

AL-AMEEN COLLEGE OF LAW

6th SEMESTER OF 3 YEARS LLB AND 10th SEMESTER 5 YEARS LL.B.

IPR-II

DURATION: 3 HOURS

MAX MARKS: 100

INSTRUCTIONS:

1. Answer all 5 questions.
2. One essay type and one short note question or problem from each unit have to be attempted.
3. Figures to the right indicate marks.
4. Answers should be written either in English or Kannada completely.

Q1. What is the meaning of copyright as per Copyright Act

Ans. 1) Introduction

This Act is passed to amend and consolidate the law relating to copyright. This Act extends to whole of India. It shall come into force on such date as the Central Government may, by Notification in Official Gazette appoint. This Act consists of 79 sections, divided in 15 chapters. This Act was amended from time to time for example 1983, 1984, 1992, 1994 and 1999 and this last amendment was given effect from 15 - 1 - 2000.

Copyright is a unique kind of intellectual property, the importance of which is increasing day by day. Only human beings are capable of creativity. They can be authors, composers, artists, designers, etc. for creating their original works. They are entitled to enjoy the exclusive rights with regard to subject matter of copyright. The importance of copyright has increased enormously in the recent times due to the rapid technological development in the field of printing, music, communication, entertainment and computer industries.

In ancient days creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living. Thus, the question of Copyright never arose. The importance of copyright was recognised only after the invention of printing press which enabled the

reproduction of books on large quantity. In India the first legislation of its kind, the Indian Copyright Act, was passed in 1914 which was mainly based on the UK. Copyright Act, 1911.

During the last four decades modern and advanced means of communications like broadcasting, litho-photography, television, etc., have made inroads in the Indian economy with the result that it became essential to fulfill international obligations in the field of copyright. This necessitated that a comprehensive legislation may be completely revised in the copyright law. To this effect a Copyright Bill, 1957 was introduced in the Parliament.

## 2) Subject matter of copyright

A copyright in original works of the author protects it exclusively, fixed in a tangible medium of expression from which they can be pursued, reproduced or otherwise communicated either directly or with the aid of machine or device. Works of authorizing includes the following categories i.e. subject matter of copyrights -

- i. literary works e.g. novel, plays, stories, including fiction and non-fiction;
- ii. musical works, including any accompanying words;
- iii. dramatic works, including any accompanying music;
- iv. pantomimes and choreographic works;
- v. pictorial, graphic, and sculptural works;
- vi. motion pictures and other audiovisual works;
- vii. sound recordings; and,
- viii. architectural works.

## 3) Meaning of copyright S. 14 -

The definition of copyright is amended by the amending Act of 1994 w.e.f. 10-5-1995. For the purposes of this Act, 'copyright' means the exclusive right, subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely -

- (a) in the case of a literary, dramatic or musical work, not being a computer ' ' programme :- (i) to reproduce the work in any material form including the storing of it in any ' ' " medium by electronic

means; ' (ii) to issue copies of the work to the public not being copies already in circulation; (iii) ' to perform the work in public, or communicate it to the public; (iv) to make any cinematograph film or sound recording in respect of the work; (v) ' to make any translation of the Work; (vi) to make any adaptation of the work; ' '(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (iv);'

(b) in the case of a computer programme -. (i) to do any of the acts specified in clause (a); (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental (By Amendment of 1999 w.e.f 15 -1- 2000)

(c) in the case of an artistic work -

i. to reproduce the work in any material form including depiction in 3 dimensions of a 2 dimensional work or in 2 dimensions of a 3 dimensional work. ii. to communicate the work to the public; iii. to issue copies of the work to the public not being copies already in circulation; iv. to include the work in any cinematograph film; v. to make any adaptation of the work; vi. to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clause i to iv

(d) in the case of a cinematograph film-

i. to make copy of the film including a photograph of any image forming part thereof; ii. to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions; iii. to communicate the film to the public.

(e) in the case of a sound recording -

(i) to make any other sound recording embodying It ;. (ii) to sell or give on hire, or offer for sale or hire, any copy of the Sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the sound recording to the public.

For the purposes of this section, a copy, which has been sold once, shall be deemed to be a copy already in circulation.

#### 4) Conclusion

The copyright is a unique kind of Intellectual property. The authors, composers, artists, designers etc. are entitled to enjoy the exclusive rights to subject matter of copyright. The importance of the copyright has increased enormously in the recent time due to rapid technological development in the held of printing, music, communication, entertainment and computer industries. The object of copyright law is to protect the author of copyright work from an unlawful reproduction or exploitation of his work by others. The object of the copyright law is to encourage the authors, composers, artists and designers to create original works by rewarding them with the exclusive right for limited period to extract the work for monetary gains.

Q Explain the essentials which makes a work copyrightable.

Ans.

##### 1) Nature of Copyright -

The object of the Copyright Law is to protect the author of the Copyright work from an unlawful reproduction or exploitation of his work by others. This protection is necessary to encourage exploitation of copyright work for the benefit of the public. Entrepreneurs like publishers, film producers or sound recording producers to whom the owner of Copyright assigns or licenses the particular right to do this exploitation.

##### 2) Characteristics of Copyright

###### i) Creation of Staute -

Copyright is a creation of the statute. No person is entitled to copyright or any similar right in any work except those provided under the Copyright Act. Its object is to protect the writer or the creator of the original work from unauthorized reproduction, or exploitation of his materials. This right also extends to prevent others from exercising without authority any other form of right, attached to the copyright.

###### ii) Multiple rights -

Copyright consists of bundle of rights in the same work therefore, copyright is a multiple right. These rights can be assigned or licensed as a whole or separately. Thus in the case of literary work, there is the

right of reproduction. In the hardback and paperback editions, the right of serial publication in magazines, the right of dramatic and cinematographic versions, right of translation, adaptation, the right of public performance of play or a

musical work and so on

iii) Copyright exists in expression of idea and not mere idea -

There is no copy right in idea. Copyright subsists only in material forms in which the ideas are expressed. There cannot be infringement of copyright to adopt the ideas of another.

iv) The work must be original -

Copyright subsists only in original work. The word 'original' does not mean that the work must be the expression of original or inventive thought. The originality which is required, relates to the expression of the thought but the expression need not be in an original or novel form but that the work must be not copied from other work i.e. it should originate from the author.

v) No formalities like registration required -

No formalities like registration are required to acquire copyright. Copyright in a work automatically subsists as soon as the work comes into existence. provided it is original. Although there is a provision for registration of copyright work, it does not confer any special right or privilege on the owner of the copyright.

vi) Nature of rights -

The nature of rights conferred on the owner of the copyright depends upon the nature of the work but it could be observed that there is one feature which is common to all kinds of the work and that is the right to reproduction in a material form and right to publication: There is no copyright in live events, as it confer special rights on performers. No copyright is granted to the work which is grossly immoral, illegal, defamatory, seditious, deceive the public and contrary to public policy.

3) Object of copyright -

The object of the Copyright law is to encourage the authors, composers, artists, and designers to create original works by rewarding them with the exclusive right for limited period to extract the work for monetary gains. The economic exploitation is done by licensing such exclusive rights to entrepreneurs

like publishers, film producers and record manufactures for monetary consideration. The owners of the copyrights are entitled to subject matter of copyrights.

Q2. What are the salient features of BIO-DIVERSITY.

Ans. Salient Features of the Biological Diversity Act 2002:

The Biological Diversity Act (BDA) was formulated after India became signatory to the CBD. The draft legislation was developed through an intensive consultation process involving all stakeholders. The Act was passed by the Parliament in December 2002. The objectives of the Act are conservation of biological diversity, sustainable use of the components of biodiversity, and fair and equitable sharing of benefits arising out of the utilization genetic resources and bio-resources. Some of the salient features made in the BDA for regulation of access to biological diversity, its conservation and sustainable use are:

1. To regulate access to biological resources of the country equitable share in benefits arising out of the use of biological resources.
2. To Conservation and sustainable use of biological diversity.
3. To Conservation and development of areas important from the standpoint of biological diversity by declaring them as biological diversity heritage sites.
4. Protection and rehabilitation of threatened species.
5. To respect and protect knowledge of local communities related to biodiversity.
6. Regulation of access to biological resources of the country with the purpose of securing equitable share in benefits arising out of the use of biological resources, and associated knowledge relating to biological resources.
7. To secure sharing of benefits with local people as conservers of biological resources and holders of knowledge and information relating to the use of biological resources.

8. Setting up of National Biodiversity Authority (NBA), State Biodiversity Board (SBB) and Biodiversity Management Committee (BMCs).
9. NBA and SBB are required to consult BMCs in decisions relating to bioresource / related knowledge within their jurisdiction.
10. To respect and protect knowledge of local communities traditional knowledge related to biodiversity.
11. All foreign nationals/organizations require prior approval of NBA for obtaining biological resources and / or associated knowledge for use.
12. Indian scientists / individuals require approval of NBA for transferring results of research to foreign nationals organizations.
13. Involvement of institutions of State Government in the broad scheme of the implementation of the Biological Diversity Act through constitution of committees.
14. To Protect India's rich biodiversity and associated knowledge against their use by foreign individuals and organizations without sharing benefits arising out of such use and check bio-piracy.
15. Indian Industry needs prior intimation to SBB to obtain bio-resource. SBB has right to restrict if found to violate conservation and sustainable use and benefit sharing.
16. Provisions for notifying heritage sites by State Government in consultation with local body.
17. Creation of National, State and Local Biodiversity Fund and its use (or conservation of biodiversity. '
18. Prior approval is needed from NBA for IPRs in any invention in India or outside India on bioresource.

Q. Write about the authorities under BIO-DIVERSITY ACT

Ans. Establishment of National Biodiversity Authority (Section 8)

(1) With effect from such date as the Central Government may, by notification in the Official Gazettee, appoint, there shall be established by the Central Government for the purposes of this Act, a body to be called the National Biodiversity Authority.

(2) The National Biodiversity Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to contract and shall by the said name sue and be sued.

(3) The head office of the National Biodiversity Authority shall be at Chennai and the National Biodiversity Authority may, with the previous approval of the Central Government, establish offices at other places in India.

(4) The National Biodiversity Authority shall consist members, namely:-

(a) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the Central Government;

(b) three ex officio members to be appointed by the Central Government, one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests or the Director General of Forests;

(c) seven ex officio members to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with-

(i) Agricultural Research and Education; (ii) Bio technology; (iii) Ocean Development; (iv) Agricultural and Co-operation; (v) Indian Systems of Medicine and Homoeopathy; (vi) Science and Technology; (vii) Scientific and Industrial Research;

(d) five non-official members to be appointed from amongst specialists and scientists having Special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources.

## Appointment, term, Pay and Allowances of the Chairperson: Section 9 & 10

The term of office and conditions of service of the chairperson and the other members other than ex-officio members of the National Biodiversity Authority shall be such as may be prescribed by the Central Government. The chairperson shall be the chief executive of the National Biodiversity Authority and shall exercise such powers and perform such duties, as may be prescribed.

The chairperson of the authority shall be appointed by the Central Government. Every appointment of chairperson shall be made either on deputation basis or by selection from outside the Central Government. In case the appointment is through deputation, the applicant should not be below the rank of additional secretary to the Government of India.

The chairperson of the authority shall hold the office for a term of three years' and shall be eligible for re-appointment, no chairperson shall hold office as such after he attains the age of sixty five years or his term of office expires which is earlier. The chairperson may resign from his office by giving at least one month notice in writing to the Central Government.

A chairperson shall be entitled to a fixed pay to be decided by Central Government from time to time. A chairperson shall be entitled to such allowances, leave, pension, provident fund, house and other perquisites etc. to be decided by the Central Government from time to time.

## Removal of Members: Section 11 :-

The Central Government may remove from the National Biodiversity Authority any member who, in its opinion, has:-

- a) been adjudged as an Insolvent; or
- b) been convicted, of an offence which involves moral turpitude; or
- c) become physically or mentally incapable of acting as a member; or
- d) so abused his position as to render his continuance in office detrimental to the public interest; or
- e) acquired such financial or other interest as is likely to affect prejudicially his functions as a member.

No member of the Authority shall be removed from his office on any ground specified in Section 11, without a due and proper enquiry by an officer not below the rank of a Secretary to the Government of India appointed by the Central Government and without giving such member a reasonable opportunity of being heard.

#### Establishment of State Biodiversity Board: (Section 22)

The State Government will appoint State Biodiversity Board: (588), consisting of:

- a) A chairperson, to be appointed by State Government.
- b) Five ex-officio members from concerned state government departments.
- c) Five members to be appointed among experts in matters relating to conservation of biological diversity.
- d) The head office of the State Biodiversity Board shall be at such place as the State Government may, by notification in the Official Gazette, specify.

#### The Functions and Powers of the SBB: (Section 23 & 24)

Advising the State Government regarding the conservation and sustainable use of biodiversity, and the equitable sharing of benefits. Approving or rejecting requests for commercial utilization or biosurvey and bioutilization of any biological resource by Indians. To perform other functions as may be necessary, as may be prescribed by the State Government.

No person, who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilization, or biosurvey and bioutilization for commercial utilization except after giving prior intimation to the State Biodiversity Board concerned. The State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquires as its conservation, may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity. Provided that no such order shall be made without giving an opportunity of being heard to the person affected.

Q3. What does Protection Plant variety and farmers rights stands for?

Ans.

## 1. Introduction:

Plant variety protection, also called a plant breeder's right (PBR), is a form of intellectual property right granted to the breeder of a new plant variety. According to this right, certain acts concerning the exploitation of the protected variety require the prior authorization of the breeder. Plant variety protection is an independent sui generis form of protection, tailored to protect new plant varieties and has certain features in common with other intellectual property rights. As in the case of patents, trade marks and industrial designs, prior examination and granting by the relevant authority is required to establish the breeder's right. Plant variety protection provides legal protection to a breeder in the form of Plant Breeders Rights. Plant Breeders Right (PBRs) are intellectual property rights that provide exclusive rights to a breeder of a registered variety.

## 2. Importance:

New plant varieties are afforded legal protection to encourage commercial plant breeders to invest the resources, labour and time needed to improve existing plant varieties by ensuring that breeders receive adequate remuneration when they market the propagating material of those improved varieties. In the absence of a grant of exclusive rights to breeders, the dangers of free riding by third parties would be considerable. This is because the genetic material within plants that specifies their distinctive and commercially valuable features is naturally self-replicating, for example by reproduction of seeds or other propagating material.

The grant of exclusive rights to plant breeders is designed to benefit the society granting the rights. It provides an incentive for private research and development into new breeding techniques, thereby reducing the need for government funding to subsidise these activities. It encourages the development of new and beneficial plant varieties for use by farmers and consumers. And it furthers the society's development in the field of agriculture, horticulture and forestry. An international system of intellectual property rights protection for plant varieties expands these benefits by facilitating access to new varieties created in other States, breeders are assured that their rights will be protected in other States, breeders will be more willing to make their new varieties available in those States, This benefits farmers consumers and researchers in many more jurisdictions.

## 3. Historical Background:

The First International Intellectual Property (IP) Convention was the Paris Convention for the Protection of Industrial Property (1883). In this instrument, agriculture was envisaged as an area of enterprise in which property rights could be secure. Thus Article 1 (3) of the Paris Convention declared that: Industrial property shall be understood in the broadest sense and apply not only to the industry and commerce,

but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, mineral water, beer, flowers and flour. The first inclusion of biological agricultural innovations in an IP statute was in the United States, the Plant Patents Act, 1930.

#### 4. The International Union for the Protection of New Varieties of Plants (UPOV);

In 1930 the United States of America introduced a special form of exclusive right called a plant patent which was available only for a sexually reproduced varieties. Subsequently a group of European States came together in 1961 to establish the International convention for the Protection of New Varieties of Plants which was revised in 1972, 1978 and 1991. The Convention also establishes the International Union for the Protection or New Varieties of Plants (UPOV). The Convention potentially protects all plant varieties irrespectively of their mode of reproduction or of the technology used in their development. This was the point at which there was recognition of the intellectual property rights of plant breeders in their varieties on an international level.

UPOV is an independent, international inter-governmental organization with an international legal personality which has its headquarters in Geneva. The Secretary-Genera of UPOV is the Director General of WIPO. The UPOV provides sui generis form of intellectual property protection which has been specifically adopted for the process of plant breeding and has been developed with the aim of encouraging breeders and has been developed with the aim of encouraging breeders to develop new varieties of plants.

#### 5. Object:

The purpose of UPOV Convention is to ensure that the members of the Union acknowledge the achievements of breeders of new varieties of plant by granting to them to intellectual property on the basis of set of clearly defined principles. To be eligible for protection, varieties have to be new in the sense that they must not have been commercialized prior to certain dates established by reference to the date of the application for protection.

The UPOV Convention sets out a minimum scope of protection and offers members of the Union the possibility of taking national or regional circumstances into account in their legislation.

Q. Explain the farmers rights under this Act.

## Ans. FARMER'S RIGHTS

### 1) Introduction:

Farmers are an important part of the economic, social and political fabric of society. Growing recognition of farmers' role worldwide in agro biodiversity conservation and innovation is significantly evident. However, there is no consensus on what should be the exact nature, scope and extent of farmers' right. In 1989, the Food and Agricultural Organisation Conference declared that they are 'rights from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity.

### 2) Historical Background:

India has a vast and diverse agriculture structure. India is among the first countries in the world to have passed a legislation granting Farmers Rights in the form of the Protection of Plant Varieties and Farmers Rights Act, 2001. The Act is unique in that it simultaneously aims to protect both breeders and farmers. It attempts to establish rights for farmers to register their innovations and protect existing varieties.

### 3) Rights of Farmers: -

Section 39 of the Act provides following rights of a farmer:-

i) A farmer who has bred or developed a new variety is entitled for registration and other protection in like manner as a breeder of a variety under the Act.

ii) The farmer's variety is entitled for registration.

iii) A farmer who has engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation is entitled in the prescribed manner for recognition and reward from the Gene Fund. Provided that material so selected and preserved has been used as donor of genes in varieties registrable under the Act.

iv) A farmer is deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under the Act in the same manner as he was entitled before the coming into force of his Act. The farmer will not be entitled to sell branded seed of a variety protected under this Act. "Branded seed" means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

#### 4) Right of Communities:

Where the people of any village or local community has contributed in the evolution of any variety, any person or group of person, whether actively engaged in farming or not, or any governmental or nongovernmental organisation may on behalf of that village or local community in India file in any center notified by the Authority any claim attributable to the contribution of the people of that village or local community.

Where any claim is made, the centre may verify the claim of such person or group of persons or such governmental or non-governmental organisation and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered the Act, it will report its findings to the Authority.

When the Authority after making necessary inquiries is satisfied that the variety with which the report is related has been registered, it may issue notice to the breeder of that variety and after providing Opportunity to such breeder to file objection and of being heard, and may grant compensation to be paid to a person or group of persons or governmental or non-governmental organisation which has made the claim. Any compensation granted will be deposited by the breeder of the variety in the Gene Fund.

#### 5) Constitution of Gene Fund:

The Central Government will constitute a Fund to be called the National Gene Fund and there will be credited the benefit sharing received from the breeder of a variety or an essentially derived registered under the Act, the annual fee payable to the Authority by way of royalty, the compensation deposited in the Gene Fund, and the contribution from any national and international organisation and other sources.

The Gene Fund will be applied for meeting any amount to be paid by way of benefit sharing, the compensation payable, the expenditure for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collection and for strengthening the capability of the Panchayat in

carrying out such conservation and sustainable use, and the expenditure of the schemes relating to benefit sharing.

#### 6) Compulsory Licence:

Any person interested, after expiry of three years from the date of Issue of a certificate of registration can make an application to the Authority alleging that the reasonable requirements of the public for seed or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake, production, distribution and sale of the seed or other propagating material of that variety. The application should contain a statement of the nature of the applicant's interest with such particulars and the facts upon which the application is based.

The Authority, after consultation with the Central Government, and if satisfied after giving an opportunity to the breeder of such variety to file opposition to the breeder of such variety registered to grant a licence to the applicant on such terms and conditions as may deem fit and send a copy of such order to the Registrar to register the title of such applicant as licensee.

#### 7) Duration of compulsory licence:

The Authority will determine the duration of the compulsory licence on a case to case basis but in no event the duration of the licence will exceed the total meaningful period of protection.

#### 8) Revocation of compulsory licence:

The Authority, on its own motion or on application from an aggrieved person made to it, if it is satisfied that a compulsory licensee has violated any terms and conditions of his licence or it is not appropriate to continue such licence in public interest may, after giving such licensee an opportunity to file opposition and of being heard, make order to revoke compulsory licence. When a compulsory licence is revoked, the Authority sends a copy of such order of the Registrar to rectify the entry or correct the Register relating to such revocation.

#### 9) Infringement (Section 64):-

Subject to the Provisions of the Act, a right established under this Act is infringed by a person-

i) Who, not being the breeder of a variety registered under this Act or a registered agent or a registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licensee or registered agency without permission of the registered licensee or registered agent, as the case may be,

ii) who uses, sells, exports, imports or produces any other Variety giving such variety. the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind of general People in identifying such variety so registered.

#### 10) Suit for Infringement (Section 65):-

No suit: -

a) for the infringement of a variety registered under this Act, or

b) relating to any right in a variety registered under this Act, shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

#### 11) Relief of Suit for Infringement:

I) . The relief which a Court may grant in any suit for infringement referred to in Section . 65 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.

II). The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters namely : -

a) discovery of documents.

b) preserving of infringing variety or documents or other evidence which are related to the subject matter of the suit.

c) attachment of such property of the defendant which the Court deems necessary

to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

Besides, abovementioned provisions the provisions have also been made with regard to following subject:-

- i) Grant of compulsory licence. (Sections 47 to 53).
- ii) , Composition, powers and functions of Plant Varieties Protection Appellate Tribunal (Sections 54 to 59).
- iii) Offences and Penalties (Sections 68 to 77).

The Indian-law is a novel experiment in ensuring protection to plant varieties and rights and Plant breeders and farmers. The success of this new Act will be measured only when it is effectively implemented. At this juncture it is necessary to create greater awareness about, the law especially among rural Indian farmers. The fear of adverse impact on farmers interest by multinational seed Companies and research organizations in the field of agriculture need to be addressed with urgency.

Q4. Define design as per Design's Act and write it's essentials.

Ans. 1. Introduction

The Designs Act 2000 aims at protecting the designs which serve the purpose of visual appeal. A design to be registerable under this Act, must be some shape, configuration, pattern or ornamentation or composition of lines or colours applied to such article in any form by any industrial process or means but does not include any more or principle of construction. Only particular class of article can be registered under this Act.

2) DEFINITION OF DESIGN.

An article is distinguished not only by its utility but also by its visual appeal which too usually play an important role in shaping the buyers preference for article. Therefore, the design of an article or even design of its packaging is important from the commercial point of view. S. 2(d) of the Design Act, 2000 deals with the definition of design. It provides 'design' means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a

mere mechanical device, and does not include any trade mark as defined in S. 2(1)(v) of the Trade and Merchandise Marks Act, 1958 or property mark as defined in S. 479 of the Indian Penal Code, 1860 or any artistic work as defined in S. 2(c) of the Copyright Act, 1957.

Essential characteristic of design:-

i) It means only 'features' or outward appearances ii) . The features include only the shape, the configuration, pattern ornament. iii) The features apply to any article by any industrial process or means, which may be manual, mechanical, or chemical, separate or combined; iv) the features in the finished article must appeal to the eye and must be capable of being 'judged solely by the eye; . v) . It does not include any mode/principle of construction or anything, which in substance 'is mere mechanical device; and vi) It does not include a trade mark or a property mark.

### 3) Essential of Designs

a) It must be applied to articles ' ,

A design is something which is applied to an article and not the article itself. An article to which the design is to be applied must be something which can be delivered to the purchaser/customer as a finished article. Therefore, buildings and structures like a 5-star hotel or a petrol filling station cannot be considered as articles within the definition of the design. On the other hand, portable! movable structures which can be sold as finished articles may be the subject-matter for registration as design. Eg., models of buildings and structures, and toys etc.

b) Appeal to the eye

. As can be seen from the definition under the 1911 as well as the 2000 Acts, features of shape, etc which in the finished article must appeal to the eye and be capable of being judged solely by the eye In other words, all shapes or configurations or patterns are not capable of being registered. The features should appeal to the eye and should be judged solely by the eye and not by any functional considerations. There must be a special, peculiar, distinctive, significant or striking appearance something which catches the eye.

c) Novelty and originality .

A design for the purpose of registration must be both new and original, not previously published in India. It should be substantially different from pre-existing designs applied to the class of article, The

introduction of ordinary trade variants into an old design cannot make it new or original. For Eg. colour may form an element in a design, but colour or colouring as such does not constitute a design, unless the change of colour creates a new pattern or ornament.

d) Copyright in drawings -

Whatever be the nature of the drawing, the purpose and intention would be the relevant criterion to consider whether the drawings are designs in the light of the provisions of the Designs Act, 1911 and the Copyright Act, 1957. Therefore where a design comes within the meaning of the definition, under the Act of 1911 and also within the meaning of Section 15 of the Act of 1957, if the same is not registered under the previous Act, protection cannot be claimed under the latter Act.

e) Presumption of originality -

Where the statement of novelty filed by the petitioner was in respect of shape, configuration and surface pattern particularly the ridged side of the container. The novelty was not claimed either in relationship to the proportion of the shape or in the colour used. Therefore difference in the proportion of the container and the difference in colour between the petitioner's containers and the defendant's containers are immaterial, as neither the colour nor the proportions were part of the registered design.

f) No prior publication -

An application for registration of a design should be for a new or original design, not previously published in India. The Design Act does not define "Publication". In order to constitute publication, a design must be made available to the public or it is shown to be disclosed to some person without any obligation to keep it a secret/confidential. It is not necessary the design should be actually used. Generally the publication may be classified into two types i) Publication in prior document; and ii) publication by prior user. If it is published already, it cannot be registered as a 'design' under the Act.

g) Effect of pre-publication

Design is a conception, suggestion, or idea of a shape and not an article. If it has been already anticipated, it is not "new" or "original". If it has been pre-published, it cannot claim protection. Publication before registration defeats the proprietor's right to protection under the Act.

#### 4) Conclusion

A design can be registerable only when it is new or original and not previously published in India. Design which are not new or original or has been disclosed to the public anywhere in India or in any other country by publication, or not significantly distinguishable from known designs or combinations of known designs or comprise or contain scandalous or obscene matter are not registerable under the Designs Act.

Q. Discuss provision regarding registration of design? Who can apply for registration of design ?

Ans. The Proprietor can apply.

SECTION- 5 lays down that any person who claims to be the proprietor of any new or original design which is not previously published in India can apply for the registration of the design

Section 2 (j) defines who a proprietor of a new or original design is -

i) Where the author of the design, for good consideration executes the work for some other person, means the person for whom the design is so executed; and

ii) . Where any person acquires the design or the right to apply the design to any article either exclusively of any other person or otherwise, means in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the . design or right is so acquired; and

iii) In any other case means the author of the design, and where the property in or the right to apply, has devolved from the original proprietor upon any Other person, includes that other person.

In the case Vredenburg's Registered Design, (1935) 52 RPC, it was held that if there are two persons each of whom has produced a similar design and communicated the . fact of such authorship to other, neither of them alone is proprietor of a new or original design. There is joint authorship of design.

Foreigner can apply for registration of a design

There is no express provisions in the Designs Act which bars foreigners from applying for registration. However, the convention followed is that if a country does not offer the identical registration right to Indian citizens for their designs in their country, its citizens would not be eligible to apply for registration of design in India.

## PROCEDURE OF REGISTRATION OF A DESIGN

### 1) Introduction-

The procedure for registration of a design is comparatively simple when compared to procedure for registration of a patent or a trade mark.

Briefly the procedure consists of the following steps :-

Submission of application Acceptance / objections / refusal Removal of objections / appeal to Central Government Decision of Central Government Registration of the design.

#### a) Submission of application

The proprietor of the design has to file an application for registration of the design. According to S. 5(1) the Controller may on application made by any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order and morality, register the design under the Act. The application is to be accompanied by the prescribed fee, prescribed form and in prescribed manner.

#### b) Designs to be filed with the application -

The application u/s. 5 shall be accompanied by four copies of the representation of the design and the applicant shall state the class in which the design is to be registered. The applicant is also to file a brief statement of novelty with the application. The Designs Act, 2000, which he claims for his designs lays down 31 classes plus miscellaneous class 99 of goods to which ornamental designs etc. and which are capable of being registered under this Act generally apply.

#### c) Acceptance / objection -

On consideration of the application if the Controller finds that the applicant fulfils all the prescribed requirements, he shall register the designs. If on consideration of application any objections appear to the Controller, a statement of these objections shall be sent to applicant or his agent.

d) Removal of objection / appeal to the Central Government -

The applicant has to remove the objection within one month of communication of the objections to him failing which the application shall be deemed to have been withdrawn. He may also apply to the Controller for being heard on the matter. When the Controller refuses the application after the submission, he may directly appeal to the Central Government whose decision is final.

e) Decision of the Central Government-

The decision of the Central Government on the registrability of the design, is final.

f) Publication of particulars of registered design

On acceptance of design filed in respect of an application, the Controller shall direct the registration and publication of the particulars of the application and the representation of the, article to which the design has been applied, in the Official Gazette. When publishing in the Gazette, the controller may select one or more views of the representation of the design, which in his opinion would depict the design best.

g) Register of Designs -

When the design is accepted, they shall be entered in the Register of Design, in addition to the particulars required by the Act, the number of the design, the class in which it is registered, the date of filing the application for registration in this country, the reciprocity date, if any, claim for registration, and such other matters as would effect the validity or proprietorship of design.

When such Register of design is maintained wholly or partly on computer under floppies or diskettes, such computer floppies or diskettes shall be maintained under superintendence and control Of Controller and in case of any dispute or doubt with regard to information of designs, the information as contained in the back-up file or master file shall be final. Where the accepted design is one in respect of

which a reciprocity date has been allowed, registration, the extension or the expiration of the copyright in the said design shall be reckoned from such reciprocity date.

h) The Registration of the design \_

On the completion of the above procedure, the Controller shall grant a certificate of registration to the proprietor of the design. .

2) CONCLUSION .

. The Designs Act, confers certain right on the proprietor of design after registration. The Act laid down a detail procedure for the same. The legal system of the protection of industrial designs requires to be made more efficient in order to ensure effective protection to registered designs. It is also required to promote design activity in order to promote the design element in an alticle of protection.