**PATENT LAWS**

 The patent, copy right are the intelligent property rights.

**Q.No. 1) WHAT IS THE OBJECTS OF PATENT LAWS?**

**ANS:** The Patents are granted for inventions only, but not for discoveries. Development breeds inventions & Industrialization. The Growth is based on inventions of new products. The pace of incentive activity is accelerated by Patent Laws. Patent Laws confirm certain rights & benefits to the inventor for limited period.

**Object of patent law:**

 The Patent Laws make provisions for the encouragement of research and progress. This protection is granted to inventor for a limited period for inventing new articles which is useful or new process or improvement of an existing article which has industrial applications. The inventor who is granted the patent is called Patentee. Patentee holds exclusive monopoly rights to manufacture sale and distribute such article is called “Patented Article” Which includes any article made by a patented process. The patentee can prevent any other person from using during the patented period. After this period anybody can manufacture when it becomes the public property. So the monopoly ceases after expiry of limited period. A patent being a form of industrial property is called an intellectual property. The inventor (owner) can sell the whole or part of his patent right to others by giving permission.

 The theory upon which the patent system is based is that the opportunity of acquiring exclusive rights is an invention. It has four important aspects of this act are:

**FIRSTLY :** It encourages research and inventions.

**SECONDLY:** It induces the inventor to disclose his inventions instead of keeping secret as trade secret.

**THIRDLY :** It offers reward for expenses of developing new article or

 new process

**FOURTHLY:** It provides inducement to invest capital in new lines of production or processes which are profitable.

 Thus the Patent Laws tends to encourage and maintain continuous flow of inventions. Inventions breed inventions, thus the pace of incentive activity is accelerated. New processes are created, industry is encouraged to manufacture new and better products and an expansion of the industry based upon new inventions. Thus employment, national wealth and higher living standards are created.

 Patent system also confers advantages and incentive to the inventor. **Though invention to be patented is not compulsory**. It is in the interest of the inventor to get the invention patented for an invention howsoever secretly maintained and used is bound **to be known or may meet with a counter and similar independent inventions** and **in that case the original inventor would have no effective legal remedy. In fact the subsequent inventor on getting his so called new inventions patented could sub original inventor for infringement.**

**Q.No. 2. Write on the applicability of Patent Law.**

**OR**

**State where Patent Law applied or where Patent Law subsists or exists.**

**ANS:** The patent law subsists on the following inventions.

1. Art of **process**, method or manner of manufacture.
2. **Machine**, apparatus or other article.
3. **Substance** produced by manufacture.
4. **All Medicines**, use of human beings and animals.

**Patent Laws are not applicable to followings:**

1. An invention **frivolous.**
2. An invention contrary to **law or morality.**
3. A mere discovery.
4. A method of agriculture or horticulture.
5. An invention relating to atomic energy.

**Q.No.3: Who can apply for Patents and How to apply?**

**ANS:** 1) **By** any person claiming to be true and first inventor.

 2) **By** any person being the assignee of any inventor.

 3) **By** legal representative of deceased inventor.

**HOW TO APPLY:**

 An application may be made by any person as said above in the prescribed form in Second Schedule of the patent rules 1972 and filed in the **office of the controller of patents with prescribed fees.**

**SPECIFICATIONS to apply:**

 A specification may be accompanied with drawings of inventions. The specifications must relate to the general nature of invention.

**SAMPLE / MODEL to apply:**

 If controller of patents requires the model or sample then that of also has to be furnished along with application furnished before acceptance of application. Sometimes the inventor may apply for improvement or modification of existing system, it is called “Patent Addition”. Which can be patented by controller.

 Before granting patent the controller will give vide advertisement in the Official Gazette. So that any person interested in opposing patent shall file notice of opposition in Form No.14 in duplicate within 3 months from the date of advertisement of application in the Official Gazette.

 After scrutiny when controller finds that application is in order than patent right is limited period will be granted to the applicant (patentee)

**Q.No.4: What are the rights of Patentees?**

**ANS:** The patent granted shall confer on patentee

1. The exclusive right to **use**, exercise, **sell** and **distribute** the inventions in India. Whether the patent is granted for process the patentee can use that method of process in India.
2. Exclusive **right to prevent** the third party from the act of making use, sale **without consent** from patentee.

**Q.No.5: What is time of Patent?**

**ANS:** The term of every patent granted shall;

1. In respect of an invention claiming method of manufacture of substance used in food, medicine is **5 years** from date of patent or **Seven years** from date of application filed to the controller of patents whichever period is shorter.
2. In respect of any other inventions the term shall be **14 years** from the date of patent or **twenty years** from the date of filing the application to the controller of patents.

Such model of invention or sample must be furnished before acceptance of application. Sometimes the inventor may apply for improvement or modification of existing system it is called patent addition which can be patented by controller.

Before granting patent the controller will give vide advertisement in the official Gazette, so that any person interested in opposing patent shall file notice of opposition in Form No.14 in duplicate within 3 months from the date of advertisement of application in the Official Gazette.

After scrutiny when controller finds that application is in order that patent right for limited period will be granted to the applicant to keep the patent right in force the patentee shall make renewal of patents as specified in the Act. Otherwise on this technical defect patent right shall cease (end) to effect

**Q.No.6: What is infringement of Patent? And state the remedies available to patentee in case of infringement?**

**ANS:** Any person who makes the use, sale, distribute the patents granted to patentee without the consent of patentee or supplies the substance of patents commercially without the consent of patent holder is called as infringement of patent rights. In suit for infringement of patent, the patentee (Plaintiff) must prove that, during the continuance of his patent period Defendants (infringer) have made, sold or used the invention without his License or Permission. The Patentee must prove that his article or process has been counterfeited or initiated by the defendants. Patentee must give the particulars of the breaches regarding alleged infringement of his patent right.

The above said Acts of an infringer done without the consent of patentee is called as infringement of patent rights. Further the patent holder has relief’s (Remedies) in case of infringement.

**Q.No.7: What are the relief’s / Remedies available to patent holder in cases of infringement by the infringer?**

**ANS:** An action for infringement may be instituted by way of suits either District Court or in the High Court, where cause of action arises shall have Jurisdiction. Suit is required to be filed within 3 years from the date of infringement act, and not from the date of Grant. Suit may be filed by patentee entered in the register of the patents as grantee or proprietor of the patent or by an assignee of the patent where the counter claim for revocation of the patent is made by the defendant that suit shall be transferred to the High Court for decision.

 **The relief which a court may grant in any suit for infringement of patent includes.**

1. **An injunction issued by the Court.**
2. **Damages award by the Court.**
3. **Claim for profit loss claimed by the plaintiff.(patentee)**
4. **AN INJUNCTION:** Injunction is the order of the Court preventing / restraining the defendant i.e. the infringer from doing particular act of infringement under such circumstances courts issue order of prohibition directing the infringer not to do the Act of infringement this order is technically called as Order of Infringement. This is a remedy available to the injured party i.e. patentee.
5. **DAMAGES:** or Remedies available to injured party in case of infringement made by the infringer. Damages are monotary compensation allowed to the patentee for the loss or injury suffered by him as a result of infringement made by the infringer. The fundamental principle of damages is not punishment but compensation by awarding damages courts aim to put the patentee i.e. injured party into the position in which he would have been had there been no infringement. Depending on the nature of loss and extent of loss court will award amount of damages with a purpose to compensate the injured party i.e. patentee. In assessing damages, the sole question is what is the extent of loss suffered by the patentee by reason of the unlawful infringement acts made by the infringer the loss must be natural and direct consequence of defendants acts remote damages are not allowed.
6. **CLAIM OF PROFITS LOSS / ACCOUNTABILITY FOR PROFITS.** In awarding the profit loss court will assess what proportion of the net profits realized by the infringer. Such calculated amount awarded by the court as “Profit Loss” accrued to the patentee by the infringer. This profit loss claimed the patentee from the infringer.

**Q.No. Write Shotr note on TRIPS?**

**ANS:** The **W.T.O (World Trade Organization)** agreement contains clauses relating to **Trade related Intellectual property rights (TRIPS)** under which India is under **obligation** to introduce **products patents for drugs, food products and chemicals** as India is signatory for establishment of W.T.O for international trade promotion under this agreement of W.T.O all signatory countries are formulating or amending the laws in conformity with W.T.O now it called as **GATT Agreement. The purpose of the GATT or W.T.O is to accelerate socio-economic and technological developments and strengthen health trade relations at international level.**

**THE COPYRIGHT ACT, 1957**

The Law relating to copy right in India is contained in the copy right Act. 1957. And this Act came into force on 21-1-1958. The Act extends to whole of India. It has 15 Chapters paying 79 sections in it.

The copy right Act is recently amendment in the year 1994 comes in effect from 10th may 1995.

**Q.No.1): DEFINE COPYRIGHT AND EXPLAIN WHERE IT SUBSISTS?**

**ANS:** Copyright means the exclusive legal right to reproduce, publish, and sell the work, in which the copyright subsists and copyright subsist (exists) in following matters.

1. Original literacy, dramatic, or musical works.
2. Artistic works.
3. Cinematographic films, and
4. Sound Recording,
5. Communicate works by T.V., Radio-diffusion
6. Computer programmes.

In the above said copyright extends not only to the original work, also to any translation, and adoption, thereof.

**Q.No. 2) WHAT IS THE OBJECT OF PASSING OF THE COPYRIGHT?**

**ANS:** The object of passing of copyright Act is to encourage authors and artists to create original works, by protecting their exclusive right for a limited period. The object is to protect the author and the artist from the unlawful reproduction or exploitation of his materials. If the author gets the copyright by means of registration, it Acts as a prima fascia evidence and admissible in the court as strong evidence, in deciding the question of ownership. Copyright is the product of the labour, skill, and capital of one man., Which must not be mis-used (Appropriated) by an other, the author may use the expression, raw material upon which the labour and skill and capital have been expended, to secure copyright for his such work is the main object of passing of copyright. Since there can be no copyright in ideas or information, it is no infringement of copyright to adopt the ideas of another or to publish information derived from another.

 The copyright Act prohibits of copying of the language in which these ideas have, expressed or that the information has been previously embodied in particular style with unique combination of words.

 The order and arrangement of each man’s words is as singular as his appearance. The object of copy right is to protect the skill, and labour of the author and the artist on his work. It is immaterial whether the work is wise or foolish, accurate or inaccurate or whether it has or has not any literary merit.

But the Copyright protection is not granted where the work which is grossly immoral, illegal, defamatory, seditious, irreligious or contrary to public policy or calculated to deceive the public.

**Q.No.3) COMMENT THAT COPYRIGHT ONLY IN FORM NOT IN IDEA?**

**ANS:** There is no copyright in ideas; copyright subsists only in the material form in which the ideas are expressed. In the field of literary work, the words chosen by the author to express his ideas are peculiar to him and no two descriptions of the same idea or fact will be in the same words. The order and arrangement of each man’s word is singular as his appearance.

 Since there can be no copyright in ideas or information, It is no infringement of copyright to adopt the ideas of another or to publish information derived from another provided there is no copyright of the language in which those ideas have, or the information has been previously embodied.

**Q.No.4)** **WHAT ARE THE WORKS IN WHICH COPYRIGHT DOES NOT SUBSISTS?**

**ANS:** Copyright shall not subsist in the following cases.

1. **PUBLISHED WORK:** Copyright shall not subsist in the work which is not first published in India.
2. **UNPUBLISHED WORK:** The copyright shall not subsist in the unpublished work if the author is not the citizen of India.
3. **ARCHITECTURAL WORK OF ART:** In the case of Architectural work of art, the copyright shall subsist if the work is not located in India.
4. **CINEMATOGRAPHIC FILM:** Copy right shall not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work.

**Q.No.6: EXPLAIN THE RIGHTS OF OWNER OF COPYRIGHTS?**

**ANS:** The Recently amended at of 1994 which comes into force on 10-5-1995 provides following three rights to the owner of copyright they are as follows:

1. The right of Assignment of copyright (Sec.18)
2. The right of Transmission in manuscript (Sec.20)
3. The right of Relinquish copyright (Sec.21)
4. **THE RIGHT OF ASSIGNMENT OF COPYRIGHT:(SEC. 18)**

 The owner of copyright in an existing work or the prospective owner of the copyright in a future work may assign (Transfer) to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. In case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence after assignment the Assignee shall be treated as owner of copyright if the Assignee dies before the work comes into existence, then this legal representatives shall become Assignee.

**MODE OF ASSIGNMENT:**

1. The copyright act made certain changes by the amended Act of 1994 which comes into force on 10-5-1995. They are as follows;
2. The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.
3. The assignment of copyright in any work shall also specify the amount of royalty payable, if any to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision extension or termination on terms mutually agreed upon by the parties.
4. An author assigning copyright in his work is allowed the option to revoke after seven years but before 10 years of assignment on the conditions that he returns the amount received by him at the time of assignment with interest thereon.
5. **RIGHT OF TRANSMISSION OF COPYRIGHT IN MENUSCRIPT BY TESTAMENTARY DISPOSTION:**

 Transmission of copyright to manuscript of literacy, dramatic musical work or to an artistic work of the Testator, if not published before his death, can be bequeathed through his will. Manuscript means the original document whether written by hand or not (Sec.20)

1. **RIGHT OF AUTHOR TO RELINQUISH COPYRIGHT:**

 The Owner (Author) of a work may relinquish all or any of rights comprised in the copyright in the work by giving notice in the prescribed form to registrar of copyrights and thereupon such rights shall cease to exist from the date of the notice.

 On receipt of such notice the Registrar of copyrights shall cause it to be published in the Official Gazette and in such other manner as he may deem fit.

**Q.No.7: DISCUSS THE PROVISIONS MADE UNDER THE COPYRIGHT ACT WITH RESPECT TO TERM OF COPYRIGHTS?**

**ANS:** Regarding the terms of copyrights of the following provisions made under the Act.

1. **THE TERM OF COPYRIGHT IN PUBLISHED LITERACY, DRAMATIC, MUSICAL AND ARTISTIC WORKS:**

 The term of copyright shall subsist in **any literacy, dramatic, musical or artistic work** (other than a photograph) published within the lifetime of the author & until **sixty years** (As amended by act of 1994 w.e.f.10-5-95) from the beginning of the calendar year next following the year **in which the author dies.**

 In the case of a work of joint authorship, be construed as a reference to the author who dies last.

1. **THE TERM OF COPYRIGHT IN ANONYMOUS (UNKNOWN) AND PSEUDONYMOUS (FALSE NAME) WORKS:**

 In the case of a literacy, dramatic, musical or artistic work (other than a photograph) which is published **anonymously (Unknown)** Pseudonymously, (False name) copyright shall subsist until **sixty years** as amended by act of 1994 w.e.f. 10-5-95 from the beginning of the calendar year next following the year in which the **work is first published;**

Where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until **sixty years** as amended by the act of 1994 w.e.f 10-5-95 from the beginning of the calendar year next following the year in which the author dies.

1. **TERMS OF COPYRIGHT IN POSTHUMOUS (AFTER DEATH) WORK:**

 In the case of literary, dramatic or musical work or an engraving. In which copyright subsists at the date of the death of the author or in the case of any such work of joint authorship, at or immediately before the date of the death of the **author who dies last**, but which or any adaptation of which, has not been published before that date, copyright shall subsist until **sixty years**. As amended by act of 1994 w.e.f 10-5-95 from the beginning of the calendar year next following the year in which the work is first published.

1. **TERM OF COPYRIGHT IN PHOTOGRAPHS:**

 In the case of a Photograph copyright shall subsist until **sixty year**s (As amended by act of 1994 w.e.f. 1-5-95 from the beginning of the calendar year next following the year in **which the photograph is published.**

1. **TERM OF COPYRIGHT IN CINEMATOGRAPH FILMS:**

 In the case of a Cinematograph film, copyright shall subsists until **sixty years** (As amended by Act of 1994 w.e.f 10-5-95) from the beginning of the calendar year next following the year in which the **film is published.**

1. **TERM OF COPYRIGHT IN RECORDS:**

 In the case of a record, copyright shall subsist until **sixty years** (As amended by the act of 1994 w.e.f 10-5-95) from the beginning of the calendar year next following the year in which the **record is published.**

1. **TERM OF COPYRIGHT IN GOVERNMENT WORKS:**

 In the case of Government work, where Government is the first owner of the copyright therein, copyright shall subsist until **sixty years** (As amended by Act of 1994 w.e.f 10-5-95) from the beginning of the calendar year next following the year in which the work is **first published**.

1. **TERM OF COPYRIGHT IN WORKS OF INTERNATIONAL ORGANIZATION:** In the case of a work of an international organization to which the copyright shall subsist until **sixty years** (As amended by Act of 1994 w.e.f 19-5-95) from the beginning of the calendar year next following the year in which the work is **first published.**
2. **TERM OF COPYRIGHT FOR BROADCASTING WORKS:** InBroadcasting works, the right shall subsist until **twenty five years** from the beginning of the calendar year next following the year in which the programme is **first Broadcast**

**Q.No.8) DISCUSS THE PROVISIONS FOR THE REGISTRATION OF COPY RIGHT? COMMENT WHETHER REGISTRATION IS COMPULSORY.**

**ANS:** The copy right act does not provide for compulsory registration of works in which copyright subsists. It has left to the option of owners or works. The copyright exists whether registration is done or not, Registration is however evidence of time when the author or the artist claims copyright in the work. Copyright vests in the person who is the known original author or creator of the work.

 Where the author or original creator cannot be ascertained. The person who got the registration earlier is presumed to be author or original creator of the work.

 Non-Registration does not deprive the author or original creator of a work of his right to bring both a civil and criminal suit against the infringer.

**Q.No.9: EXPLAIN THE PROVISIONS REGARDING THE INFRINGEMENT OF COPYRIGHT? WHEN COPYRIGHT INFRINGED?**

**ANS:** Infringement is the violation by a person of the right of another particularly the right to a copyright in a work created or produced by the original author. It is rightly said that what is worth copying is prima-facia worth protecting.

 Copyright protects the skill and labour employed by the author or artist in the production of his work. In relation to a literacy work that skill and labour embraces not only the language originated and used by the author. But also such skill and labour as he has employed in selection and compilation.

**DEFINITION OF INFRINGEMENT:**

Copyright in a work shall be deemed to be infringed:

1. When any person without a license granted by the owner of the copyright or the Registrar of copyrights or in contravention of the conditions of a license or of any condition imposed by a competent authority under this Act.
2. If a person does anything injurious to the exclusive right of the owner of the copyright.
3. It a person permits for profits any place to be used for the performance of the work in public where such performances of the work in public where such performance constitutes an infringement of the copyright in the work. However, if he was not aware and had no reasonable ground for believing that such performance would be an infringement of copyright granting of permission will not be an infringement of copyright.
4. When any person: Makes for sale or hire or sells or lets for hire or by way of trade displays or offers for sale or hire. Any infringed copy of the work of another amounts an infringement.

**FOLLOWING ACTS ARE NOT INFRINGEMENT OF COPYRIGHT.**

 Fair dealing with literary, dramatic, musical or artistic work for the purpose of:

* 1. Research or study
	2. Criticism or review of that work for the purpose of a judicial proceedings.
	3. Reproduction by teacher or pupil in the causes of study or examination purpose.
	4. The performance in the course of the activities of an educational institution by the staff and students of the institution.
	5. Reproduction or publication prepared by secretariat of legislature, exclusively for the use of members of legislature.
	6. Reproduction in accordance with any law in force.

**Q.No.10: WHAT ARE THE REMEDIES AVAILABLE TO THE OWNER OF COPYRIGHT IN CASE OF INFRINGEMENT OF HIS COPYRIGHT?**

**ANS:** The owner of the copyright has following remedies in case of infringement of his copyright.

1. **Civil remedies**
2. **Criminal remedies**
3. **Administrative remedies**
4. **CIVIL REMEDIES:**

 Where copyright in work has been infringed, the owner of the copyright shall be entitled to civil remedies such as injunction & claim for damages.

1. **AUTHOR’S SPECIAL RIGHTS:**

 The Author of a work shall have the right to claim the authorship of work.

1. The owner of the copyright may claim for recovery of possession of infringing copies & other materials related to the production.
2. **CRIMINAL REMEDIES:**

 **PENALTY:** Any person who infringes the copyright shall be punishable with imprisonment for a term which shall not be less than **6 months** but which may extend to 3 years and with fine which shall not be less than **Rs.50,000/-** but which may extend to **Rs.2,00,000/-** However the Court may for adequate and special reasons to be mentioned in the judgement impose a sentence of imprisonment for a term of less than 6 months or a fine of less that **Rs.50,000/-**

 For the second and for every subsequent offence, term of imprisonment shall not be less than 1 year but which may extend to 3 years and fine shall not be less than Rs.1,00,000 but which may extend to Rs.2,00,000. However the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than 1 year or a fine of less than Rs.1,00,000

1. Knowing use of infringing copy of computer programme to be an offence.

Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

 Provided that where the computer programme has not been used for gain or in the course of trade or business, the Court may, for adequate and special reasons to be mentioned in the judgement not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.

1. **ADMINISTRATIVE REMEDIES:**

 Administrative remedies include moving the Registrar of copyrights to ban the import of infringing coples into India and the delivery of infringing copies confiscated (Seize) to the owner of the copyright.

***Negotiable Instrument***

**Q1. What is meaning and definition of negotiable instrument?**

**Ans*:*** *Meaning and Definition of Negotiable Instrument****:*** A Negotiable Instrument is a written contract evidencing a right to receive money and it may be transferred by negotiation i.e. either by delivery or by endorsement. The term *“negotiable instrument”*. Literally means “a document transferable by delivery”. In India, the law relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881 which came into force 1st March, 1882. It is more or less a codification of the English common law rules .A *Negotiable Instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.*

***Examples of Negotiable Instruments***

1. Negotiable Instruments recognized by statute: (i) Bills of Exchange, (ii) Promissory Notes, (iii) Cheques.

***Examples of Non-negotiable instruments:*** (i) Money orders, (ii) Deposit receipts, (iii) Share certificates, (iv) Dock warrants, (v) Postal orders.

**Q2. What are the essential features of negotiable instrument?**

**Ans: *Essential Features of Negotiable Instruments***

1. ***Easy Transferability:*** They can be transferred from one person to another like cash, i.e., the property (ownership) in the instrument can be transferred by mere delivery (if is a bearer instrument) or by endorsement and delivery (if it is an order instrument).
2. ***Title :*** A bonafide transferee for value (know in law as a holder in due course) of a negotiable instrument gets a complete, independent and indefeasible title to the instrument even though there was some defect in the title of the transferor.
3. ***right to file suit :*** The transferee of a negotiable instrument is entitled to file a suit in his own name for enforcing any right of claim on the basis of the instrument i.e., there is right of action in itself and he is not dependent upon another’s title.
4. ***Notice of transfer :*** Moreover, it is not necessary to give notice of transfer of as negotiable instrument to the party liable to pay.
5. ***Presumption :*** Certain presumptions apply to all negotiable instrument e.g., consideration is presumed to have passed between the transferor and the transfree.
6. ***Procedure for suits :*** In India a special procedure is provided for suits on promissory notes and bills of exchange (order 37-A in the Civil procedure code).
7. ***Number of transfer :*** These Instruments can be transferred in infinitum till they are at maturity.
8. ***Rule of evidence :*** These instruments are in writing and signed by the parties, they are used as evidence of the fact of indebteness because they have special rules of evidence.
9. ***Exchange :*** These instruments relate to payment if certain money in legal tender, they are considered as substitutes for money and are accepted in exchange of goods because cash can be obtained at any moment by paying a small commission. The parties to these instruments know for certain (by whom, to whom, how much, when and where) the liabilities or claims will mature.

 **Q3. What are the presumptions attached to negotiable instruments?**

**Ans: *Presumptions as to negotiable Instruments:***

Sections 118 and 119 of the negotiable instruments act provide the following presumptions as to negotiable instruments.

1. ***consideration :*** Every negotiable instrument was made or drawn, accepted, endorsed, negotiated for consideration:
2. ***Date :*** Every negotiable instrument was made or drawn on the date it bears:
3. ***Time of acceptance :*** every accepted bill was accepted within a reasonable time after its date and before its maturity:
4. ***Transfer :*** Every transfer of a negotiable instrument was made before its maturity:
5. ***Order of endorsement :*** The endorsement on a negotiable instrument were made in the order in which they appear.
6. ***Stamping :*** A lost promissory note, bill of exchange or cheque was duly stamped:
7. ***Holder in due course :*** the holder of a negotiable instrument is a holder due course:
8. ***Proof of protest :*** in a suit upon an instrument which has been dishonored, the court shall, on proof of protest, presume the fact of dishonor, unless and until such fact is disproved i.e., counter evidence.

The above presumptions are rebuttable by evidence to the contrary. Moreover, these presumptions would not arise if an instrument has been obtained by means of fraud (or) for unlawful consideration.

***Q4 : Who are the parties to negotiable intruments?***

**Ans :** ***Parties to Negotiable Instrument***

***Parties to A Promissory Note:***

1. Maker
2. Payee.
3. Holder
4. Indorser
5. indorsee.

***Parties to A Bill of exchange:***

1. Drawer
2. Drawee
3. Acceptor
4. Payee
5. Holder
6. Indorser
7. Indorsee
8. In case of need **9.** Acceptor for honor.

***Parties to A Cheque :***

1. Drawer
2. Drawee
3. Payee
4. Holder
5. Indorser
6. Indorsee

The explanation of all the Parties to negotiable instrument in case of pro-note, bill of exchange and cheque are stated below.

1. ***Drawer :*** The maker of a negotiable instrument is called ‘drawer’.
2. ***Drawee :*** He is person on whom the instrument is drawn.
3. ***Acceptor :*** He is a person who accepts the instrument of bill of exchange. Generally the drawee becomes the acceptor after accepting the instrument (but sometimes a stranger may accept on behalf of the drawee).
4. ***Payee :*** Payee is a person to whom the sum stated in the instrument is payable. The drawer or any other person may also be the payee. In the latter case, he is called payee for Honor.
5. ***Holder :*** He is either the original payee or any other person to whom the payee has endorsed the instrument. In case of the bearer cheque, the bearer is the holder.
6. ***Endorser :*** When the holder endorses the instrument to anyone else, he becomes the endorser:
7. ***Endorsee:*** The person to whom the instrument is endorsed is known as endorsee.
8. ***Endorsee in case of need:*** The person to whom resort may be had in case of need (In English law, he is called referee in case of need) i.e., when the bill is dishonored either by non-acceptance or by non-payment.
9. ***Acceptor for honor:*** Further, any person may voluntarily become a party to a bill as an acceptor. A person who, on refusal by the original drawee to accept the bill or to furnish better security when demanded by the notary, accepts the bill in order to safeguard the honor of the drawer or any endorser in called acceptor for honor.
10. ***Holder in due course:*** According to section 8 of the Negotiable instruments act, a holder of a negotiable instrument is “a person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto”. Thus a person who has obtained the possession of an instrument by theft or under a forged endorsement is not a holder in due course as he is not entitled to recover the amount of the instrument.

**Q5. What are the privileges (benefits) enjoyed by holder in due course of negotiable instrument and make out difference between holder and holder in due course?**

**Ans :*Privileges of a Holder in due course :*** A holder in due course is given certain other privileges under the negotiable Instrument Act, which are not available to a holder.

* 1. A person who signed and delivered to another a stamped but otherwise inchoate (Incomplete) Instrument, is stopped from asserting as against a holder in due course that the instrument has not been filed in accordance with the authority given by him provided the amount filled is covered by the stamp affixed (Section 20).
	2. Every prior party to a negotiable instrument. i.e., the maker or drawer, the acceptor, and al the intermediate endorsers continue to remain liable to the holder in due course until the instrument is duly satisfied (Section 36).
	3. Where a bill of exchange is drawn by a fictitious person and is payable to his order the acceptor cannot be relieved from his liability to the holder in due course. The holder in due course shall, however, have to prove that the instrument was endorsed by the same hand as the drawer’s signature (Section 42).
	4. Where is instrument is negotiated to a holder in due course, the parties to the instrument cannot escape liability on the ground that the delivery of the instrument was conditional or for a special purpose only (Section 47).
	5. Not only that the title of the holder in due course is not subject to the defect in previous holder’s title but once the instrument passes through the hands of a holder in due course it is a purged of al defects. Any person acquiring it takes it free of al defect unless he was himself a party to the fraud (Section 53).
	6. No maker of a promissory note and no drawer of a bill of exchange or cheque shall in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn (Section 120).
	7. No maker of a note and no acceptor of a bill payable to order is, in suit thereon by a holder in due course, permitted to deny the payee’s capacity at the date of the note or bill to endorse it (Section 121).

Deference between Holder ion due course and Holder

|  |  |  |
| --- | --- | --- |
| Sl No.  | Holder in due course  | Holder  |
| 1 | Takes the instrument for free from al defects | Takes it subject to al defects and equities  |
| 2 | Acquires the instrument for valuable consideration  | Consideration not necessary.  |
| 3 | Should have acquired possession of the instrument before the amount mentioned in it became payable.  | Could acquired the possession after the amount mentioned in it became payable.  |
| 4 | He should not have noticed any defect in the instrument  | Can take the instrument with notice of defects.  |
| 5 | Must have possession of the instrument  | It is sufficient if he is entitled to the possession of the instrument. He could be a holder though the instrument is lost.  |

***Promissory Note***

**Q6. Define promissory note and state its essential elements**

***Ans :***

***Definition***

 According to section 4 “a promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument”.

 Before analyzing the essentials of a promissory note as contained in this definition, the following facts are worth noting:

1. A promissory note payable ‘only to a particular person’ is valid if it satisfies the requirements of the definition, but it shal not be a negotiable instrument within the meaning of the Negotiable Instruments act as its transferability is restricted. To put it differently, it would appear from the above definition that negotiability is not essential to the validity of a promissory note as an instrument.
2. As observed earlier, under section 31 of the Reserve Bank of India Act, 1934, no person in India except the Reserve Bank or the Central Government can make or issue a promissory note payable to bearer, accordingly, a promissory note cannot be originally made ‘payable to bearer’. Thus, the words ‘or to the bearer of the instrument’ included in the above definition have become redundant and ineffective. In fact these words ought to have been deleted after the passing of the Reserve Bank of India Act, 1934.
3. Bank notes (i.e., promissory notes issued by a banker payable to bearer on demand) and currency notes (i.e., promissory notes issued by the Reserve Bank of India or the Central Government payable to bearer on demand) are excluded from the definition of a promissory note because both of them are treated as money. The issue of bank notes, however, is now prohibited by the Reserve Bank of India Act. But Government promissory notes, which are issued by the Government for raising loans, are within the definition.
4. The person who makes the promise to pay is called the ‘maker’. He is the debtor and must sign the document. The person to whom payment is to be made (i.e., the creditor) is called the ‘payee’.

***Essentials of a Promissory Note***

 From the definition given in the Act it follows that to be a valid promissory note, an instrument must fulfill the following essential requirements.

1. It must be in writing. A promissory note has to be in writing. An oral promise to pay does not become a promissory note. The writing may be on any paper, on any bahi or book. It may be in pencil or in ink and includes printing or typing. No particular form of words is necessary, even a promise contained in a letter will suffuce, provided the other requirements of Section 4 are complied with. Of course the words used must import a clear undertaking to pay, but it is not necessary that the word ‘promise’ should be used (balmukund vs Munnalal).

The following is the usual form of a promissory note:

***Illustrations.*** A signs the instruments in the following terms:

1. “I promise to pay B or order Rs. 500”
2. “I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received.”

*Both the above instruments are valid promissory notes.*

1. It must contain a promise or undertaking to pay. There must be a promise or an undertaking to pay. The undertaking to pay may be gathered either from express words or by necessary implication. A mere acknowledgement of indebtedness is not a promissory note, although it is valid as an agreement and may be sued upon as such.

***Illustrations***: A signs the instruments in the following terms:

* 1. “Mr B I.O.U. (I owe you) Rs. 1,000.”
	2. “I am liable to pay to B Rs. 500.”
	3. “I have taken from B Rs. 2,000 and I am accountable to him for the same with interest.”

The above instruments are not promissory notes as there is no undertaking or promise to pay. There is only an acknowledgement of indebtedness.

Where, however, the acknowledgment of indebtedness contained in the document is in a defined sum of money payable on demand, there is a valid promissory note even though the words ‘promise to pay’ may not have ben used. It is so because the phrase ‘payable on demand’ necessarily implies ‘a promise to pay at once or immediately.’

***Illustration***. Where a signs the instrument in the following terms: “I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received,” there is a valid promissory note.”

1. ***The promise to pay must be unconditional.*** Certainty is very necessary in the commercial world. As such a promissory note must contain an unconditional promise to pay the promise to pay must not depend upon the happening of some uncertain event i.e., a contingency or the fulfillment of a condition. It must be payable absolutely. If an instrument contains a conditional promise to pay, it is not a valid promissory note and will not become valid and negotiable even after the happening of the condition (Hill vs Halford).

***Illustrations:*** A signs the instruments in the following terms:

* 1. :I promise to pay B Rs. 500 seven days after may marriage with C.”
	2. “I promise to pay B Rs 50 on D’s death, provided D leaves me enough to pay that sum.”
	3. “I promise to pay B Rs. 500 as soon as I can.”

The above instruments are not valid promissory notes as the payment is made dependent upon the happening of an uncertain event which may never happen and as a result the sum may never become payable.

 But a promise to pay is not conditional if the amount is made payable at a particular place or after a specified time or on the happening of an event which must happen, although the time of its happening may be uncertain (Sec. 5, Para 2). Thus, if A signs an instrument stating: “I promise to pay B Rs. 500 seven days after C’s death,” the promissory note is valid because it is not considered to be conditional, for it is certain that C will die, though the exact time of his death is uncertain.

1. ***It must be signed by the maker.*** It is imperative that the promissory note should be duly authenticated by the ‘signature’ of the maker. “Signature’ means the writing or otherwise affixing a person’s name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document. The signature may be in any part of the instrument and need not necessarily be at the bottom. The intention to sign,, however, must in al cases be proved. It may be in pencil or in ink. When the maker of a pro-note is illiterate, his thumb mark is sufficient. But facsimile impressions whether affixed in printing or by perforation or in some other form, and impressions by a rubber stamp are not recognized as signatures unless the parties specifically agree to treat them as such.
2. ***The maker must be a certain person.*** The instrument itself must indicate with certainty who is the person or are the persons engaging himself or themselves to pay. In case a person signs in an assured name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity. Where there are two or more makers, they may bind themselves jointly or jointly and severally. But alternative promisors are not permitted in law because of the general rule that “where liability lies no ambiguity must lie,: Thus a note in the form “I Alok Kumar promise to pay” and signed by alok Kumar or also Satish Chandra is a good note as against Alok Kumar only.
3. ***The Payee must be certain.*** Like the maker the payee of a pronote must also be certain on the face of the instrument. A note is valid even if the payee is misnamed or indicated by his official designation only (Sec. 5, Para 4), provided he can be ascertained by evidence. It may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees (Sec. 13(2) ). Thus alternative payees are permissible in law. But it must be made payable to order originally. A note originally made payable to bearer is illegal and void as per Reserve Bank of India Act, 1934. also a note in favor of fictitious person is illegal and void, for it is teated as payable to bearer. A pro-note made payable to the maker himself is a nullity, the reason being the same person is both the promisor and the promise.
4. ***The sum payable must be certain.*** For a valid promissory note it is also essential that the sum of money promised to be payable must be certain and definite. The amount payable must not be capable of contingent additions or subtractions.

***Illustrations .*** A signs instruments in the following terms:

* 1. “I promise to pay B Rs. 500 and all other sums which shall be due to him”,
	2. “I Promise to pay B Rs. 500, first deducting there out any money which he may owe me.”
	3. “I promise to pay B Rs. 500 and all fines according to rules.”
	4. “I promise to pay B Rs. 10 on or before 15 August 1993, and a similar sum monthly every succeeding month.”

The above instruments are invalid as promissory notes because the exact amount to be paid by A is not certain.

But according to section 5, para 3, the sum does not become indefinite merely because:

* 1. There is a promise to pay the amount with interest, provided the rate of interest is stated.
	2. the amount is to be paid at an indicated rate of exchange or according to the course of exchange; or
	3. the amount is payable by installments, even with a provision that on default being made in payment of an installment, the balance unpaid shall become due.
1. ***The amount payable must be in legal tender money of India.*** A document containing a promise to pay a certain amount of foreign money or to deliver a certain quantity of goods is not a promissory note. Similarly, a promise to deliver paddy either in the alternative or in addition to money does not constitute a promissory note. Thus, an instrument signed by A, saying, “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next” is not a valid promissory note.
2. ***Other formalities.*** Though it is usual and proper to state in a note the place where it is made and the date on which it is made but their omission will not render the instrument invalid. Even where the amount is made payable at a certain time after date, omission of date does not invalidate the instrument and the date of execution can be independently ascertained or proved. The words “value received” are also not an essential part of the form of a pro-note, because, as per Section 118, consideration is presumed until the contrary is proved. But a promissory note must be properly stamped as required byu the Indian stamp act and each stamp must also be duly cancelled. The maker’s signature with the date across the stamp cancels the stamp effectively. Although an unstamped or inadequately stamped promissory note is invalid, but the amount of loan can be recovered if proved otherwise.

***Bill of Exchange***

**Q7. Define bill of exchange and state its essential elements**

***Ans :***

***Definition :***

Section 5 of the Negotiable Instruments Act defines a bill a exchange as follows:

 “A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.”

 *At the very outset the following two facts must be noted:*

1. Although a bill of exchange directing to pay ‘only to a particular person is valid if it satisfies the requirements of the definition but it shall not be a negotiable instrument within the meaning of the Negotiable instruments Act as its transferability is restricted.
2. Although a bill of exchange may be originally drawn ‘payable to bearer’ but in such a case it must be payable otherwise than on demand (Say, three months after date). In other words, a bill cannot be drawn payable to bearer on demand.’ If it is ‘payable on demand’ then it must be made ‘payable to order’ (Sec. 31, of the Reserve Bank of India Act).

Parties to a bill of exchange. There are three parties to a bill of exchange viz., drawer, drawee and payee. The person who makes the bill is called the drawer.’ The person who is directed to pay is called the drawee.’ The person to whom the payment is to be made is called the payee.’ The drawer, or if the bil is endorsed to the payee, the endorsee, who is in possession of the bil is called the ‘holder.’ The holder must present the bill to the drawee for his acceptance. When the drawee accepts the bill, by writing the words ‘accepted’ and then signing it, he is called the acceptor.

 It is not necessary however that three separate persons should answer to the description of drawer, drawee and payee. One person may fill any two of these positions. Thus, one may become drawer and payee (when the bill is drawn “pay to me or my order”). Or drawee and payee (when the bull is subsequently endorsed in favor of the drawee), or drawer and drawee (when one draws a bill upon himself). In the last case, the holder may treat the instrument as a bill of exchange or as a promissory note. What is required is that the three parties drawer, drawee and payee must be pointed out in the bill with certainty.

 Drawee in case of need. Sometimes the name of another person may be mentioned in a bill of exchange as the person who will accept the bill, if the original drawee does not accept it. Since another person so named is to be approached in case of need, he is known as :drawee in case of need.” (Sec. 7)

 Acceptor for honor. When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honor of the drawer or of any one of the insorsers, such person is called an acceptor for honor (Sec. 7). Thus any person may voluntarily become a party to a bill as an acceptor for honor.”

**Essentials of a Bill of Exchange**

 To be a valid bill of exchange an instrument must comply with the requirements of the definition given in section 5, which are as follows:

1. it must be in writing.
2. in must contain an order to pay. A mere request to pay on account will not amount to an order, but an order may be expressed in polite language.
3. The order to pay must be unconditional.
4. It must be signed by the drawer.
5. The drawer, drawee and payee must be certain. A bill cannot be drawn on two or more drawees in the alternative because of the rule of law that “where liability lies, no ambiguity must lie.” But a bill may be made payable in the alternative to one of two or more payees (Sec. 13).
6. The sum payable must be certain.
7. The bill must contain an order to pay money only.
8. It must comply with the formalities as regards date, consideration, stamps, etc.

It will be seen that the fundamental essentials of a bil enumerated above are more or less similar to that of a promissory note. As such the rules that apply to promissory notes in regard to those essentials are in general applicable to bills of exchange as well, (For details of these essentials see notes to promissory note).

***Special Benefits of Bill of Exchange***

 The special benefits of using bills of exchange in the world of commerce are as follows:

1. A bill of exchange is a double secured instrument. If the bill is dishonored by the acceptor, the holder or the payee may look to the drawer of the bill for payment.
2. In case of immediate need of money a bill can be discounted with a bank by the payee.
3. Two separate trade debts can be discharged by a bill of exchange Hence, where a buys goods on credit from B for Rs. 1,000 to be paid three months after date and B buys goods on credit from C on similar terms for similar amount, an order by B to A to pay the sum of Rs. 1,000 to C will discharge two separate trade debts.

***Specimen of a Bill of Exchange***

Rs. 1,000 New Delhi, 15 August 1987

Three months after date pay to C or order the sum of rupees one thousand only, for value received

To,

 A, Sd/-

135 Sadar Bazar

 Delhi



Revenue stamp

SD/- B

B

Distinction between a Pro-note and a Bill

 The points of distinction between a promissory note and a bill of exchange are as follows:

1. ***Number of parties :*** In a promissory note there are two parties the maker of the note and the payee. In a bill of exchange there are three parties the drawer, the drawee and the payee.
2. ***the maker of a note cannot be the payee:*** in the case of a promissory note the maker cannot be the payee for the simple reason that the same person cannot be both the promisor and the promise. But in a bill of exchange the drawer and the payee may be one and the same person as where a bill is drawn “pay to me or my order.”
3. ***Promise and order:*** In a promissory note there is a promise to make the payment whereas in a bill of exchange there is an order for making the payment.
4. ***Acceptance:*** A promissory note requires no acceptance as it is signed by the person who is liable to pay. The drawer of a bill of exchange is generally the creditor of the drawee and therefore it must be accepted by the drawee before it can be presented for payment.
5. ***Nature of liability.*** The liability of the maker of a pro-note is primary and absolute but the liability of a drawer of a bill of exchange is secondary and conditional. It is only when the acceptor does not honour the bill that the liability of the drawer arises as a surety. (Sec. 30 and 32).
6. ***Maker’s position.*** The maker of a promissory note stands in immediate relation with the payee, while the maker or drawer of an accepted bill stands in immediate relation with the acceptor and not the payee (Explanation to Sec. 44).

 The position of the maker of a pro-note also differs from the position of the acceptor of a bill. A promissory note must contain an unconditional promise to pay and therefore the maker, who himself is the originator of a note, cannot make it conditional. In the case of a bill of exchange although the drawer, who is the originator of a bill, has to make an unconditional order to pay but under section 86 the acceptor may accept the bill conditionally.

1. ***Payable to bearer.*** A promissory note cannot be drawn ‘payable to bearer,’ while a bill of exchange can be so drawn provided it is not drawn payable to bearer on demand.
2. ***notice of dishonour.*** In case of dishonour of a bill of exchanjge, notice of dishonour must be given by the holder to all prior parties who are liable to pay (including the drawer and endorsers), whereas in case of dishonour of a promissory note, no notice is necessary to the maker.
3. ***Applicability of certain provisions.*** The provisions relating to presentment for acceptance, acceptance, acceptance supra protest and drawing of bills in sets are applicable only to a bill of exchange, they are not applicable to a promissory note.

***Q7.. Define cheque and state essential elements***

***Cheque***

***Definition***

 Section 6 defines a cheque as follows:

 “A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand”.

 Thus, a cheque is a bill of exchange with two distinctive features, namely:

1. it is always drawn on a bank, and
2. it is always payable on demand.

***Specimen of a cheque***

*Tuesday closed*

Pay: *Excellent graphic*

Rupees: *One thousand two hundred twenty only*

***Vijay Bank***

1/3732, Lonl Road Shahadra, Delhi – 110 032

VB/94/MCA/B

Rs. 1220/-

INTLS

LF

785

A. No.



***Distinction between a cheque and a Bill of exchange***

 Although a cheque, being a species of a bill of exchange, must satisfy almost all the essentials of a bill, e.g., signed by the drawer, containing an unconditional order, to pay a certain sum of money, to the order of a person or the bearer, etc., yet there are few points of difference between the two, namely:

1. A cheque is always drawn on a banker, while a bill may be drawn on any person, including a banker.
2. A cheque can only be drawn payable on demand, whereas a bill may be drawn payable an demand or on the expiry of a certain period after date or sight.
3. A cheque drawn payable to bearer on demand is valid but a bill drawn payable to bearer on demand is absolutely void and illegal (though a bill can be made payable to the bearer after a certain time) (Sec. 31, The Reserve Bank of India Act).
4. A cheque does not require any acceptance by the drawe before payment can be demanded. But a bill requires acceptance by the drawee before he can made liable upon it.
5. A cheque does not require any stamp, whereas a bill of exchange must be properly stamped.
6. There days of grace are allowed while calculating the maturity date in the case of time bills (i.e., bills drawn payable after the expiry of a certain period). Since a cheque is always payable on demand, there is no question of allowing any days of grace.
7. Unlike cheques a bill of exchange cannot be crossed.
8. Unlike cheques, the payment of a bill cannot be countermanded by the drawer.
9. Unlike bills, there is no system of Noting or protest in the case of a cheque.
10. The drawer of a bill is discharged from liability, if it is not duly presented for payment, but the drawer of a cheque will not be discharged by delay of the holder ion presenting it for payment, unless through the delay, the drawer has been injured, e.g., by the failure of the bank the drawer has lost the money which would have otherwise discharged the amount of the cheque. However, where the drawer is so discharged, the payee may rank as creditor of the bank for the amount of the cheque. (Sec. 84).