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- Reading note hand written
- report on NEC & NEA
- Case studies at least 3.
- List of government of concern with engineering profession

Case studies related to practice of engineering profession

1. Public safety, industrialization, and protection of environment
2. conflict of interest, personal integrity, and personal privacy
3. professional negligence (duty, breach, proximate cause and damage)
4. breach of duty, criminal law and tort
5. breach of NEC code of conduct
6. breach of Public Procurement Act and Public Procurement Regulation
7. breach of intellectual property rights and copyrights
8. abuse of position and authority

- **Kathmandu, August 17, 2016**

Some slum areas on the banks of the Bagmati River and Dhobikhola were inundated in Kathmandu after torrential rainfall yesterday night and in the wee hours this morning. The slum dwellers were panic-stricken as the swollen rivers entered their settlements. Some vacated their shanties in search of safer places while others spent the night salvaging their belongings. , 45, residing in the slum area for that past 15 years said they had not faced such a situation in the past, but this time they were left high and dry after the river entered the slum area in Bijulibazaar at midnight. He blamed the disaster on causeways made in different areas along the Bagmati River with huge huge pipes to widen the roads. He demanded removal of the causeways. The slum dwellers were busy clearing waterlogged houses today. The flood had damaged the causeway in Dhobikhola, Bijulibazaar. The slums in Bhimsengola and Shantinagar on the banks of the Bagmati River and in Bijulibazaar on the banks of Dhobikhola were worst affected by rainfall. The 24-hour rainfall in Kathmandu till 8:45am was 67.0 mm, according to Meteorological Forecasting Division.

- **Discuss the situation**

- [issues of flood in river.docx](#)



- **Determine the facts in the situation**
- **Determine the stake holders**
- **Assess the motivation of the stakeholders**
- **Formulate the alternative solutions**
- **Seek additional assistance as appropriate**
- **Select the most appropriate course of action**
- **Implemented the selected resolution**

- Public safety, industrialization, and protection of environment
- During quality control visit in a remote village, it has been found that a building is being constructed on the bank of a river and it will be damaged due to flood. Approximately 25% of the construction was completed. The survey was done by your friend with the consent of the local people. However, the quality of construction was as per the specification. Your job is limited to control the quality of building only. Discuss the case and recommend your views on whether to continue the construction or not.

- A client came to a designer and asked to design a multistoried building. The soil type of the proposed site was found not suitable for that type of structure. The designer hesitated to design the building. The client said that he actually was not going to build that structure. He wanted to collect money from outside sources showing that designed as a proposal for his venture and wanted to utilize that money in other business. Explain the roles of the client and the designer in the perspective of professional ethics.

Regulatory Environment

- **Regulatory Environment [5 hours]**
 - **Nepal Engineering Council Act**
 - **Labor Law**
 - **Intellectual Property Right**
 - **Building Codes and Bylaws**
 - **Company Registration**

Regulatory Environment

- **What is regulatory environment?**
- **Environment in which professional encounter during practice**
- **Compliances with rules and regulation**
- **There are several act / rules of state to act**
- **[list law of nepal.pdf](#)**

Legal Aspects Of Professional Engineering In Nepal

The Nepalese legal system as it affects the practice of engineering

- The system of state functioning according to act or Law
- Law may be defined as rules of state
- Law is made by legislature
- Law is implemented by executive (organ of government)
- Engineering professional also work as representative of government

Legal Aspects Of Professional Engineering In Nepal

Following are also to be understand as Law

- Constitution
- Ordinance
- Rules
- Regulation
- Bylaws
- Order

Legal Aspects Of Professional Engineering In Nepal

Sources of law

1. Legislation/ parliament /senate etc
 2. Precedent (previous examples)
 3. Custom
 4. Convention
 5. Opinions
 6. equity
- Etc.

Regulatory environment (conflict and dispute)

- Labour law
- Business law
- Trade union
- Environmental law (sustainable management)
- Cyber law
- Building code/ laws
- Solid waste management law
- Arbitration
- Adjudication
- Conciliation and mediation

Legal Aspects Of Professional Engineering In Nepal

- Different acts and regulation related with development works:
 - 1. Financial Administration regulation 2048 BS (FAR)**
 - 2. public procurement act PPA 2063**
 - 3. Public procurement regulation 2064**
 - 4. Public works directives PWD developed under FAR**
 - 5. related manuals, guidelines, standards and specification adopted from departmental decisions**
 - 6. Contract act 2056**
 - 7. Arbitration act 2055**
 - 8. Contract management act 2020**
 - 9. contractor development act 2055**
 - 10. Procurement guidelines for donors developed under FAR**

Legal Aspects Of Professional Engineering In Nepal

- For feasibility study (1,2,3,4 attracted)
- For detail study (design estimate etc) 1,2,3 attracted
- For contract management (refer 1,2,3,4,5,7,8
- For contract execution (refer 1,2,3,4,5,6,8)

✦ **Labour act**

✦ **Business act**

✦ **Environment protection act**

✦ **Local government Act**

✦ **Nepal Engineering Council Act**

✦ **Intellectual Property Right**

✦ **Building Codes and Bylaws**

✦ **Company Registration**

Legal Aspects Of Professional Engineering In Nepal

Law helps

1. Law and order
2. Cooperation and coordination among citizen / community
3. Maintaining discipline, dignity, and morality
4. Enhancing and protecting rights/ freedom
5. Aware toward duties

epp

labour law and business law

Labour law

Labour law is concerned over the rights, interest, facilities and safety of workers.

Labour is a productive activity and by labour anything shapes its form from abstract to concrete.

In Nepal there is an act by 2048 labour act consider for construction industry too. Before that by the law of factory workers 2019 was in act.

By the labour act 2048 is highlight and define the following thing.

1 Labour Act, 2048 (1992)

Date of Authentication, 2 Jestha 2053 (May 15, 1996)

Amendment Acts

1. Labour (first Amendment) Act , 2054 15 Magh 2054 (Jan.28, 1989)

2. Child Labor (Prohibition and Regulation) Act , 2056.
7 Ashadha 2057 (June 21, 2000 A.D.)

epp

labour law

Preamble: Whereas it is expedient to make timely provisions relating to labour by making provisions for the rights, interests, facilities and safety of workers and employees working in enterprises of various sectors. Now, therefore, the Parliament has made this Act on the twenty first year of the reign of His Majesty King Birendra Bir Bikram Shah Dev

2. Definitions. In this Act, unless the subject or context otherwise requires:-: (a) "Production process" means any of the following processes:

(i) works relating to making, altering, repairing, ornamenting, engraving, finishing, packing, oiling, washing, cleaning, breaking-up, dismantling or other kinds of activities given to any article or substance with a view of bringing it to its use, sale, distribution, transportation, or disposal.

(ii) Pumping of oil, water, or sewage;

(iii) Generating, transforming, and transmitting energy; or

(iv) Printing, lithography, photography, book-binding and other similar work.

(b) "Enterprise" means any factory, _company, organisation, association, firm, or group thereof, established under the prevailing laws for the purpose of operating any industry, profession or service, where ten or more workers or employees are engaged and this expression also includes:

2. Definitions.

- (1) Tea estates, established under the law for commercial purpose;
- (2) Enterprise operating within the industrial districts established by Government of Nepal where less than ten workers or employees are engaged.
- (c) "Employee" means persons engaged in the administrative functions of the enterprise.
- (d) "Worker" means a person employed on the basis of remuneration _.....to work in any building, premises, machinery or any part thereof used for any productions process or providing service, or any act relating to such work or for any unscheduled works and this expression also includes any worker working at piece-rate, contract or agreement.
- (e) "Manager" means a person appointed for performing the functions in the Enterprise.
- (f) "Proprietor" means the person having final authority on the activities of the Enterprise and this expression also includes any person appointed as the Chief of any §branch or unit of the Enterprise with powers to exercise final responsibility or authority in respect thereof.
- (g) "Factory Inspector" means a factory inspector appointed by Government of Nepal and this expression also includes the Senior Factory Inspector.
- (h) .μ.....

- 2. Definitions.** (i) "Minor" means a person who has attained the age of sixteen years but has not completed the age of eighteen years.
- (j) "Adult" means a person who has completed the age of eighteen years.
- (k) "Energy" means electrical or mechanical energy. Provided that, this word shall not include any energy generated from human or animal sources.
- (l) "Seasonal Enterprise" means an Enterprise which cannot be operated or which is not feasible to operate in any season other than the specific season and this expression also includes a Seasonal enterprise which cannot operate more than one hundred and eighty days in one year.
- (m) "Day" means period of twenty-four hours starting from any midnight and ending at another midnight.
- (n) "Week" means a period of seven days starting from midnight on Saturday or from midnight of such other day as prescribed by the Department of Labour.

2. **Definitions.** (o) "Welfare Officer" means the welfare officer appointed under this Act.

(p) "Labour Officer:" means the Labour Office appointed under this Act and this expression also includes the Senior Labour Officer.

(q) "Labour Court" means the Labour Court under this Act.

(r) " Remuneration" means the remuneration or wage to be received in cash or kind from the Enterprise by the worker or employee for the works performed in the Enterprise and this expression also includes any amount to be received in cash or kind for the works done under piece-rate or contract. Provided that, this expression does not include any kind of allowance or facility.

μ Deleted by Chi Id Labor (Prohibit ion and Regulation) Act, 2056.

Ô Amended by the Chi Id Labor (Prohibit ion and Regulation) Act, 2056

(s) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act

CHAPTER - 2

Employment and Security of Service

3. Classification of Job:

4. Appointment of Worker and Employee:

_Clarification: " the continuous service period of one year" means the period of two hundred forty days

_4A. Prohibition of Engaging Non-Nepalese Citizens at Work: (

5. Engagement in Work: (1) μ.....

(6) Computation of period of Works:

§7. Appointment in Contract Service:

CHAPTER - 2**Employment and Security of Service**

8. Change of Ownership shall not Adversely Affect:

9. Separate Registers of the Workers and Employee to be Kept:
mentioning the following particulars –

- (a) Name of the worker or employee,
- (b) Nature of job,
- (c) Remuneration and method of its payment,
- (d) Other prescribed particulars.

10. Security of Service: may not be terminated without following the procedures prescribed by this Act or the Rules or Bylaws made under this Act.

11. Keeping on Reserve: (

12. Retrenchment and reinstatement:

13. Seasonal Enterprise:

15. Compulsory Retirement:

CHAPTER – 3

WORKING HOURS

16. Working Hours:

17. Computation of Commencement of Working Hour:

18. Intervals for Refreshment and Rest:

19. Extra Wages for overtime to be Provided: (1). Provided that, no worker or employee shall be compelled to work overtime.

20. Attendance Register to be kept: Each Enterprise shall keep attendance register of its workers and employees.

CHAPTER – 4**Remuneration**

§21. Minimum Remuneration Fixation Committee:

_21A. Annual Increment in Remuneration:

§22. Payment of Remuneration, Allowances and Facilities:

23. Period of Remuneration: the period of payment of remuneration to the workers or employees on weekly, fortnightly or monthly basis in way not exceeding the period of one month.

This provision shall not apply in respect of the persons who are working on daily wages, piece-rate or contract basis.

CHAPTER – 4**Remuneration****24. Prohibition on Deduction of Remuneration:**

- (a) In case it is required to realize any fine.
- (b) In case it is required to deduct against absence;
- (c) In case it is required to deduct against loss or damage of cash or kind of the Enterprise caused intentionally or negligently;
- (d) In case it is required deduct in respect of providing prescribed facilities;
- (e) In case it is required to deduct in respect of advance or over payment of remuneration;
- (f) In case it is required to deduct in respect of the period of suspension;
- (g) In case it is required to deduct under the order of government office or court'
- (h) In case it is required to deduct as per the notification of Government of Nepal published in the Nepal Gazette; or
- (i) In case it is required to deduct in respect of income tax or any other tax levied under prevailing laws.

(

CHAPTER – 4

Remuneration

(2) The limit of amount to be deducted pursuant to Sub-section (1) the method of deduction, the period of deduction and other related matters shall be as prescribed.

§25. Petition to be Filed in cases a Deduction in Remuneration Made or Delay

Caused in Payment or other Facilities not provided or Delay Caused in providing such Facilities in an Undue Manner:

26. Appeal:

CHAPTER – 5

Health and Safety

27. Provisions Relating to Health and Safety:

28. Protection of Eyes:

29. Protection from Chemical Substance:

30. Provision for Safety Against Fire

31. Hazardous Machines to be fenced:

32. In relation to Lifting of Heavy Weight:

32A. Minor not to be engaged in Works without Adequate Guidelines or of

Vocational Training:

32B. Disputes Relating to Age:

33. Pressure Plants:

34. Orders to Provide for Safety:

35. Notice to be Provided:

36. Powers to Determine the Standards

CHAPER – 6

Welfare Provision

37. Welfare Fund:

38. Compensation:

39. Gratuity, Provident Fund and Medical Expenses:

40. Leave:

41. Provision of Quarters:

42. Provisions Relating to Children:

43. Relaxing Room:

44. Canteen:

CHAPTER – 7 Special Provisions to be Applicable to Special Type of Enterprise.

45. Tea-Estate:

- (a) Formation of Committee:**
- (b) Provision of Quarter:**
- (c) Provisions of Primary Health Care:**
- (d) Safety Devices:**
- (e) Provisions of Primary School:**
- (f) Daily Consumer Goods:**
- (g) Provision for Entertainment:**
- (h) To get the works done on contract:**

46. Construction Business : The following special provisions shall apply in respect of the construction business –

- (a) Provisions for Construction Tools:**
- (b) Special Arrangements at Temporary Construction Sites:**
- (c) Accident Insurance:**
- (d) Safety Arrangements:**

47. Transportation Business:

Motor Vehicle Transport Management Act, 2049 (1992)."

48. Business of Hotel, Travel, Trekking, Adventure, Rafting, Jungle Safari etc:

49. Applicability of other Provisions:

CHAPTER – 8

Conduct and Punishments

- 50. Type of Punishment:**
- 51. Misconduct:**
- 52. Punishment:**
- 53. Procedures:**
- 54. Department of Labour may dismiss from service:**
- 55. Misconduct of Proprietor or Manager:**
- 56. Punishment for Obstruction to Government Employee :**
- 57. Other Penalties:**
- 58. Quashing of Illegal Acts :**
- 59. Instituting of case and Limitation :**
- 60. Appeal:**
- 61. Realizations of Fines:**

CHAPTER – 9

Committee, Officers and Other Provisions

62. Central Labour Advisory Board:

63. Labour Relation Committee:

64. Appointment of Labour Officer:

65. Powers of Labour Officer

66. Appointment of Factory Inspector:

67. Powers of the Factory Inspector:

68. Welfare Officer:

69. Notice to be provided of establishment of Enterprise:

70. Information to be provided by Proprietor:

71. Notices and Posters:

CHAPTER – 10

Settlement of Labour Dispute

72. Establishment of Labour Court:

_72a Proceedings May Be Initiated in Contempt:

73. Procedures Relating to Personal Claims or Complaints:

74. Procedures Relating to Submission of Claims of Collective Dispute:

76. Notice of Strike to be Provided:.

77. Lock Out:

78. Prohibition to Strike:

79. Legal Validity of Collective Agreement:

_79A. Implementation of Collective Agreement:

80. Order may be issued to End the Strike:

81. Termination of Lock-out Period:

82. Remuneration for the Period of Lock-out:

83. Special Provisions for Settlement of Dispute

CHAPTER – 11

Miscellaneous

84. Special Powers of Government of Nepal:

_ 84A. Special provisions respect of the Workers and Employees Engaged Outside the Enterprises: (

85. Powers to Remove Obstacles:

86. Powers to Frame Rules

87. Bylaws to be availed:

88. Provisions Relating to Enterprise owned by Government of Nepal:

89. Directive of Government of Nepal:

90. Delegation of Authority:

91. Prevalence of this Act:

92. Repeal and Saving: (1) The Factory and Factory Workers Act, 2016 (1959) is, hereby, repealed.

(2) All acts and proceedings performed or executed under The Factory and Factory Workers Act, 2016 shall be deemed to have been performed or executed under this Act.

Note:

The following word has been changed by first Amendment- "Remuneration" instead of "salary"

All the activities that the people do can be classified as economic affairs and non economic affairs.

The affairs that one services oriented and non profit are considered non economic whereas the affairs that are aim earnings profits are considered economic affairs.

Thus business professions and daily wages are all economic affairs.

In general business means earning profit from doing.

Business may be defined as human activities directed toward producing or acquiring wealth through buying and selling.
(L.H.Heney)

- Production of goods and services
- Purchases of goods and services
- Exchanges of goods and services, where aim is profit making

Objectives of Business

1. **Economic objective:** business needs to run not only for earning profit, but also to survive in the competitive market. So business seeks or innovative new ideas or tactics of business.
2. **Social objectives:** business needs people to run it. Business has to address society and their needs so that business flourishes.
3. **Human objectives:** all business run through people and if people are unattended, it may be collapsed. Training seminar educating motivating are some of the business.
4. **Organic objective:** business needs to save its existence or needs to grow and expand to improvement service.
5. **National objectives:** Business needs to save national interest; if the nation prospers business flourish

The norms that are drafted and enforces by a state or local government to regulate the activities is known as law and the law that regulate the business activities are known as business law. **There is no excuse for ignorance of law.**

Sources of business law in Nepal

English business law

- Common law of England

- Law of merchant

- Principal of equity

- Statute of legislature

- Custom of usage

Nepalese statutory

Judicial decision

Writing and opinion of of scholars

Commercial treaties and agreement

Strategy of development

epp Business law and labour law [Types of business]

Types of business enterprises

Business grows along with the development of human beings. In the beginning, business was simply sole concern or one man run business. A single person faces unlimited liabilities, difficulties in individual management and control, with limited operation, individual risk etc. To relax this difficulty initiated partnership business in which risk and liabilities are shared. Partnership business felt absence of separate entity and restriction in the transfer of interest. Joint stock Company, public enterprises, and cooperative organisation are named.

1. Sole business concern (single business concern (2014 Act)
2. Partnership business organisation (2020)
3. Company
 1. Private limited
 2. Public limited
4. Cooperative

Sole business concern (single business concern (2014 Act)

Characteristics	Limitation
<ul style="list-style-type: none">• Sole ownership• Sole management control• Unlimited liability• Limited area of operation• Less legal formalities• Voluntary origin and end	<ul style="list-style-type: none">• Unlimited liability• Limited capital• Uncertain future• Absence of legal status• Chances of unfeasible decision• Lack of specialization• Loss of absence of key person

Partnership business organisation

Characteristics	Limitation
<ul style="list-style-type: none">• Joint ownership• Unlimited liability• Sharing of profit and loss• Establishment on the basis of agreement• Members do not have separate existence• Joint management and control• Joint agent ship• Partnership right could not transferred	<ul style="list-style-type: none">• Unlimited liability• Uncertain existence• Friction/ misunderstanding• Limited capital• Difficult to transfer ownership• Lack of prompt decision• Lack of public faith

Company business organisation 2053 private maximum 50 share holders public no limit upper minimum 7 shareholders

Characteristics	Limitation	
<ul style="list-style-type: none"> • Legal artificial person • Perpetual existence • Limited liabilities • Common seal • Voluntary association of person • Capital collecting by share distribution • Transferability of shares • Management by representation • Publication of financial statement 	<p><u>Pros</u></p> <ul style="list-style-type: none"> • Limited liability • Perpetual existence • Transfer of share • Effective management • Unlimited capital • Public faith • Unlimited business capabilities 	<p><u>Cons</u></p> <ul style="list-style-type: none"> • Difficult in formation • Lack of personal interest • Lack of security • Possibilities of fraud • Exploitation of share holders • groupie for power • conflict of interest • absence of prompt decision • lack of closeness (secrecy)

- Intellectual property rights are the rights given to persons over the creations of their minds. Intellectual property rights does not really mean physical things, it is a creation of new things. Intellectual property differs from other forms of property. Intellectual properties like patents, trademarks, copyrights, and industrial designs are protected by law.
- Rights that relate to patents, trademarks, copyrights, and industrial design are called “Intellectual Property Rights”.[the-copyright-act \(1\).pdf](#)
- [IPR copyright Nepal2015.pdf](#)
- [Intellectual Property LawBy Sirjana Sharma Dedman School of Law SMU.docx](#)

- ✚ A **patent** (pronounced /'patent/ or /'peɪtənt/) is a set of exclusive rights granted by a state (national government) to an inventor or their assignee for a limited period of time in exchange for a public disclosure of an invention
- "patent" means any useful invention relating to a new method of process or manufacture, operation or transmission of any material or a combination of materials, or that made on the basis of a new theory or formula.

- The Patent Act defines **patent** as an invention of “any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture, or composition of matter”.
- The invention must be novel and useful. An idea alone is not patentable; the idea or principle must be reduced it to a definite practical shape before he/she can be said to have invented a process. Invention must have two characteristics—utility and novelty—that results from the application of ingenuity and skill.
- To be qualified for a patent, one must show that invention results from the ingenuity (the quality of originality or unsuspecting).A patent may not be obtained where an application to patent the same invention has already been filed or the invention has been public use or disclosed to the public.

Intellectual property rights: copy rights and patent Protection

- **Intellectual property rights (PDTA 2022)**[the-patent-design-and-trademark-act.pdf](#)
- **the rights given to persons over the creations of their minds.**
- **not really mean physical things,**
- **it is a creation of new things.**
- **differs from other forms of property.**
- **Intellectual properties like patents, trademarks, copyrights, and industrial designs are protected by law.**

Intellectual property rights: copy rights and patent Protection

- Human Society is benefited from the outcome of **efforts of intellectual**
- They are in behind the **screen**.
- It is much **easier to copy** original creative works
- Books, Computer programs, Songs, Cinemas are the examples
- interrupt to secure the economic reward for the **effort of producer or creator**.
- To **safeguard the original creative works** of producer or creator that have economic value are protected by law.
- The statutes (written laws/ constitution) describe such matter as obtaining patents of invention,
- and the registration of trademarks, copyrights, and industrial designs.

Intellectual property rights: copy rights and patent Protection

- Intellectual Property laws reward the creators of original works by preventing others from copying, performing, or distributing those works without having any permission from the creator.
- The government also provides incentives for people to produce scientific and creative works that benefits society at large.
- Most intellectual property rights expire after a specified period,
- on the assumption that producer or creator had an opportunity to earn a fair reward of their efforts within that specified period,
- and then after society benefits from that work.

Intellectual property rights: copy rights and patent Protection



- The Patent Act defines **patent** as an invention of “any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture, or composition of matter”.
- The invention must be novel and useful.
 - An idea alone is not patentable; the idea or principle must be reduced it to a definite practical shape before he/she can be said to have invented a process. Invention must have two characteristics—utility and novelty—that results from the application of ingenuity and skill.
 - To be qualified for a patent, one must show that invention results from the ingenuity (the quality of originality or unsuspecting).
 - A patent may not be obtained where an application to patent the same invention has already been filed or the invention has been public use or disclosed to the public.

Intellectual property rights: copy rights and patent Protection

- **Duration of Patent**
- The duration of patent is twenty one years (two renewal)
- If a particular invention has been granted a patent, no other valid patent can be granted with respect to that invention.
- **Assignment and Licensing of Patent Right**
- The patent rights can be assigned to others provided the assignment is in writing.
- The owner of a patent can assign part or all of the patent rights, in whole or in part, and for such valuable consideration as may be negotiated with the assignee.
- Patent rights may also be licensed, on an exclusive or a nonexclusive basis. Usually a royalty fee is charged based on a percentage of sales of the patented product.
- Any assignment of a patent right or grant of exclusive licensing rights must be registered in the Patent Office. Otherwise it will be void and therefore unenforceable against a subsequent assignee or exclusive license who does register.

Case Studies Involving Professional Ethical Issues Chosen From A Wide Range Of Topics



Intellectual property rights: copy rights and patent Protection

- The patent rights may also transferred
- For registration
 - Name and address of inventor
 - Transfer of ownership
 - Process, making and using of patent
 - Principle or formula
 - full description/ drawing / specification

Intellectual property rights: copy rights and patent Protection



Restricted for registration

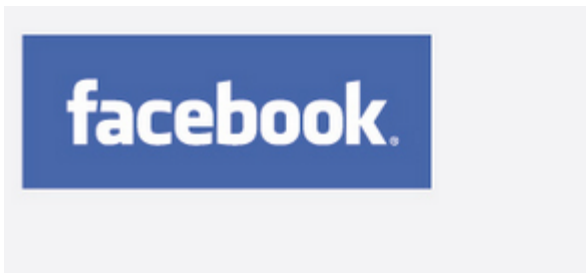
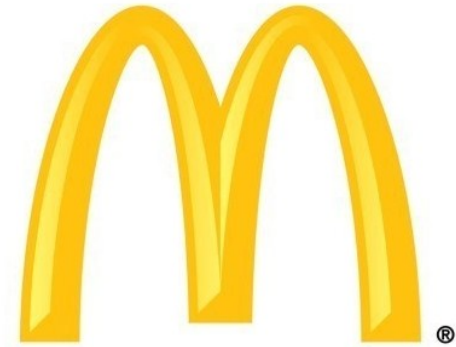
- Already registered
- Not belongs to applicant
- The production against society/ environment (health/ morality/conduct)
- Against existing law
- Some one act against there is provision of fine

Intellectual property rights: copy rights and patent Protection

➤ Infringement of Patent

- Infringement (break or violate a rule)
- the owner of the patent to claim for all damages sustained by the owner's licensees by reason of such infringement.
- To recover damages, a court action may be brought.

Trademarks (LIKE LOGO DIFFER FROM STAMP)



Intellectual property rights: copy rights and patent Protection

Trademarks (LIKE LOGO DIFFER FROM STAMP)

- TO DISTINGUISH OR REPUTATION OF FIRM/ SERVICE/ PRODUCTION
- The Trademarks Act defines **trademark** as “a mark that is used by a person for the purpose of distinguishing wares or services manufactured, sold leased, hired or performed by him from those manufactured, sold leased, hired or performed by others”.
- COMBINATION OF WORD, SYMBOOL, PICTURE ALL OR ANY ONE
- registered according to the Trademarks Act in connection with wares and/or services.
- Unless shown to be invalid, the registration of a trademark gives the owner the exclusive right to use the trademark.
- The trademark must distinguish goods of one manufacturer from those of another to protect public from deceive.
- An essential feature of a valid trademark is its distinctiveness.
- A trademark registration that ceases to be distinctive may be cancelled.
-

Intellectual property rights: copy rights and patent Protection

Licensing of Trademarks

- The Trademarks Act allows a trademark to be used by third parties. In order to maintain the distinctiveness of a licensed mark, the third parties must be licensed under the authority of the trademark owner.
- **Duration of Trademarks** period of SEVEN years.
- Registrations may be renewed for unlimited subsequent periods of SEVEN years each.
- A trademark registration may be cancelled if the owner stops using the trademark.
- **Infringement of Trademarks**
 - infringes a valid registered trademark may be restrained or prevented from continuing to use the mark, and that person may be liable for damages that resulted from the infringing of trademark.

Intellectual property rights: copy rights and patent Protection

Copyright[the-copyright-act \(1\).pdf](#)

- Subject to the provisions of Copyright Act, copyright subsists (exists) in every original, literary, dramatic, musical, and artistic work.
- Copyright may be defined as the sole right to produce or reproduce the work, or any substantial part thereof in any material form whatever.
- Copyright does not protect designs applied to useful articles that are mass produced.
- **Duration of Copyright**
- Copyright exist for a duration that equals the life of the author and a period of fifty years after the author's death.

Intellectual property rights: copy rights and patent Protection

Registration of Copyright

- The Copyright Act provides that an author, the author's legal representatives, or an agent may apply for the registration of a copyright at the Copyright Office.
- Registration is not essential to copyright.
- However, registration of copyright in a work may assist in obtaining damages for infringement.
- Registration of assignments and licenses of copyright are advisable in order to protect assignees and licenses from claims of other subsequent assignees and licenses who may register.
- **Ownership of Copyright**
 - The first owner of copyright in a work is the author of the work. The owner of the copyright is entitled to assign the copyright in whole or in part. The assignment must be in writing.

Intellectual property rights: copy rights and patent Protection

Moral Right

- The creator of a work in which copyright subsists also has moral rights in the work. Moral rights include the right to be identified as the author of the work by name and the right to the integrity of the work.
- The right to integrity is infringed if the work is altered in any manner or used in association with a product, service, cause, or institution and such alteration or use affects the honor or reputation of the author.
- The remedies for infringement of moral rights are the same as the remedies for copyright infringement.
- Moral rights may be waived but cannot be assigned. The waiver must be in writing.
- ECONOMIC RIGHT
- First economic right is author
- Share for co authors
- Unidentified goes publishers or producers
- Under direction or participation of institution goes to institution
- Jointly or merged previous work act as contact or shared mutually

Intellectual property rights: copy rights and patent Protection

Author or owners rights

- **Reproduction**
- **Translation**
- **Modification/ revision**
- **Selling or renting**
 - **Transferring for audiovisual, phonographic, computer programming, musical works (digital also)**
- **Importing**
- **Public demonstration, presentation**
- **Broadcasting**
- **Public transmission**

Intellectual property rights: copy rights and patent Protection

Industrial Design

- The Industrial Design Act grants protection to originators of certain industrial designs.
- The term “industrial design” refers to any features of shape, configuration, pattern, or ornament that are applied to finished articles and appeal to and are judged solely by the eye where the articles are multiplied by an industrial process.
- Only those designs that are ornamental or aesthetic in nature qualify for protection under the Industrial Design Act.
 - The mechanical construction of an article and method of manufacture does not form part of the design.
 - Construction and method are functional and thus are not protected by act. (Mechanical constructions or methods of manufacture may qualify for patent protection).

Intellectual property rights: copy rights and patent Protection

Industrial Design

- In order to qualify for protection, a design must meet the tests of novelty and originality, an application to register the designs must be filed within one year of publication.
- **Duration of Industrial Design**
 - The proprietor who registers an industrial design is granted an exclusive right to the use of the design for a term of five years.
 - The term is subject to renewal for additional five years.

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Intellectual property rights: copy rights and patent Protection

Industrial Design

➤ Assignment of Industrial Design

- Designs are freely assignable, the assignment must be made in writing. A proprietor may license others to make, use, or sell the design during the term of its statutory protection.

➤ Employees

- The right to any designs made by an employee in the course of employment belongs to the employer.

➤ Registration of Industrial Design

- To register a design under the Industrial Design Act, a proprietor submits a drawing and description of the design in duplicate, together with the stated fee, to the government office.
- Registration will be refused if it appears that the design is identical with or closely resembles another design currently in use or previously registered.

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Personal privacy and large commercial data base

- Impact of computer on society
- Social application: Solve human/ social problem such as
 - Medical diagnosis
 - Computer assisted instruction
 - Government program planning
 - Environmental quality control
 - Law enforcement
- Employment and productivity:
 - Increase in employment and productivity
 - Reduction in some type of job
- Impact on competition:
 - Allows large organisation to become more efficient or gain strategic competitive advantage
 - Small firms are driven out

Personal privacy and large commercial data base

Impact of computer

- Impact on individuality:
 - Reduce human relationship
 - Inflexible.
- Impact on quality of life:
 - Production of better quality goods/services at low costs/effort/time
 - Increase in leisure time
 - Eliminated monotonous tasks (upgraded quality of life)
- Impact on privacy:
 - Collect, store, integrate, interchange and retrieve-easy.
 - Lost privacy

Personal privacy and large commercial data base

Computer/ cyber crime

- Crime in general behaviour that are forbidden under the law
- Subjected to punishment
- Computer crimes are range from the catastrophic (disastrous) to the merely annoying (irritating).
- The computer as a target - attacking the computers of others (spreading viruses is an example).
- The computer as a weapon - using a computer to commit "traditional crime" that we see in the physical world (such as fraud or illegal gambling).
- The computer as an accessory - using a computer as a "fancy filing cabinet" to store illegal or stolen information.

Personal privacy and large commercial data base

➤ Computer/ cyber crime

- Spam (*Unsolicited bulk email*)
- Fraud (hoax, racket)
- Obscene or offensive content
- Harassment
- Threats
- Drug trafficking
- Cyber terrorism
- Cyber warfare

Personal privacy and large commercial data base

➤ **Computer/ cyber crime**

- (1) crimes that target computers directly;
 - Computer viruses
 - Denial-of-service attacks
 - Malware (malicious code)
- (2) crimes facilitated by computer networks or devices, the primary target of which is independent of the computer network or device.
 - Cyberstalking
 - Fraud and identity theft
 - Information warfare
 - Phishing scam (cheat)

Personal privacy and large commercial data base

- [Electronics Transaction ACT 2063/2004](#)[Electronic Transaction Act 2008 ENGLISH.pdf](#)
 - Theft, damage or alternation of computer source code
 - Unauthorized access to materials on computer
 - Destruction to computer and information system
 - Publication of illegal material on electronic form
 - Violation of confidentiality
 - False information
 - Submitting or showing forgery license or certificate
 - Non submission of the documents or other materials
 - Computer fraud

Preamble of Electronic Transaction Act 2008

it is expedient to make, legal provisions for authentication and regularization of the recognition, validity, integrity and reliability of generation, production, processing, storage, communication and transmission system of electronic records by making the transactions to be carried out by means of electronic data exchange or by any other means of electronic communications, reliable and secured; And where as, for controlling the acts of unauthorized use of electronic records or of making alteration in such records through the illegal manner,

Now, therefore, be it enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of representatives, 2063(2007) .

need of act

CAUSE FOR ELECTRONIC TRANSACTION ACT (BACKGROUND)

In Nepal, organization, business houses started using the electronic transactions when the government was lacking the law, rules and regulations.

Cyber law

ELECTRONIC TRANSACTION ACT AS CYBER LAW IN TO EFFECT

- A cyber crime (electronic transaction) legislation committee has on February 4, 2004 presented an ordinance to House of Representatives.
- The House of Representatives has on March 4, 2004, made a recommendation for an Act amending the Penal Code and the ratification and was first enacted as an ordinance. And It was enacted as an act on 2006 and entered into force.

Purpose of cyber law

MAIN PURPOSE OF THE CYBER LAW

The main purpose of this act (law) is to legalize the electronic transactions and digital signatures for both private and public transactions, protecting the electronic documents from the unauthorized access and to control the illegal activities or the cyber crimes. This act has 12 sections and 79 clauses. Electronic Transaction Act 2006 is here to fore addressed in the capacity of cyber law.

What is cyber crime ?

Theft of computer source code, unauthorized access, destructing the computer and computer system, illegal publication, violation of privacy, providing wrong information, compute fraud etc are known as computer (cyber) crime.

For side of act

This act has encouraged the use of information technology for business houses and other offices. Especially for the banks, that start the electronic transactions such as internet banking, SMS banking, Tele banking, ATMs, Credit Cards, Debit Cards effective delivery service etc.

Complain history?

- Many threat and extortion e-mails
- Many renowned companies received spam mails from proxy hot mails, yahoo, G-mail demanding money on the name of mainly insurgents groups and so called armed groups.
- Hacking of newspaper's website by replacing the original content with threat to attack.
- mutilation girl image and pasted on the porno site
- Copy  of intellectual properties

Types cyber crime

- Black mailing
- E-mail Threats
- Computer Fraud
- Trafficking
- Digital Piracy
- Counterfeiting
- Hacking
- Internet use to cause public disturbance
- Identity theft and invasion of privacy
- Internet fraud
- ATM fraud
- Wire Fraud
- Networking business fraud
- Internet Porno
- Creating Computer viruses
- Sabotage and denial of e-service (Trojan Horse)
- Hijacking of government and corporation web sites
- Theft of intellectual property
- Online abuses

What is problem in implement?

The problem facing us today is the rapid progress of technology which has found its way around existing social control systems and allowed individuals to do as they please with this technology. The law and the government are struggling to catch up but we feel that it is also important to bring the common man into the fight against cyber crime.

Building codes and by laws

- Building act 2055 (1998)
- Building rules 2062 (2005)
- National building codes 2060 (2003)
 - ☐ International state of art
 - ☐ Professionally engineered building > 100 sq feet
 - ☐ Mandatory rules of thumb
 - ☐ Guidelines for remote rural building
 - ☐ Retrofitting and others
- ☐ implementing agency DUDBC< Municipalities etc

Building codes and by laws

N B C	Description
101	Material Specification
102	Unit weight of material
103	Occupancy load
104	Wind load
105	Seismic design of building in nepal
106	Snow load
107	Fire saFety
108	Site consideration
109	Masonry unreinforced

N B C	Description
110	Plain and reinforcement concrete
111	Steel
112	Timber
113	Aluminum
114	Construction safety
206	Architectural design
207	Electrical design requirement (for public building)
208	Sanitary and plumbing design requirement
	NBC207 electricity.pdf

Documents required for Company Registration in Nepal

- A company registration procedure needs some finance to be paid along with the amount of time required for the registration process.
- The registration fee differs for a private company and a public company.
- There is certain distinction between a private and a public company.
- The companies that generate money by public participation are public companies and those companies which are run by the owner without the permission to have public participation in purchase of shares are private companies.
- Private companies are not permitted to have stock flow for the public.
- The differences between private and public companies based on the distinctions are mentioned below:

Types of Companies in Nepal

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Before registering a company you have to decide what kind of company is suitable for your business needs.

- Currently, three types of companies can be established in Nepal according to the Companies Act 2006 (2063 B.S.). They are :-
- Private limited company - requires only one shareholder or promoter
- Public limited company - requires at least seven shareholders and promoters
- Non-profit company - requires at least five members
- A minimum paid up capital of 10 Million Nepalese Rupees is required to register a public limited company.
- Private company does not have any minimum capital requirements.
- A non-profit company does not have shareholders, it only has members and does not require any form of minimum capital.

S.N.	Basis of Difference	Public Company	Private Company
1.	Minimum paid-up Capital	Rs. 1,00,000	No minimum paid-up capital prescribed
2.	Number of Members	7 to any number of members	1 to 50 members
3.	Transfer of share or securities	Shares and securities are freely transferrable	Shares and securities can only be transferred to the existing shareholders of the company
4.	Number of Board of Directors	3 to 11	Any number of Directors
5.	Presence of Company Secretary	Mandatory	Optional
6.	General Assembly	Mandatory	In accordance with the Articles

Company registration

- **Memorandum of association of proposed company**
- **Articles of association of proposed company**
- **Copy of the agreement such as Joint Venture Agreement or Memorandum of Understanding (if any)**
- **Approval license if a company is intending to operate a business regulated under Industrial Business Act**
- **Incorporation decision of its board of directors and other major documents if the promoter is a company**
- **Approval under the Foreign Investment and Technology Transfer Act if the promoter is a foreign national or foreign company**
- **In addition**
- **Powers of Attorney are required if promoters want to send a representative rather than appear in the Office of the Companies Registrar themselves.**

- **Conflict theory**
- Conflict theory was developed by Karl Marx and has been modified and developed by later sociologists. Conflict theory of social change holds that many changes are caused by tensions between competing interests in the society. Conflict theorists regard conflict as inevitable and normal process. This theory assumes that the existing social conditions always contain the seeds of new social change. Based on the condition of economic production, the form of society is defined as: primitive socialist, slave, feudal, capitalist, socialist and finally communist society.