

Legal Issue of Entrepreneurial venture

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Very Short Question Answer

1. Define the term intellectual property right.

The right that protects intellectual properties like inventions, literary and artistic works, designs, and symbols, names and images is known as intellectual property right. Intellectual property is protected in law through patents, copyright and trademark which enables people to earn recognition or financial benefit from what they invent or create.

2. What is environmental law?

Law aimed at protecting and conserving the different facets of environment in a particular country is known as environmental law. These environmental laws help to protect the environment.

3. Enlist the types of courts of law in Nepal.

- Supreme Court
- High Court
- District Court
- Specialized Courts

4. Enlist any two laws related to consumer right protection in Nepal.

- Black market and other Social Crime Punishment Act, 1977
- Consumer Protection Act, 1998

5. Define PAN.

Permanent Account Number (PAN) is a unique ten-digit alpha-numeric issued by Inland Revenue Department to all the tax payers. It is allotted only once in the life time of tax payer.

6. Make a short note on VAT.

Value added tax is a type of consumption tax that is placed on a product whenever a value is added at a stage of production and final sale. Value added tax is based on tax payer's consumption of goods rather than his income. Today more than 160 countries around the world use value added tax. In Nepal, VAT was introduced on 16th Nov, 1997 A.D.

7. Define patent.

A patent is a set of exclusive rights granted by a sovereign state to an inventor or assignee for a limited period to an inventor or assignee for a limited period in exchange for detailed public disclosure of an invention. In other words, a patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something.

8. Write about trademark.

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights.

9. Define trade secret.

Any confidential business information which provides an enterprise a competitive edge may be considered a trade secret. Trade secret encompasses manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret.

10. Write about copyright.

Copyright is a law that gives you ownership over the things you create. Be it a book, photography or painting if you created it, you own it and it's the copyright law itself that assures that ownership.

Short Question Answer

1. What are legal issues of entrepreneurial venture? Mention the legal requirements for venture creation.

Every country has its own share of laws. An entrepreneur must conduct his/her activities inside the circumference of these laws. Since an entrepreneur is not a legal person h/she has scant knowledge about legal matters. In this context, the entrepreneur often faces a series of legal hassles. These series of legal hassles are often termed as legal issues of entrepreneurship. Whether a law is violated intentionally or unintentionally the entrepreneur is recipient of punishment. It thus makes sense to have detailed knowledge of all the legal aspects associated with the particular enterprise.

In general, the entrepreneur must have knowledge about:

- Courts of law
- General business legislation
- Labour related legislation
- Finance and Investment related legislation
- Consumer protection legislation
- Legal strictness of entrepreneurial venture, etc.

Legal Requirements for Venture Creation

- **Name of business:** Name of business is a pre-requisite for new venture creation. The name must be new and not repeated. Moreover, it must not influence the society and country negatively.
- **Business structure:** There are many types of business structure. Every business structure has its own unique process. The entrepreneur must decide its organizational structure before establishing a new venture.
- **Registration:** The legal identity of a business venture starts with its registration. One must legally abide all the registration process for lawfully establishing a business.

- **Non-disclosure agreement:** There has to be a non-disclosure agreement among all the stakeholders of venture. Non-disclosure agreement secures all those important information that are crucial for the business.
- **Create documents of relationship and safeguard them:** Creating document of relationship of all the stakeholders associated with business venture and safeguarding them is another key legal requirement for venture creation. In this regard the entrepreneur must (e create document in relation to every activities and personnel concerned.

2. Write the process of registering sole trading concern in Nepal.

A firm or sole trading concern has to be registered under the Private Firm Registration Act 2014. If the STC is related to the industry, it has to be registered with the department of industry whereas STC related to commercial natures should be registered under the department of commerce. The general procedure that should be followed for registration is given below.

Application form: An individual has to fill up the details as required in the prescribed form of the concerned department. The applicant should pay the prescribed application fee and enclose attested citizenship certificate along with the application form. The application form contains the following particulars.

- Name and address of applicant, his father's and grandfather's name
- Name and address of the firm
- Objectives of the firm

Payment of registration fee: The prescribed registration fee should be deposited in the bank in the account of concerned departments. The voucher of deposited fee has to be submitted along with the application. The registration fee is determined by the government and rates are published in the Gazette. The registration fee differs according to the amount of capital investment.

Capital	Registration fee	Renewal fee
Up to 1,00,000	Rs 700	Rs 100
From 1,00,001 to 3,00,000	Rs 2100	Rs 125
From 3,00,001 to 5,00,000	Rs 4100	Rs 150
From 5,00,001 to 10,00,000	Rs 7600	Rs 200
Up to 10,00,001 to 50,00,000	Rs 10100	Rs 250
Above 50,00,000	Rs 15100	Rs 300

Certificate of registration: After receiving the application form and prescribed registration fee, the concerned department examines the particulars of the application form. If the application form is found to meet all the requirements, the concerned department registers the name of the private firm in its registry books. Then a certificate of registration is issued to the sole trader.

Renewal: The firm has to renew the certificate of registration every year. Such renewal should be made within 35 days of the new fiscal year. If not renewed within this period, the certain fine will be charged. The amount charged will depend on upon the period of default. The renewal fees may also be changed during budget sessions.

3. How partnership firms are registered in Nepal. Write.

According to Partnership Act 2020, the following procedures have to be followed while registering a partnership firm in Nepal.

Submission of application form: Partnership firm has to be registered under Partnership Act 2020. Application for registration should be submitted along with partnership deed. Also, a recommendation letter from Nepal Chamber of Commerce must also be attached. The application form is prescribed and provided by the concerned department which includes the following information.

- Name and address of firm and partners.
- Description of proposed goods or services the firm intends to provide.
- Objectives of the firm
- Restriction on the rights of partners if any
- Types of partners and the capital contributed by them
- Name of partners who represent the firm with specimen signature
- Any other information required by the concerned department from time to time.

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Registration fee: The registration fee must be deposited in the account of the concerned department. Fee depends on the capital investment. A voucher from the bank must also be attached along with the application form. The registration fees are subject to change during the budget session of the government every year.

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Above 50,00,000	Rs 15100	Rs 300

Certificate of registration: If the registration officer is satisfied with the application, a certificate of registration is issued to the partners. In case, the officer is not satisfied, he will ask the partner to fulfil the requirement or rejects the proposal and informs the partners accordingly.

Renewal: Partnership firm must be renewed within 35 days of the new fiscal year. The renewal fee depends on the capital investment. If the firm is not renewed within specified period, the certain fine is issued. The renewal fee charged is subject to change during the budget session.

4. Define PAN. Enlist the documents essential for PAN registration.

Permanent Account Number (PAN) is a unique identification number, which is issued to all the taxpayers and Tax deducted at source TDS withholding agents throughout the country. The general process of PAN registration in Nepal is discussed as follows:

The key documents for PAN registration are listed as follows:

- A copy of the citizenship certificate. Foreigners: any authentic identification document.
- A copy of the firm registration certificate in case of proprietorship firm. Add copies of all proprietorship firm registrations if you own more than one firm.
- Two identical passport size photos.
- Proof of deposit if requested by your Inland Revenue Office (foreigners only).
- Sketched map of the location of your main office.
- When an individual of forms need to re-register the PAN, s/he should provide following detail:
- A copy of the Income Tax Registration Certificate with valid renewal.

5. Give the elements of VAT registration in Nepal

The various elements of VAT registration in Nepal are discussed as follows:



5. Give the elements of VAT registration in Nepal

The various elements of VAT registration in Nepal are discussed as follows:

- Agency: Department of Inland Revenue
- Purpose: For increasing revenue mobilization by making effective the process of collecting revenues required for the economic development of the country and to collect revenues effectively by regulating the process of collection.
- Application Fee: Rs. 10 (ticket fee)
- License Fee: No fees
- Maximum Processing Time: 1 day
- Statutes: Value Added Tax Act, 2052 (1995), Section 5,9 and 10; Value Added Tax Rule 2053 (1997), Rule 2,6 and 7
- Validity: No time bound
- Requirements: Proof of deposit if requested by Inland Revenue Office (only for foreigner)
- MOA & AOA of Company: Company Registration Certificate from Company Registrar Office/ Docomm/DoSCI/VDC/Municipalities
- Application Form: Copy of the citizenship certificate of the individual or of the partner who signs the application form for the partnership firm or the person who signs the application form for the limited companies corporations (Any authentic identification document for foreigner) Two passport size photo of the individual or of the partner who signs the application form for the partnership firm or the person who signs application form for the limited companies corporations
- Rent agreement: Hand drawn sketch of the business location or main office or head office of the applicant.
- Power of attorney in case a representative is sent for registration (except for applicants)

6. Write the main provisions of environmental law of Nepal.

The main provisions of Environment Protection Act, 1997 are explained as follows:

Definition

As per the Environment Protection Act, "environment means the interaction and interrelationship among the components of natural, cultural and social systems, economic and human activities and their components. Likewise, pollution means the activities that significantly degrade, damage the environment or harm on the beneficial or useful purpose of the environment. Besides these, the act also defines the words, protection, proposal, proponent, etc.

1. Prevention and Control of Pollution: Nobody shall create pollution in such a manner as to cause significant adverse impacts on the environment or likely to be hazardous to public life and people's health, or dispose or cause to be disposed sound, heat radioactive rays and wastes from any mechanical devices, industrial enterprises, or other places contrary to the prescribed standards.
2. Environment Inspector: In order to effectively carry out or cause to be carried out the acts of the mitigation, avoidance or control of pollution or the acts required to be carried out in accordance with the Initial Environmental Examination or the Environmental Impact Assessment report, the Ministry may, by fulfilling the procedures prescribed by the Public Service Commission, appoint Environmental Inspectors or designate any employee to carry out functions of such Inspectors. The qualifications for the Environment Inspectors shall be as prescribed. The functions, duties, and powers of the Environment Inspector shall be as follows:
 3. To inspect as to whether or not the acts of mitigation, avoidance or control of pollution have been carried out following this Act or the Rules framed under this Act.
 4. To inspect as to whether or not sound, heat or wastes have been disposed or emitted from any place contrary to this Act or the Rules framed under this Act.
 5. To examine and inspect as to whether or not the acts have been carried out following the terms mentioned while granting approval to implement a proposal.



6. Protection of national heritage: It shall be the duty of the concerned agency to protect National Heritage.
7. Environment protection area: Government of Nepal may, by a notification in the Nepal Gazette, maintain any place within Nepal containing natural heritage or aesthetic, rare wildlife, biological diversity, plant, and places of historical and cultural importance, which are considered crucial from the viewpoint of environment protection, as an Environment Protection Area.
8. Establishment and operation of Environment Protection Fund: A fund named Environment Protection Fund shall be established for the ar protection of the environment, prevention, and control of pollution and protection of the National Heritage. The following amounts shall be deposited in the Fund:
 9. Amount received from Government of Nepal.
 10. Amount received from foreign governments or international organizations.
 11. Amount received from other sources.
12. The operation of the Environment Protection Fund shall be as prescribed. The fund shall be audited by the Auditor General.
13. Power to constitute Environment Protection Council: Government of Nepal may, to provide policy guidance and suggestion to Government of Nepal concerning environment protection, and also to have coordination among different agencies, constitute an Environment Protection Council comprising of environment experts and representation of the persons from recognized political parties at a national level as well.
14. Compensation may be given: In case, in consequence of the creation or disposal of pollution, sound, heat or wastes by anybody contrary to this Act or Rules or guidelines framed hereunder, any person or organization happens to suffer any loss or damage, the person or organization affected by such actions may, if he/she desires to have compensation recovered from the person or institution or proponent doing such Act, make an application to the prescribed authority setting They out the details thereof.
15. Punishment: In case any person carries out any act contrary to the approved proposal, the prescribed authority may stop such act immediately, and if any person or organization has done such act, may according to the degree of offence punish him/her with a fine up to one hundred thousand rupees.

7. Write the main provisions of contract law of Nepal.

The main provisions of Contract Act, 2000 are explained below:

Definition

Unless the context otherwise requires, the act defines contract as an agreement enforceable by law concluded between two or more parties for performing or not performing any work. Likewise, the proposal means a proposal presented by one person to another with the intent of obtaining his/her consent to do or not to do any work. Likewise, the act also defines aspects like consent, consideration.

Contractual Parties and Proposal and Consent

It deals with:

- Person competent to conclude contracts.
- Parties to be autonomous.
- Contract to be deemed to have been concluded.
- Place of contract.
- Proposal or consent may be cancelled.
- Proposal to be deemed or cancelled. .
- Indirect contract.
- Contingent contract.

Void and Voidable Contract

As per this, a contract preventing anyone from engaging himself/herself in any occupation, profession or trade union which is not prohibited by prevailing law is termed as void contracts. Likewise, following contracts may be made void:

- A contract concluded through coercion.
- A contract concluded through undue influence.
- A contract concluded through fraud.
- A contract concluded through deceit.

Contracts Relating to Guarantee, Indemnity, and Subrogation

It deals with the contracts relating to guarantee, indemnity and subrogation. As per this, a contract relating to guarantee shall be deemed to have been concluded in case it provides that if any person defaults in the repayment of the loan obtained by him/her or fulfilment of the obligation accepted by him/her, it shall be repaid or fulfilled by a third person. Likewise, in case person has entered into a contract relating to indemnity with a provision to pay any party to a contract or a third person for any loss or damage that may result from his/her actions while working under the direction of that party to that contract, he/she may realize as compensation all or any of the defined amounts subject to the contract. Similarly, it explains the provision concerning subrogation.

Contracts Relating to Bailment

It deals with:

- Contract relating to bailment
- Process of bailment to deem completed
- Particulars of bailed property to be mentioned, etc.

Contracts Relating to Collateral and Deposit

It deals with various elements of contracts relating to collateral and deposits such as collateral or deposit to be returned, rights of the obtaining collateral or deposit, consequences of pledging property without sufficient title as collateral or deposit, etc. person

Contract Relating to Sale of Good

As per this, a contract relation to a sale of goods shall be deemed to have been concluded in case any seller agrees to handover buyer immediately or in the future by receiving a price. In addition to any goods to the this, it deals with contract relating to the sale of goods to be void, determination of the price of goods, the price of goods to be paid, etc.

Contracts Relating to Agency

As per this, any person may appoint any other person as his/her agent to do anything/represent on his/her behalf except some things connected with his/her personal skills or to conduct business as his/her agent of many transaction with a third person on his behalf or to represent himself to such person or to establish any kind of legal relation with the person appointing an agent and a third person, and in case an agent is so appointed, a contract relating to agency shall be deemed to have been concluded.

Similarly, the few other provisions are in reference to contracts relating to transportation of goods, time, procedure and place for performing contracts, execution of contract and obligation arising out of the contract, breach of contract and remedies, etc.



Long Question Answer

1. Write how intellectual property rights are acquired in Nepal.

The mechanism for acquiring intellectual property rights in Nepal are discussed below:

Patent

Application for acquiring right over patent: A person desirous of having any patent registered in his/her name should submit an application to the department (Department of Industry or prescribed) with the following particulars.

- Name, address and occupation of the person inventing the patent
- If the applicant he/herself is not the inventor, how and in what manner e/she acquired title from the inventor
- Process of manufacturing, operating or using the patent
- The theory or formula if any, on which the patent is based
- The applicant should submit map and drawings of the patent along with other particulars of the application.

No registration: The department does not register any patent under this Act in the following circumstances:

- If the patent is already registered in the name of any other person
- If the applicant he/herself is not the inventor of the patent nor has acquired rights over it from the original inventor
- If the patent is likely to adversely affect the public health, conduct or morality or the national interest

Term: The term of the patent is valid only for seven years from the date of registration.

Design

- Application: A person desirous to register the design of any article manufactured or to be manufactured should submit an application to the department together with four copies of such design and maps, and drawings and required particulars.
- Registration: On receipt of the application, the department registers the design in the name of the applicant and issues a certificate. 3. Term: The design registered under this Act remains valid for five years from the date of registration.
- Punishment. No one can copy or use the design without transferring the ownership or written permission. If a person does so, a fine not exceeding fifty thousand rupees may be imposed, and articles and goods connected with such offence can be confiscated.

Trade Mark

- Application: A person desirous to register the trademark of his business registered should submit to the Department an application in the prescribed format along with four specimens of such trade-marks.
- Registration: The Department registers a trademark in the name of the applicant after a necessary investigation.
- Prohibition: No trade-mark may be used as a registered trademark without registering it at the Department.
- Time limit: In case a trademark registered at the Department is not brought into use within one year from the date of registration, the department conducts necessary inquiries and cancel such registration.
- Term: The title of the person in whose name a trade-mark has been registered remains valid for seven years from the date of registration.
- Punishment: If one uses the trademark of others without transforming the ownership or written permission or the trademark registered is not brought into use within one year from the date of registration, the department imposes a fine not exceeding one hundred thousand rupees and articles and goods connected with such offence are also confiscated.

2. Give a brief overview of labor laws in Nepal.

Labor Act

The Labor Act 1992 applies to business and industrial firms, enterprise and service units. This act holds extreme importance as it lays down the legal framework and the basis for the rules regulation and guidance on the proper management of any establishment. Matters related to an employee like security, working hours, minimum wages, health and welfare of employees, employer-employee relations, settlement are addressed by this act.

The significance associated with this act is enlisted below:

- For the setting of minimum remuneration
- It finalizes the basic work time that is no worker shall engage more than eight hours a day or 48 hours. For work more than that overtime remuneration at the rate of 150% of usual remuneration shall be paid.
- For the establishment of necessary safety arrangement, etc.

Trade Union Act

Trade Union Act was promulgated in 1992 with its first amendment taking place on 1999. The Trade Union Act is defined as an act made to provide for the management of trade union. The trade union act aims to make legal provision regarding registration, the operation of trade union and other necessary provisions relating to it for the protection and promotion of the professional and occupational right of self employed and working for others. The trade union act is divided into six chapters with each chapter focused on specific aspects.



- Chapter 1: Preliminary
- Chapter 2: Regulation of trade union
- Chapter 3: Operation, management, and recognition of the trade union
- Chapter 4: Appointments, functions, duties and rights of the registrar
- Chapter 5: Fund and auditing
- Chapter 6: Miscellaneous

Foreign Union Act

Foreign Union Act was promulgated in 2007 to amend and consolidate laws relating to foreign employment. The Foreign Employment Act is expedient to amend and consolidate laws relating to foreign employment to make foreign employment business safe, managed and decent. Moreover, it focuses on protection of rights and interests of the workers who go for foreign employment and the foreign employment entrepreneurs, while promoting that business. The Foreign Employment Act is divided into 12 chapter with each chapter focused on a specific aspect.

- Chapter 1: Preliminary
- Chapter 2: Provisions relating foreign employment
- Chapter 3: Provisions relating to license on foreign employment business
- Chapter 4: Provisions relating to prior approval and selecting of workers
- Chapter 5: Provisions relating to classification of training and workers
- Chapter 6: Provisions relating to foreign employment welfare fund BAT
- Chapter 7: Provisions relating to monitoring and inquiry price
- Chapter 8: Constitution functions, duties, and powers of foreign employment promotion board
- Chapter 9: Offence and punishment regarding various aspects of foreign employment
- Chapter 10: Investigation and inquiry
- Chapter 11: Trial and settlement of cases
- Chapter 12: Miscellaneous that focuses on foreign employment department, appointment off labour attaché, repatriation of income of workers, etc.

Bonus Act

Foreign Union Act was promulgated in 1974 with its first amendment 1, taking place on 1977. The Bonus Act is an act made to provide for the distribution of bonus. The Bonus Act is expedient to provide for the legal provisions for distributors of bonus to the workers and the personnel working in the enterprises.

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