Federal Rules of Civil Procedure relating to federal civil actions generally.
- ✓ Most states have rules relating to civil procedure that are modeled substantially after the Federal Rules of Civil Procedure and likewise govern the litigation.
- ✓ If the defendant has a cause of action to assert against the plaintiff relating to the trade secret, it must be asserted by way of a counterclaim in the litigation so that all disputes between the parties relating to the information can be resolved at the same time.
- ✓ After the complaint, answer, and counterclaim have been filed, various motions may be made. Discovery will commence. The plaintiff and defendant will take depositions to obtain testimony from those who may have information about the case.
- ✓ Ultimately, if the matter cannot be resolved by private agreement, it will proceed to trial. The trade secret owner must prove misappropriation by a preponderance of the evidence. Ether party may request a jury trial; otherwise, a judge will render the decision. Appeals may follow.
- ✓ One of the difficult issues in trade secret litigation arises from the

fact that the trade secret sought to be protected often must be disclosed in the litigation so the judge or jury can evaluate whether the information is sufficiently valuable that it affords its owner a competitive advantage.

- ✓ Similarly, the owner's methods of protecting the information often must be disclosed so the fact-finder can determine whether the owner has taken reasonable measures to protect the alleged trade secrets.
- ✓ The dilemma faced by trade secrets owner is that they must disclose the very information they seek to protect.
- ✓ As technology progresses and the value of certain communication and entertainment inventions increases, trade secret litigation is becoming an increasingly common and high-stakes occupation.

Trade Secret Protection Programs: Trade secrets are legally fragile and may be lost by inadvertent disclosure or failure to reasonably protect them, companies should implement trade secret protection programs to safeguard valuable information. Because trade secret protection can last indefinitely, businesses should devote proper attention to the methods used to ensure confidentiality of information. Developing programs and measure to protect trade secrets is an easy way to demonstrate to a court that an owner values its information and takes appropriate measures to maintain its secrecy.

Physical protection

- ✓ There are a variety of tangible measures a company can implement to protect trade secrets, including the following:
- ✓ Safeguarding information under lock and key; Protecting the information from unauthorized access;
- ✓ Forbidding removal of protected information from the company premises or certain rooms;
- ✓ Retaining adequate security during evening and weekends either through alarm systems or security services; Ensuring tours of the company premises do not expose outsiders to valuable processes or information;
- ✓ Using check-out lists when valuable equipment or information is removed from its normal location;

		✓ Monitoring employees‟ use of e-mail and the Internet to ensure confidential information is not being disseminated; ✓ Using encryption technology and antivirus protection programs to protect information stored on computers; ✓ Educate employees on trade secrets and protection of trade secrets; ✓ Ensuring information retained on computers is available only on company networks so that access can be easily tracked. ✓ Most companies will not need to implement all of the measures described above. Courts do not require absolute secrecy or that extreme measure be taken to protect information. Rather, reasonable measures will be sufficient to protect the status of information as trade secrets. Contractual Protection ✓ Another method of protecting trade secrets is by contract, namely, requiring those with access to the information to agree in writing not to disclose the information to other or use it to the owner's detriment. ✓ Similarly, in licensing arrangements, trade secret owners should ensure the license agreements contain sufficient protection for trade secret information. ✓ Employers should use noncompetition agreements to ensure former employees do not use material gained on the job to later compete against the employer. ✓ With the advent of the Internet and the increased ease of electronic communications, employers have become concerned about the loss of trade secrets through dissemination over the Internet. ✓ It has been held that "once a trade secret is posted on the Internet, it is effectively part of the public domain, impossible to retrieve".		
	b)	**What are the outputs of trademark secrets**	**[L1] [CO4]**	**[6M]**
		Trademark secrets, or trade secrets, are a form of intellectual property that refers to confidential and valuable information that is not generally known or easily accessible to others. Unlike patents or trademarks, trade secrets are not registered or disclosed to the public. Therefore, the outputs of trade secrets can vary depending on the specific information they protect. Here are some potential outputs or outcomes associated with trade secrets: **Competitive Advantage:** Trade secrets can provide businesses with a		

		competitive edge by granting them exclusive access to valuable information that gives them an advantage over their competitors. This advantage can be in the form of unique manufacturing processes, customer lists, pricing strategies, or other proprietary information. **Confidentiality:** One of the primary outputs of trade secrets is maintaining confidentiality. By keeping certain information secret, businesses can protect their valuable assets and prevent others from using or exploiting them without permission. **Economic Value:** Trade secrets can have significant economic value for businesses. By keeping proprietary information secret, companies can leverage it to gain market share, attract investors, secure partnerships, or negotiate favorable licensing agreements. **Innovation and Research:** Trade secrets often encourage innovation and research within a company. By protecting confidential information, businesses can invest in the development of new technologies, processes, or products, knowing that their investment will be safeguarded and not easily replicated by competitors. **Employee Retention:** Trade secrets can play a role in retaining key employees. By entrusting them with valuable proprietary information, businesses can foster loyalty and incentivize employees to stay with the company, as they become integral to the maintenance and further development of the trade secret. **Legal Protection:** If a trade secret is misappropriated or unlawfully disclosed, businesses can pursue legal action to protect their interests. The outputs in this case would involve seeking damages, injunctions, or other remedies through litigation or alternative dispute resolution mechanisms.		
7	**a)**	**How long does a trade secret last?**	**[L2][CO4]**	**[2M]**
		The duration of protection for a trade secret can vary depending on the jurisdiction and the circumstances surrounding the trade secret. Unlike patents or trademarks, which have fixed terms of protection, trade secrets can potentially last indefinitely as long as the information remains confidential and meets the criteria of a trade secret. In general, the duration of trade secret protection is determined by how long the information remains secret and maintains its value as a secret. Once the information becomes publicly known or readily accessible through proper means, it no longer qualifies for trade secret protection. To maintain trade secret protection, businesses must take reasonable steps to keep the information confidential, such as implementing security measures, restricting access to the information on a need-to-know basis, and having non-disclosure agreements in place with employees, partners,		

and contractors.

It's important to note that trade secret protection is subject to legal requirements and potential limitations in different jurisdictions. Many countries have laws and regulations specifically addressing trade secrets, and businesses must comply with those laws to receive legal protection. Additionally, trade secrets can lose their status if they are independently developed by others or if they are lawfully obtained through reverse engineering, licensing, or other means.

It's advisable for businesses to consult with intellectual property professionals or legal experts familiar with trade secret laws in their specific jurisdiction to understand the applicable rules and regulations and how they impact the duration of trade secret protection.

	b)	**Distinguish between international trade mark law and copy right law.**	**[L2][CO4]**	**[10M]**

International trademark law and copyright law are two distinct branches of intellectual property law that provide protection for different types of creative works and assets. Here are the key distinctions between the two:

Comparison	Trade mark	Copy right
Subject Matter of Protection	Trade mark law protects distinctive signs, symbols, names, logos, or designs that are used to distinguish goods or services of one business from those of others. It focuses on protecting brand names and marks that identify the source of goods or services in the marketplace.	Copyright law protects original creative works, such as literary, artistic, musical, or dramatic works, including books, paintings, music, sculptures, photographs, and software. It covers the expression of ideas rather than the ideas themselves.
Scope of Protection	Trademark protection extends to preventing others from using a similar or identical mark that may cause confusion among consumers regarding the source of goods or services. It aims to protect the goodwill, reputation, and distinctiveness associated with a particular brand.	Copyright protection grants the owner exclusive rights to reproduce, distribute, display, perform, and create derivative works based on the original work. It focuses on preventing unauthorized copying, distribution, or use of the protected work without the

					permission of the copyright owner.		
			Registration Requirement:	Trademarks can be registered with national or regional trademark offices to obtain statutory rights and protections. Registration provides the owner with a presumption of ownership and the exclusive right to use the mark in the registered classes of goods or services.	Copyright protection is automatic upon the creation of an original work in a tangible form. In many countries, registration is not required for copyright protection to exist. However, registering the copyright with a copyright office may provide additional benefits, such as the ability to bring a lawsuit and seek statutory damages.		
			Duration of Protection:	Trademark protection can potentially last indefinitely as long as the mark is used continuously in commerce and its registration is properly maintained. Trademarks can be renewed periodically, typically every 10 years.	Copyright protection generally lasts for the life of the author plus a certain number of years after their death. The duration of copyright protection varies among countries, but it is typically several decades after the author's death or a fixed number of years from the date of publication or creation.		
			International Framework	International trademark protection is facilitated through various international treaties, such as the Madrid Agreement and the Madrid Protocol, which allow for the centralized filing and management of trademark applications across multiple jurisdictions.	International copyright protection is primarily governed by the Berne Convention for the Protection of Literary and Artistic Works. It provides automatic protection for works of authors from member countries without the need for formal registration.		
8		**What are all the items can be considered as a trade secret? How it can be Safe guarded from others.**				**[L2] [CO4]**	**[12M]**

		A trade secret can encompass a wide range of confidential and valuable information that provides a business with a competitive advantage. While the specific items that can be considered trade secrets may vary depending on the industry and circumstances, here are some common examples: **Formulas and Recipes:** Proprietary formulas and recipes used in manufacturing processes or for creating unique products can be considered trade secrets. This includes recipes for food and beverages, chemical formulas, or formulations used in various industries. **Customer Lists and Data:** Confidential customer lists, databases, and customer-specific information, including purchasing habits, preferences, or contact details, can be valuable trade secrets. **Manufacturing Processes:** Detailed procedures, techniques, or methods used in the production of goods can qualify as trade secrets. These may involve specialized equipment, timing, sequencing, or other factors that contribute to the quality or efficiency of the manufacturing process. Software Algorithms: Proprietary algorithms, computer programs, or software systems that provide a competitive advantage in terms of functionality, efficiency, or unique features can be trade secrets. **Business Strategies and Plans**: Confidential business strategies, marketing plans, expansion strategies, pricing models, or other proprietary approaches that contribute to a business's success can be trade secrets. **Technical Know-How:** Specialized technical knowledge, expertise, or insights that are not commonly known in the industry can be protected as trade secrets. **Research and Development (R&D) Data:** Confidential research data, experimental results, laboratory notebooks, and findings related to new		

		products, technologies, or innovations can be trade secrets. To safeguard trade secrets from unauthorized use or disclosure, businesses can employ several strategies: **Confidentiality Agreements:** Use non-disclosure agreements (NDAs) or confidentiality agreements when sharing trade secret information with employees, contractors, or business partners. These agreements legally bind the recipients to maintain the confidentiality of the trade secrets. **Restricted Access:** Limit access to trade secret information on a need-to-know basis. Implement physical and digital security measures, such as restricted areas, secure servers, password protection, encryption, and data loss prevention mechanisms. **Employee Training:** Train employees about the importance of trade secrets, their obligations to maintain confidentiality, and the potential consequences of unauthorized disclosure or use. **Vendor and Partner Management:** Implement stringent contractual provisions with vendors, suppliers, and business partners to protect trade secrets and restrict their use or disclosure. **Marking and Labeling:** Clearly label and mark documents, files, or information that contain trade secrets as "Confidential" or "Trade Secret" to communicate their protected status. **Exit Procedures:** Establish exit procedures for employees leaving the company to ensure the return or deletion of trade secret information and to remind them of their ongoing obligations to maintain confidentiality. **Regular Audits and Updates:** Conduct periodic audits to assess the effectiveness of trade secret protection measures and update them as needed to adapt to changing circumstances or technological advancements.		

		It's important for businesses to consult with legal professionals to develop comprehensive trade secret protection strategies tailored to their specific needs and comply with applicable laws and regulations regarding trade secrets in their jurisdiction.		
9		**Explain in briefly about misappropriation right of publicity.**	**[L2] [CO4]**	**[12M]**
		The right of publicity refers to an individual's right to control and profit from the commercial use of their name, likeness, image, or other identifiable aspects of their identity. Misappropriation of the right of publicity occurs when someone uses another person's name, likeness, or identity without permission for commercial purposes, resulting in unauthorized financial gain or harm to the individual's reputation. Here's a brief explanation of misappropriation of the right of publicity: **Definition**: Misappropriation of the right of publicity involves the unauthorized use of a person's name, likeness, or identity for commercial purposes, such as advertising, endorsements, merchandising, or promotional activities. It refers to the exploitation of an individual's image or persona without their consent or proper compensation. **Elements**: To establish a claim of misappropriation of the right of publicity, certain elements must generally be met. These elements may vary among jurisdictions, but commonly include: Use of the individual's name, likeness, or identity for commercial purposes. Lack of consent or permission from the individual. The use resulted in financial gain or caused harm to the individual's reputation or commercial value. **Scope of Protection:** The right of publicity varies among jurisdictions, with some providing statutory protection while others recognize it as a common law right. The scope of protection also varies, as some jurisdictions extend the right beyond celebrities to cover individuals who may have a reasonable expectation of privacy or commercial value associated with their identity.		

		Exceptions and Balancing: Misappropriation of the right of publicity is not absolute, and exceptions or defenses may exist. These can include matters of public interest, news reporting, commentary, parody, or transformative use that significantly alters the original identity or likeness. Balancing the right of publicity with the principles of free speech and expression is a key consideration in legal analysis. **Remedies**: Individuals whose right of publicity has been misappropriated can seek various remedies. These may include injunctive relief to stop the unauthorized use, damages to compensate for financial losses or harm to reputation, disgorgement of profits obtained through the unauthorized use, and possibly punitive damages for willful or intentional violations. **Jurisdictional Variations:** The legal recognition and protection of the right of publicity can differ significantly among jurisdictions. Some jurisdictions may have specific statutes that explicitly define and protect the right of publicity, while others rely on common law principles or related doctrines like privacy rights or unfair competition laws. It's important to consult with legal professionals and consider the specific laws and regulations of the relevant jurisdiction to understand the nuances and requirements of the right of publicity and its misappropriation in a particular context.		
10		**Explain in briefly about false advertising with an example and how it affects the IPR**	**[L2] [CO5]**	**[12M]**
		□ In 1943, the federal trademark law, the Lanham Act, was passed. □ Section 43(a) of the act (15 U.S.C. § 1125) prohibited false designations of origin, namely, descriptions or representations tending falsely to describe or represent goods or services. □ It was not an effective vehicle to use when a party made misrepresentations relating to the nature or quality of goods or services. □ Moreover, until the passage of the Lanham Act, Plaintiffs, an element that was often difficult to demonstrate. □ Although the individual states enacted statutes prohibiting false		

advertising, these statutes varied from state to state and were often ineffective to prohibit false advertising that was national in scope.

- The expansive language of section 43 of the Lanham Act, however, soon began to be used to protect not only against unregistered trademarks but also against nearly all forms of false advertising.
- In 1989 Congress amended the Lanham Act and broadened the scope of section 43 for infringement of trademarks (both registered and unregistered marks) and trade dress, while the other portion of the statute allows the assertion of claims for false advertising and trade libel.

Under section 43(a), whoever uses a false or misleading description or representation of tact or false designation of origin in commercial advertising or promotion or misrepresents the nature, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities is liable to any person likely to be injured by such act (if the act is committed in interstate commerce)

For Example:

- ✓ A failure to disclose that advertised prices did not include additional charges;
- ✓ A statement that a pregnancy test kit would disclose results in "as fast as ten minutes" when a positive result would appear in ten minutes but a negative results might take thirty minutes;
- ✓ A claim that a certain motor oil provided longer life and better engine protection than a competitor's product when that claim could not be substantiated;
- ✓ A false claim that automobile antifreeze met an automobile manufacturers standards; Covering up a label stating "Made in Taiwan" that appeared on goods

International Protection against Unfair Competition

- ✓ The United States has assumed certain obligations under international agreements in the arena of unfair completion, chiefly under the Paris Convention.
- ✓ The Paris Convention seeks to afford citizens of each of the more than 160 member nation's protection against unfair competition and trademark infringement and requires that member nations provide the same level of protection against unfair competition to

		citizens of other member nations as they do for their own citizens. ✓ The Paris Convention expressly prohibits acts that create confusion by any means with a competitor, false allegations that discredit a competitor, and indications that mislead the public in regard to the nature or characteristics of goods. ✓ Section 44 of the Lanham Act (15 U.S.C§ 1126) implements the Paris Convention and expressly provides that any person whose country of origin is a party to any convention or treaty relating to the repression of unfair competition, to which the United States is also a party, is entitled to effective protection against unfair completion.		

UNIT –V

NEW DEVELOPMENT OF INTELLECTUAL PROPERTY

1		**Discuss whether the New Developments in the Right of Publicity is necessary, if so in what way?**	**[L2] [CO6]**	**[12M]**
		As is common with intellectual property rights in today's society, some of the new issues relating to the rights of publicity stem from increasing technological advances. Without prior permission one should not appear in the digital technology used movie. The international Trademark Association has proposed amending the U.S. Trademark Act to create a federal right of publicity with postmortem rights (although such rights would be limited to some specific period of duration after death). Similarly, names, gestures, and likenesses are unprotectable under copyright law because they are titles or ideas rather than expressions. Thus, in some instances, federal copyright law may control a plaintiff's rights, while in other instances; only the right to publicity will provide protection. California recently passed the Astaire Celebrity Image Protection Act (Cal.Civ.Code § § 3344-3346) to allow heirs of celebrities to block commercial uses of deceased celebrities" likenesses while allowing a "safe harbor exemption" to artistic uses, such as the digital insertion of President Kennedy's image into the movie Forrest Gump, or uses for news, public affairs, and so forth. Over the years, there have been new developments and debates surrounding this legal concept. Let's discuss whether these developments are necessary and, if so, in what way. **Expanding digital landscape:** With the rise of social media, online advertising, and digital content creation, individuals' identities can be easily exploited without their consent. New developments in the right of publicity can help protect individuals from unauthorized use of their personal information in various digital platforms. **Protecting celebrities and public figures:** Celebrities and public figures often rely on their name, image, and likeness for their careers and brand endorsements. Enhanced right of publicity laws can		

		safeguard their interests by giving them more control over how their identity is used for commercial purposes, preventing unauthorized endorsements or associations. **Balancing privacy and free speech:** The right of publicity must be balanced with other important rights, such as free speech and privacy. While individuals should have the right to control the commercial use of their identity, it is essential to ensure that this doesn't infringe on legitimate forms of expression or limit the public's access to information. **Addressing evolving challenges:** As technology continues to advance, new challenges emerge, such as deepfakes (manipulated videos or audios) that can convincingly impersonate individuals. Evolving right of publicity laws can provide a legal framework to combat these challenges and protect individuals from malicious use of their identity. **Economic implications:** The right of publicity can have significant economic implications for individuals, particularly those in the entertainment and sports industries. By granting individuals more control over the commercial use of their identity, they have a better opportunity to monetize their fame and protect their economic interests. **Jurisdictional variations:** The right of publicity laws vary across jurisdictions, making it challenging to maintain consistent protection for individuals' identities. New developments can help establish clearer and more uniform standards, providing individuals with stronger legal recourse and protection, irrespective of their location. **Impact on creativity and transformative works:** Some argue that expansive right of publicity laws could stifle creativity and limit transformative works such as parody, satire, or historical documentaries. Striking a balance between protecting individuals' rights and allowing for creative expression is crucial to ensure the development of a vibrant and diverse cultural landscape. The new developments in the right of publicity are necessary to adapt to the evolving digital landscape, protect individuals' interests, address emerging challenges, and provide a legal framework that balances various rights. However, it is essential to carefully consider the implications on free speech, privacy, creativity, and the overall cultural		

		and economic landscape while formulating and implementing these developments.		
2		**Explain new developments in the copyright protection for following: a) Computer programs b)Video games c)Piracy of software**	**[L2] [CO6]**	**[12M]**
		a) **Computer programs** Copyright protection for computer programs has witnessed several new developments in recent years. These developments primarily stem from emerging technologies, changing legal interpretations, and international harmonization efforts. Here are some notable advancements in copyright protection for computer programs: **API Copyrightability:** Application Programming Interfaces (APIs) are sets of rules and protocols that enable different software applications to communicate with each other. The question of whether APIs are eligible for copyright protection has been a subject of debate and legal disputes. In 2014, the landmark case Oracle v. Google reached the U.S. Supreme Court, which ruled that APIs could be eligible for copyright protection under certain circumstances. The decision clarified that original and creative elements of APIs may be protected, while functional aspects generally remain unprotectable. **Fair Use and Transformative Use:** Fair use is a doctrine that allows the limited use of copyrighted material without permission from the copyright owner. In the context of computer programs, courts have increasingly recognized the importance of fair use in fostering innovation and development. Fair use defenses have been successfully raised in cases involving the reproduction of code snippets for interoperability purposes, reverse engineering, and software analysis. Additionally, transformative use, which involves using copyrighted material in a substantially different manner, has been considered favorably in cases involving computer programs. **Open Source Licensing:** Open source software licenses, such as the GNU General Public License (GPL) and the Apache License, play a significant role in the copyright protection of computer programs. These licenses provide legal frameworks that grant certain rights to users while		

also imposing certain obligations and restrictions. The adoption and enforcement of open source licenses have gained prominence, ensuring that the original authors' copyrights are respected while fostering collaborative development and sharing of software.

International Harmonization: Efforts have been made to harmonize copyright protection for computer programs globally. The World Intellectual Property Organization (WIPO) has been working on international treaties and agreements, such as the WIPO Copyright Treaty (WCT) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to establish minimum standards for copyright protection of computer programs across different countries. This promotes consistency in legal frameworks and facilitates cross-border protection and enforcement.

Digital Rights Management (DRM): With the proliferation of digital distribution and licensing models, technological protection measures, commonly referred to as DRM, have gained importance in safeguarding the copyright interests of software developers and distributors. DRM technologies aim to control access to and usage of copyrighted computer programs, preventing unauthorized copying or modification. However, the efficacy and balance of DRM systems with respect to users' rights and fair use exceptions remain topics of ongoing debate.

b)Video games

Copyright protection for video games has witnessed several new developments in recent years, driven by advancements in technology, evolving legal interpretations, and industry practices. Here are some notable advancements in copyright protection for video games:

Avatar and Character Copyright: Video games often feature unique characters, avatars, and other visual elements. The question of whether these elements are eligible for separate copyright protection has gained attention. Courts have recognized that distinctive and original characters within video games may be protectable under copyright law. This can extend to character designs, expressions, and storylines associated with

		the characters. **Streamed and Online Gameplay:** The rise of live streaming platforms and online multiplayer games has introduced new challenges in copyright protection. Streamers broadcasting gameplay content and developers providing online game services navigate issues such as fair use, licensing, and the use of copyrighted music or artwork within games. Platforms like Twitch and YouTube have implemented policies and licensing agreements to address copyright concerns and facilitate compliance. **Esports and Competitive Gaming:** The growth of esports and competitive gaming has spurred developments in copyright protection. Issues related to the use of game footage, broadcasting rights, and sponsorship agreements have gained attention. Game developers and tournament organizers often employ licensing agreements and contracts to protect their intellectual property and commercial interests. Additionally, player contracts may address copyright ownership and rights related to in-game content created by players. **User-Generated Content:** Many video games now incorporate features that allow players to create and share user-generated content (UGC) within the game or on external platforms. UGC can include custom levels, mods, artwork, and other creative works. Developers have implemented tools and policies to address copyright infringement, while also embracing and facilitating the creation and sharing of UGC through licensing frameworks and content moderation systems. **Virtual Reality (VR) and Augmented Reality (AR):** The emergence of VR and AR technologies has introduced new copyright considerations. Developers creating immersive experiences must navigate issues such as the use of copyrighted materials within virtual environments, potential infringements of real-world trademarks or copyrights, and the protection of original VR or AR content. Copyright protection extends to the audiovisual elements, code, and artistic assets that constitute the VR or AR experience. **International Enforcement and Piracy:** Video game copyright infringement remains a challenge in the digital age. With the global nature of the gaming industry, enforcing copyright and combating piracy across different jurisdictions can be complex. Game developers and		

publishers employ digital rights management (DRM) systems, take legal actions against infringing entities, and work with industry associations and platforms to protect their intellectual property rights

C) Piracy of software

Copyright protection for combating piracy of software has seen various developments in recent years, driven by advancements in technology, international cooperation, and legal measures. Here are some notable advancements in copyright protection against software piracy:

Digital Rights Management (DRM): DRM technologies have evolved to prevent unauthorized copying, distribution, and use of software. DRM systems employ encryption, licensing controls, and authentication mechanisms to safeguard software from piracy. Continuous advancements in DRM aim to strike a balance between protecting intellectual property rights and ensuring user convenience and fair use.

Anti-Piracy Measures: Software developers and industry organizations actively employ anti-piracy measures to detect and deter unauthorized distribution and use of software. These measures include watermarking, fingerprinting, and monitoring systems that identify pirated copies and enable enforcement actions against infringing parties.

International Cooperation and Enforcement: International cooperation among governments, law enforcement agencies, and industry stakeholders has strengthened efforts to combat software piracy. Collaborative initiatives, such as the Anti-Counterfeiting Trade Agreement (ACTA) and the Business Action to Stop Counterfeiting and Piracy (BASCAP), foster cross-border cooperation, information sharing, and enforcement actions against software pirates.

Online Piracy Monitoring and Takedown: The rise of online piracy platforms and file-sharing networks has necessitated proactive monitoring and enforcement measures. Software developers and industry associations employ automated systems and manual monitoring to detect and report instances of software piracy. They work closely with internet service providers (ISPs) and online platforms to take down infringing content and address repeat offenders.

Legal Actions and Penalties: Copyright holders, including software developers, can take legal action against infringing parties to enforce their

		rights. Civil lawsuits, cease and desist letters, and settlement agreements are common legal strategies employed to combat software piracy. In some jurisdictions, criminal penalties, fines, and imprisonment can be imposed on individuals or organizations involved in large-scale software piracy. **Educational and Awareness Campaigns:** Promoting awareness about the negative consequences of software piracy and educating users about legal software acquisition and licensing has been an ongoing effort. Software industry organizations and government agencies conduct awareness campaigns, public service announcements, and educational initiatives to foster a culture of respect for intellectual property rights and discourage piracy. **Subscription and Cloud-Based Models:** The shift towards subscription-based models and cloud computing has provided alternative avenues for software distribution and licensing. By offering affordable and convenient access to software, these models aim to reduce the incentive for piracy. Software-as-a-Service (SaaS) platforms and cloud-based solutions provide centralized control and licensing management, reducing the risk of unauthorized copying and distribution.		
3	**a**	**Discuss New Developments in Copy right Law?**	**[L2] [CO6]**	**[6M]**
		While acknowledging that clothing is a useful article and thus not subject to copyright protection, a New York Federal court ruled that lace design, copyrighted as writing and incorporated into wedding dresses, were protectable and enjoined another maker of wedding dresses from making or marketing copies. Similarly, detailed embroiders or some other two dimensional drawing or graphic work affixed to a portion of a garment may be copyrightable. ➢ A federal court in California recently held that while type fonts themselves are not protectable under copyright law, a software program that generated and created the typefaces was protectable. ➢ As soon as Stephen King sold his book riding the Bullet exclusively in an Internet format, an individual cracked the copyright protection software and posted free copies of the book on the Internet. The publishers responded by adopting stronger encryption technology. Similarly, in 2000, Mr. King suspended online publication of a serial novel because too many individuals were downloading the work		

		without paying it. ➢ It late 1997 President Clinton signed into law the No Electronic Theft [NET] Act [amending 18 U.S.C §2319] to enhance criminal penalties for copyright infringement, even if the infringer does not profit from the transaction. The act also extends the statutes of limitations for criminal copyright infringement from three to five years, and allows law enforcement officers to use federal copyright law against online copyright violation, thereby extending the same copyright protection to the Internet that is provided to other media. ➢ In September 1999, the Clinton administration relaxed government restrictions on the export of encryption products and simultaneously introduced new legislation to give law enforcement agencies greater authority to combat the use of computers by terrorists and criminals and to create a new code cracking unit within the FBI [Foreign Bureau of Investigation]. ➢ In mid-2000, president Clinton signed the Electronic signatures in Global and National Commerce Act, making digital execution, called e-signatures, as legally binding as their paper counterparts. ➢ In 2000, federal prosecutors in Chicago indicted seventeen people who called themselves "Pirates with Attitude" for pirating thousands of software program. The case ➢ was brought under the NET Act. Some of the individuals were former employees of Intel and Microsoft. ➢ The copyright office has recommended that congress amend section 110 of the copyright Act to grant educators the right to transmit copyrighted works for distance learning if certain conditions are met.		
	b	**Explain about copyright law treaty with suitable examples?**	**[L2] [CO6]**	**[6M]**
		Leading International Treaties, Convention and Agreements on Copyright The Berne Convention for the Protection of Literary and Artistic Works, 1886 The Berne Convention is the oldest international Convention in the field of copyright providing the minimum standards of protection. While enacting the law in respect of the literary and artistic this convention have to be compiled which lays down fundamental principles that are		

capable of universal application in a manner equitable to all interested in the right.

More than that, this convention has been periodically been revised, the last revision being on September 28, 1979, is a benchmark legislation, prescribing certain minimum standards of protection relating to the rights of authors and the duration of protection and hence mandated by the WTO agreement, Agreement On Trade-Related Aspect Of Intellectual Property Rights (TRIPS) for its signatories.

Main provisions

Some of the main provisions of the Berne Convention which are to be taken into consideration are the definition of Literary and artistic works, the protected works and the requirements for protection to them; criteria of eligibility for protection; possible limitation of protection of certain works of national of certain countries outside the union; right to enforce protected rights; infringing copies; special provisions regarding the developing countries etc.

National treatment

The most significant right out of the rights provided under this Convention is the national treatment for the works covered by the convention is automatic and is available in all the countries of union, other than the country of origin and this is not governed by any procedural formality. But the extent of the protection, as well as the means of the redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed. This means that while protection is assured, the procedural means of securing it is what prescribed by the law of the country where protection is sought.

Compliance with some major provisions of the Berne Convention-TRIPS requirement

TRIPS Agreement is not a stand-alone agreement. By reference it incorporates appropriate provisions of previous treaties and Conventions. As far as the Berne Convention is concerned, TRIPS requires that the members of WTO shall comply with certain specific

		provisions of the Berne Conventions and the Appendix thereto, expecting the provision dealing with the moral rights of the author or of the rights deprived there from. **Universal Copyright Convention, 1952** Universal Copyright Convention originally adopted in the year 1952 and later on protocols to the Convention are done at Paris July 24, 1971. This Convention is intended to facilitate a wider dissemination of works of the human mind and increase international understanding. The WIPO Internet Treaties: The WIPO Performances and Phonograms Treaty (WPPT), 1996 and The WIPO Copyright Treaty (WCT), 1996. The WIPO Performances and Phonograms Treaty (WPPT), 1996 and the WIPO Copyright Treaty (WCT), 1996 also known as the Internet Treaties, make it an offence to circumvent technological measures employed by authors to protect their works. The WIPO Copyright Treaty (WCT), 1996 is a special agreement that contracting parties of the Berne Convention may enter into without prejudice to the Berne Convention. WCT, in addition to stipulating that contracting parties apply mutatis mutandis the provisions of the Berne Convention, in respect of the protection provided by WCT, requires that the following shall be protected by copyright in the countries of the contracting parties: ✓ Computer programs, whatever may be the mode or form of their expression, and ✓ Compilations of data or other material (database), in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations.		
4	**a**	**Discuss New Developments in Patent Law?**	**[L2] [CO6]**	**[6M]**
		The patent Act has proven remarkably flexible in accommodating changes and development in technology. Thus advisement in technology generally has not necessitated changes in the stately governing patent protection. **Business method and software patent:** Many of the cutting-edge issues in patent law related to patents for		

computer software. For several years, the conventional wisdom has been that unless a computer program had significant commercial value and application patent protection was often counterproductive or ineffective in that the PTO often took two years to issue a patent, roughly the same time it took for the software program to become absolute.

Biotechnology patent:

Medicines, Science, agricultural and pharmacology present the other cutting-edge issues in patent law. Research into genes may hold the key to curing disease throughout the world. Agricultural research may hold the key to providing sufficient food for the world's ever- increasing population. The development of strains of plants and crops that are resistant to brought and disease has also led to an increasing number of patents issued, and attendant litigation. In the field of "agbiotech".

American Investors Protection Act of 1999 [AIPA]:

The AIPA was signed into law in 1999 and represents the most significant changes to patent law in twenty years. Although some of the provisions of AIPA have been discussed earlier, its key subtitles are as follows:

- Inventors" Right Act of 1999
- The First Inventor Defense Act of 1999
- The patent term guarantee act of 1999
- The domestic publication of Foreign filed patent application act of 1999
- The optional Inter parts reexamination procedure Act of 1999

Introduction of International Patent protection:

The rights granted by a U.S Patent extend only throughout the U.S and have no effect in a foreign country. Therefore, an inventor who desires patent protection in other countries must apply for a patent in each of the other countries or in regional patent office.

The Paris convention (already it is in previous units) The European patent organization

Agreement on Trade-Related Aspects of IPR (already it is in previous units) The patent Law Treaty

Foreign Filling Licenses

Applications for United States Patents by Foreign applicants

		The European patent organization: The European Patent Organization (EPO) was founded in 1973 to provide a uniform patent system in Europe. A European patent can be obtained by filing a single application with the EPO headquartered in Munich (or its sub branches in The Hague or Berlin or with the national offices in the contracting nations). Once granted, the patent in valid in any of the EPO countries designated in the application and has the same force as patent granted in any one of the contracting nations.		
	b	**Explain about patent law treaty with suitable examples?**	**[L2] [CO5]**	**[6M]**
		The Patent Law Treaty (PLT), adopted by the World Intellectual Property organization (WIPO) in June 2000, entered into force on April 28, 2005. The PLT is the product of several years of multilateral negotiations on harmonizing global patent systems. The PLT harmonizes and streamlines formal procedures in respect of national and regional patents and patent applications, making the procedures and the global patent system more user friendly. To do so, the provisions of the PLT sets forth a maximum set of requirements a party to the treaty may apply. It does not, however, harmonize substantive patent law. Rather, it makes it easier for patent applicants and patent owners to obtain and maintain patents throughout the world by simplifying and, to a significant degree, aligning formal requirements associated with patent applications and patents among global patent offices and jurisdictions. **The PLT:** ✓ simplifies and minimizes patent application requirements to obtain a filing date, ✓ limits the formal requirements that Contracting Parties (that is, the signatories) may impose, ✓ eases representation requirements for formal matters, ✓ provides a basis for the electronic filing of applications, ✓ provides relief with respect to time limits that may be imposed by the intellectual property office of a Contracting Party and reinstatement of rights where an applicant or owner has failed to comply with a time limit and that failure has the direct		

		consequence of causing a loss of rights, and provides for correction or addition of priority claims and restoration of priority rights.		
5		**Explain the practical aspects of IP audits and process of conducting audit?**	**[L2] [CO5]**	**[12M]**
		Many companies believe that copyright extends only to important literary works and therefore fail to secure protection for their marketing brochures or other written materials. Similarly, companies often fail to implement measures to ensure valuable trade secrets maintain their protectability. Because clients are often unaware of the great potential and value of this property, law firms often offer their clients an intellectual property audit to uncover a company's protectable intellectual property. The IP audit is analogous to the accounting audit most companies conduct on an annual basis to review their financial status. Another type of IP investigation is usually conducts when a company acquires another entity. At that time, a thorough investigation should be conducted of the intellectual property of the target company to ensure the acquiring company will obtain the benefits of what it is paying for and will not inherit infringement suits and other problems stemming from the targets" failure to protect its IP. This type of IP investigation is generally called a due diligence review inasmuch as the acquiring company and its counsel have an obligation to duly and diligently investigate the target's assets. **Conducting the Audit:** • The first step in the audit should be a face-to-face meeting of the legal team and company managers. • The legal team should make a brief presentation on what Intellectual Property is, why it is important to the company, and why and how the audit will be conducted. • Managers will be more likely to cooperate if they fully understand the importance of the audit. • Obtaining this kind of "buyin" from the client's managers and employees will speed the audit and reduce costs. • Moreover, education about the importance of intellectual		

		property helps ensure that managers consider ways to further protect a company's valuable assets and remain alert to possible infringements of the company's Intellectual capital or infringements by the computer of other's right. • Finally, having, outside counsel involved in the process will ensure that communications related to the audit are protected by the attorney-client privilege. • Once the company's managers have been advised of the need for the audit, the legal team should provide a work-sheet or questionnaire to the company specifying the type of information that the firm is looking for so that company files can be reviewed and materials assembled for inspection by the firm and its representatives.		
6	**a**	**Explain about International Trademark law.**	**[L2] [CO6]**	**[6M]**
		The Internet • Trademark owners throughout the world are struggling with new issues presented by increased electronic communication, primarily that occurring through the Internet. • The Internet derives from a network set up in the 1970s by the Department of Defense to connect military and research sites that could continue to communicate even in the event of nuclear attract. • In the 1980s, the National Science Foundation expanded on the system, and its first significant users were government agencies and universities. • In the early1990s, however, it became apparent that the system could provide a global communication network, allowing people from all over the world to talk with each other; send written messages, pictures, and text to each other; and establish web pages to advertise their ware and provide information to their customers. **Assignment of Domain Names** • A company's presence on the internet begins with its address or domain name not only serves as a locator for a company but also functions as a designation of origin and a symbol of goodwill---a trademark. • There are two portions to a domain name: the generic top-level domain, which is the portion of the name to the right of a period (such as .gov or .com) and the secondary level domain, which is the portion of the name to the left of a period (such as "kraft" in Kraft.com").		

- Disputes frequently arise between owners of registered mark and owners of domain names whose domain names similar or identical to the registered marks.

Internet Corporation for Assigned Names and Numbers [ICANN]

- ✓ To help resolve the problems in the domain names registration and use process The government created the ICANN
- ✓ It is a nonprofit corporation
- ✓ It is governed by a board of directors elected in part by various members of the Internet community.

Protecting a Domain Name

People register well-known marks as domain names to prey on consumer confusion by misusing the domain name to divert customers from the legitimate mark owner's site. This practice is commonly called cybersquatting.

There are three approaches for against cyber squatter:

- An action can be brought under the Federal Trademark dilution Act
- A civil suit can be instituted under the recent Ant cybersquatting consumer protection Act, or
- An arbitration proceeding can be instituted through ICANN‟s disputes resolutions process

Cybersqutter and the dilution doctrine: Federal trademark dilution Act (15 U.S.C §
1125 (C)

Cyber squatters and Ant cybersquatting consumer protection Act (15 U.S.C § 1125 (d) [ACPA: Anti cybersquatting consumer Protection Act]

- To prevail in a civil action under ACPA, a plaintiff must prove three thing:

1. The plaintiff's mark is a distinctive or famous mark deserving of protection
2. The alleged cyber squatter's infringing domain name is identical to or confusingly similar to the plaintiff mark
3. The cyber squatter registered the domain name is bad faith

Resolving Disputes through the Uniform Domain Name Dispute Resolution Policy: [UDRP] 1999

- The allegedly wrongful domain name is identical or confusingly similar to the complainants‟ trademark;
- The domain name registrant has no legitimate interest in the domain name and
- The domain name is being used in bad faith.

	b	**Explain about International Copyright law.**	[L2] [CO6]	[6M]
		ternational copyright law refers to the legal framework and agreements that govern the protection and enforcement of copyright on an international scale. Copyright is a form of intellectual property protection granted to the creators of original works, such as literary, artistic, musical, and dramatic creations, as well as software, architectural designs, and other creative expressions. Key aspects of international copyright law include: **Berne Convention for the Protection of Literary and Artistic Works: The** Berne Convention is an international treaty administered by the World Intellectual Property Organization (WIPO). It establishes minimum standards for copyright protection and provides a framework for reciprocal treatment among member countries. Under the Berne Convention, copyright protection is automatic upon the creation of an original work, and registration is not required for international protection. **Universal Copyright Convention (UCC):** The UCC is another international treaty administered by WIPO. It provides an alternative framework for copyright protection, especially for countries that are not part of the Berne Convention. The UCC also establishes minimum standards for copyright protection and facilitates international cooperation and the exchange of copyrighted works. **World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):** TRIPS is a multilateral agreement that sets minimum standards for intellectual property protection, including copyright, among WTO member countries. It covers various aspects of copyright law, including the scope of protection, the rights granted to copyright owners, limitations and exceptions, and enforcement measures. **WIPO Copyright Treaties:** The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) are international treaties administered by WIPO. These treaties address copyright protection in the digital environment, focusing on the protection of digital works and the rights of performers and producers of phonograms. They require member countries to provide certain minimum standards of protection and to adopt effective technological protection measures. **Moral Rights Protection:** International copyright law also recognizes moral rights, which are the non-economic rights of authors to be identified as the creators of their works and to protect the integrity of their works. The Berne Convention and other international agreements		

include provisions for the protection of moral rights, ensuring that authors' reputations and artistic integrity are safeguarded.

Enforcement and Dispute Resolution: International copyright law includes provisions for enforcing copyright rights and resolving disputes. This may involve civil litigation in national courts, administrative proceedings before copyright offices or specialized tribunals, or alternative dispute resolution mechanisms such as arbitration or mediation. Some countries also have criminal penalties for copyright infringement in certain circumstances.

7	**a**	**Explain about International Patent law.**	**[L2] [CO6]**	**[6M]**
		The Patent Cooperation Treaty (PCT) is an international patent law treaty, concluded in 1970. It provides a unified procedure for filing patent applications to protect inventions in each of its contracting states. A patent application filed under the PCT is called an international application, or PCT application. A single filing of a PCT application is made with a Receiving Office (RO) in one language. It then results in a search performed by an International Searching Authority (ISA), accompanied by a written opinion regarding the patentability of the invention, which is the subject of the application. It is optionally followed by a preliminary examination, performed by an International Preliminary Examining Authority (IPEA). Finally, the relevant national or regional authorities administer matters related to the examination of application (if provided by national law) and issuance of patent. A PCT application does not itself result in the grant of a patent, since there is no such thing as an "international patent", and the grant of patent is a prerogative of each national or regional authority. In other words, a PCT application, which establishes a filing date in all contracting states, must be followed up with the step of entering into national or regional phases to proceed towards grant of one or more patents. The PCT procedure essentially leads to a standard national or regional patent application, which may be granted or rejected according to applicable law, in each jurisdiction in which a patent is desired. The contracting states, the states which are parties to the PCT, constitute the International Patent Cooperation Union.		
	b	**Distinguish International trademark law and copy right law?**	**[L2] [CO6]**	**[6M]**

BASIS OF COMPARISON	TRADE MARK	COPYRIGHT
Subject Matter	Trademark law primarily protects distinctive signs, symbols, logos, names, or slogans that are used to identify and distinguish goods or services of one party from those of others. It focuses on protecting brand names and	Copyright law protects original works of authorship, including literary, artistic, musical, and dramatic creations. This can include books, paintings, sculptures,

	their associated goodwill in the marketplace.	songs, movies, software code, and other creative expressions.
Protection Granted	Trademark law grants the owner the exclusive right to use a specific mark in connection with specific goods or services. It aims to prevent consumer confusion and protect the reputation and distinctiveness of a brand. Trademark protection allows the owner to prevent others from using a similar mark in a way that could lead to confusion.	Copyright law grants the creator of an original work exclusive rights to reproduce, distribute, display, perform, and create derivative works based on the original. Copyright protection ensures that others cannot copy, distribute, or publicly display the copyrighted work without the owner's permission.
Registration Requirement	Trademarks can be registered with intellectual property offices in various countries, granting the owner additional legal benefits and presumptions of ownership and validity. However, trademark rights can also be established through common law use and reputation, even without formal registration.	Copyright protection is automatically granted upon the creation of an original work. Registration is not mandatory in most countries, including the Berne Convention member states. However, in some jurisdictions, registration provides additional legal advantages, such as the ability to sue for statutory damages or attorney's fees.
Duration of Protection	Trademark protection can potentially last indefinitely, as long as the mark remains in use and the owner continues to meet renewal requirements.	Copyright protection generally lasts for the author's life plus a certain number of years after their death, typically 50 to 70 years. The duration may vary depending on the country and the type of work.

		Enforcement and Remedies	Trademark owners can enforce their rights through civil actions, seeking injunctions, damages, and other remedies. Trademark infringement can also be challenged before administrative bodies, such as trademark offices or specialized tribunals.	Copyright owners can enforce their rights through civil actions, seeking injunctions, damages, and other remedies. In some cases, criminal penalties may apply for wilful copyright infringement.		
8		**Discuss new developments in international patent law? How can you analyze them?**			**[L2] [CO6]**	**[12M]**
		That there may have been further developments beyond that timeframe. **Patent Harmonization Efforts:** One ongoing development in international patent law is the continued effort to harmonize patent laws and procedures across different countries. This includes initiatives aimed at streamlining patent examination processes, increasing cooperation among patent offices, and fostering greater consistency in the interpretation and application of patent laws. For example, the Patent Law Treaty (PLT) and the Global Dossier Initiative by WIPO are examples of efforts to harmonize and simplify patent procedures globally. **Patentability of Computer-Implemented Inventions:** The patentability of computer-implemented inventions, such as software and business methods, has been a subject of debate and evolving standards in international patent law. Different jurisdictions have taken varied approaches in determining the patent eligibility and patentability criteria for these types of inventions. Some countries have implemented stricter requirements, while others have adopted more liberal approaches. This has led to discussions and potential developments in international harmonization regarding the patentability of computer-implemented inventions. **Challenges in Patent Enforcement:** With the increasing global nature of innovation and technology, enforcing patent rights across multiple jurisdictions has become more complex. Differences in patent laws, procedural requirements, and varying levels of enforcement effectiveness in different countries pose challenges for patent holders seeking effective remedies against infringement. International efforts to			

		enhance cooperation and coordination among patent offices, such as the Patent Prosecution Highway (PPH) and the IP5 Cooperation, aim to address some of these challenges. **Patentability of Biotechnological Inventions:** The patentability of biotechnological inventions, including gene sequences, stem cells, and genetically modified organisms, has been the subject of significant debate and evolving standards. Different countries have adopted diverse approaches and requirements when it comes to the patentability of these inventions. This raises questions about the scope of patent protection for biotechnological innovations and the need for international harmonization. To analyze these developments, one can examine how they impact the legal landscape, patent filing strategies, and the ability to protect inventions globally. Key factors to consider include: **Comparative Analysis:** Compare and contrast the patent laws and requirements of different jurisdictions to identify areas of convergence or divergence. Analyze the implications of these differences on patentability, enforcement, and strategic considerations. **International Cooperation:** Assess the impact of international efforts and initiatives aimed at harmonizing patent laws, streamlining procedures, and facilitating cooperation among patent offices. Evaluate the effectiveness of these initiatives in achieving their objectives and promoting a more harmonized and efficient global patent system. **Industry-Specific Impact:** Analyze the impact of developments in patent law on specific industries or sectors, such as biotechnology, software, or pharmaceuticals. Examine how changes in patentability criteria or enforcement practices influence innovation, investment, and competition in these industries. **Patent Strategies:** Evaluate how recent developments in international patent law affect patent filing and prosecution strategies. Consider the potential advantages, challenges, and risks associated with seeking patent protection in different jurisdictions based on evolving patentability standards and enforcement practices. Overall, analyzing new developments in international patent law requires a comprehensive understanding of legal frameworks, emerging		

		trends, and their practical implications. It involves assessing the impact on patent holders, inventors, industries, and the global innovation ecosystem as a whole.		
9		**Explain how a copyright protection is overcoming the cybercrime?**	**[L2] [CO5]**	**[12M]**
		Copyright protection plays a crucial role in combating cybercrime by providing legal mechanisms and remedies to address infringements and unauthorized use of copyrighted works in the digital realm. Here are some ways copyright protection helps overcome cybercrime: **Digital Rights Management (DRM) Technologies:** Copyright owners often use DRM technologies to protect their digital content from unauthorized copying, distribution, or modification. DRM technologies employ encryption, access controls, and licensing mechanisms to prevent unauthorized use and enforce copyright restrictions. By implementing DRM, copyright owners can deter or limit cybercriminal activities, such as unauthorized sharing or piracy of copyrighted materials. **Notice and Takedown Procedures:** Many countries have implemented notice and takedown procedures to address online copyright infringements. These procedures allow copyright owners to notify internet service providers (ISPs) or online platforms about infringing content hosted on their platforms. Upon receiving a valid notice, the ISP or platform is required to promptly remove or disable access to the infringing material. This mechanism helps combat cybercrime by enabling copyright owners to efficiently identify and remove infringing content from the internet. **Anti-Piracy Initiatives:** Governments, industry associations, and copyright enforcement agencies collaborate on anti-piracy initiatives to combat large-scale copyright infringement online. These initiatives involve monitoring and taking action against websites or platforms that facilitate or host pirated content. By targeting and taking down major piracy hubs, these efforts aim to disrupt the distribution of copyrighted works and discourage cybercriminal activities related to piracy. **International Cooperation and Treaties:** International cooperation plays a vital role in combating cybercrime and copyright infringement in the digital space. Countries work together to enforce copyright laws, exchange information, and cooperate on investigations. Treaties such as the Berne Convention and the WIPO Copyright Treaty provide a legal framework for international cooperation and harmonization of copyright laws. They facilitate mutual assistance, enforcement actions, and extradition of offenders involved in cross-border copyright infringements.		

		Digital Watermarking and Tracking Technologies: Copyright owners may use digital watermarking and tracking technologies to embed identifying information within digital content. This allows copyright holders to track the use and distribution of their copyrighted works online. Watermarks can serve as evidence of ownership and can help identify the source of infringing copies. These technologies aid in detecting and combating cybercrime by enabling copyright owners to trace unauthorized use and take appropriate legal action. It's important to note that while copyright protection measures can help overcome cybercrime, they are not foolproof. Cybercriminals may employ various techniques to circumvent or infringe upon copyright protection measures. Additionally, enforcement challenges and jurisdictional issues can arise in the global digital landscape. Therefore, a combination of legal measures, technological solutions, international cooperation, and public awareness is necessary to effectively combat cybercrime and protect copyrighted works in the digital age.		
10	**a**	**What is International patent protection law? Explain.**	**[L2] [CO6]**	**[6M]**
		• • The laws of many other countries differ in various respects from the patent law of the United States. . • There are several international patent treaties to which the United States adheres, primarily the Paris Convention, the PCT, and the Agreement on TRIPS. **1. Paris Convention** • The Paris Convention for the Protection of Intellectual Property of 1883 is a treaty adhered to by more than 170 nations and is administered by WIPO. • The Paris Convention requires that each member country guarantee to the citizens of the other member adherents the same rights in patent and trademark matters that it provides to its own citizens. • The treaty also provides for the right of priority in the case of patents, trademarks, and industrial designs (design patents). • The right of priority means that, on the basis of a patent application filed in one of the member countries, the applicant may, within one year, apply for patent protection in any of the other member countries. • These later applications will then be regarded as if they had been filed on the same day as the first application in the first country. **2. Patent Cooperation Treaty(PCT**) • While the Paris Convention allows applicants to defer decisions about filing in member countries for 12 months, it still requires that applicants file separate applications in each country in which they desire protection. • For an inventor who wishes to market his or her invention on a global basis, this process is		

		time-consuming and expensive in the extreme. • The PCT, which was negotiated in 1970 and came into force in 1978, responds to these concerns by providing a centralized way of filing, searching, and examining patent applications in several countries simultaneously. • Moreover, a standardized application format is used, saving applicants substantial time and money that is ordinarily incurred in ensuring that a patent application complies with the procedural and formatting requirements imposed by each country. • The PCT is adhered to by more than 140 countries, including the United States, and is administered by WIPO. • In sum, the PCT allows an inventor to file one "international" application and seek protection for the invention simultaneously in several countries. **3. The European Patent Organization(EPO)** • The EPO was founded in 1973 to provide a uniform patent system in Europe. • A European patent can be obtained by filing a single application with the EPO headquartered in Munich. • The application is deemed to designate all contracting states in the EPO, but the applicant must later confirm the designation for the specific countries in which protection is desired. • Once granted, the patent is valid in any of the EPO countries designated and has the same force as a patent granted in any one of the contracting nations. • The EPO contracting nations are Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, former Yugoslav Republic of Macedonia, France, Germany, Hellenic Republic (Greece), Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.		
	b	**Discuss about international developments in trade secrets law?**	**[L2] [CO6]**	**[6M]**
		International developments in trade secrets law have gained significant attention in recent years due to the increasing importance of trade secrets as a form of intellectual property and the need for consistent protection globally. Here are some notable international developments in trade secrets law: **The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):** TRIPS, administered by the World Trade Organization (WTO), sets out minimum standards for the protection of intellectual		

		property rights, including trade secrets, among its member countries. It requires member countries to provide legal means for the protection against the unauthorized acquisition, use, and disclosure of trade secrets. TRIPS has contributed to the global recognition of trade secrets as an essential component of intellectual property rights. **The Uniform Trade Secrets Act (UTSA**) in the United States: The United States has made significant strides in trade secrets protection through the adoption of the Uniform Trade Secrets Act (UTSA). The UTSA provides a framework for consistent trade secrets protection across different U.S. states. In 2016, the U.S. federal government also enacted the Defend Trade Secrets Act (DTSA), which provides a federal cause of action for trade secret misappropriation. These developments have enhanced trade secrets protection and enforcement in the U.S. **European Union Trade Secrets Directive**: The European Union (EU) has taken steps to harmonize trade secrets protection across its member states. In 2016, the EU adopted the Trade Secrets Directive, which establishes minimum standards for the protection of trade secrets within the EU. The directive provides a definition of trade secrets, sets out rules for the prevention and redress of trade secret misappropriation, and encourages the use of measures to preserve confidentiality during legal proceedings. **The Asia-Pacific Economic Cooperation (APEC)** and the ASEAN Framework Agreement on Intellectual Property Cooperation: Regional initiatives such as APEC and ASEAN have recognized the importance of trade secrets protection in promoting innovation and economic growth. APEC developed the APEC Model Guidelines for the Protection of Trade Secrets, which provide a framework for member economies to enhance trade secrets protection and enforcement. Similarly, ASEAN has undertaken initiatives to strengthen intellectual property rights protection, including trade secrets, across its member countries. **Bilateral and Multilateral Trade Agreements:** Trade agreements between countries often include provisions on intellectual property rights, which may cover trade secrets protection. For example, the United States-Mexico-Canada Agreement (USMCA) includes		

		provisions on the protection of trade secrets, outlining requirements for effective enforcement and remedies. Bilateral and multilateral trade agreements contribute to the harmonization and improvement of trade secrets protection on a broader international scale. These international developments aim to foster a consistent and robust framework for trade secrets protection, encouraging innovation, attracting investment, and facilitating international trade. While progress has been made, challenges remain in terms of harmonizing legal definitions, procedures, and enforcement mechanisms across different jurisdictions. Continued efforts are needed to enhance international cooperation, exchange best practices, and address the evolving nature of trade secrets misappropriation, particularly in the digital era.		

PREPARED BY

DEPT OF MBA/SIETK