

C.S Executive - June - 2010
ECONOMIC AND LABOUR LAWS
(Paper No.- 5)
Part - A

2010 - June [1]

Q-1

With reference to the relevant legal enactments, while short notes on any five of the following :-

Q-1 (i)

- (i) Privileges to a star export house.

Ans-1

Please refer to 2008 - Dec [1] {C} (ii) under the head Short Notes on Pg 19.

Q-1 (ii)

- (ii) Competition Advocacy.

Ans-1 (i)

- (i) Provisions relating to competition advocacy are contained under Section 49 of the Competition Act 2002.
- (ii) This section provides that the Central or State Government can seek any opinion from CCI i.e. Competition Commission of India.
- (iii) Information sought may be with regards the tentative effects of the policy on competition.
- (iv) It is not necessary to abide by the opinion given by CCI.
- (v) CCI needs to provide its opinion to State/Central Governments within a time frame of 60 days of receipt of reference for providing information.

Q-1 (iii)

- (iii) Term of patents.

Ans-1 (iii)

- (i) Provisions Relating to term period of patents are covered under section 53 of the Patents Act 1970.
- (ii) The term period of patents is 20 years from date of filing application for the patent.
- (iii) However non payment of renewal fees may result in the cessation of the patent.

Q-1 (iv)

- (iv) The concept of sustainable development.

Ans-1 (iv)

Please refer 2005 - June [2] {C} (ii) on Pg 9-108 under the head short Notes.

Q-1 (v)

- (v) Mens rea under the Essential Commodities Act, 1955.

Ans-1 (v)

- (i) The term 'mens rea' which means guilty mind is considered as a pre-

requisite for committing any crime.

- (ii) Section 7 of the Essential Commodities Act, 1955 also provides that mens rea is an essential constituent to regard the contravention as an offence.
- (iii) The Act provides these needs to be an intention contravention of order under section 3 so as to regard the same as punishable.

Q-1 (vi)

- (vi) International copyright.

Ans-1 (vi)

Please refer 2007 - June [1] {C} (v) under the head short Notes on Pg No. 136.

2010 - June [2]

Q-2

State, with reasons in brief, whether the following statements are correct or incorrect. Attempt any five :-

- (i) The consumer protection Act, 1986 only reinforces the doctrine of caveat emptor.

Ans-2 (i)

Incorrect, the objective for enactment of the Consumer Protection Act, 1986 is to provide protection of the interest of consumers and therefore provide for the establishment of consumer councils and other authorities to settle the consumer disputes.

The concept of 'Let the buyer beware' has been replaced by the one which states 'consumer is the king'.

Q-2 (ii)

- (ii) In all legal proceedings relating to trade mark registered under the Trade Marks Act, 1999, the original registration and all subsequent assignments and transmissions thereof shall be prima facie evidence of its validity.

Ans-2 (ii)

Correct, as per the provisions of Section 31 of the Trade Marks Act, 1999 the original registration and all subsequent assignments and transmissions thereof shall be prima facie evidence of its validity in all legal proceedings relating to trade mark registered under the Trade Marks Act, 1999.

Q-2 (iii)

- (iii) Cartel includes an association of producers, sellers or distributors who by agreement among themselves limit, control or attempt to control. The production, distribution, sale or price of or trade in goods or provision of services.

Ans-2 (iii)

Please refer to 2005 - June [1] {C} (iv) of Short Notes of Chapter - 3 Trade, Competition and Consumer Protection.
The statement is correct.

Q-2 (iv)

- (iv) Trade practice includes a single or isolated action of any person in relation to any trade.

Ans-2 (iv)

Correct

Please refer 2003 - June [1] {C} (ii) under the head short Notes of chapter 3 'Trade Competition & Consumer Protection'.

Q-2 (v)

- (v) While calculating the value of plant and machinery for the purposes of small scale/ancillary industrial undertaking, the following shall be included-
- (a) The cost of installation of plant and machinery.
 - (b) The cost of research and development equipment and pollution control equipments.
 - (c) The cost of fire fighting equipments.
 - (d) The charges paid for technical know how for erection of plant and machinery.

Ans-2 (v)

The statement is not correct since the value of plant and machinery calculated for the purpose of SSI/ancillary undertaking shall **exclude** all the cost mentioned in (a), (b), (c), (d),

For details please refer to 2005 - Dec [2] (c) of under The head Descriptive Questions of chapter 1 'Industries Development & Regulation'.

Q-2 (vi)

- (vi) Special Economic Zone (SEZ) is deemed to be on foreign territory for the purposes of trade operations, duties and tariffs.

Ans-2 (vi)

Please Refer to 2005 - Dec [1] {C} (iv) under the head 'Short Notes' on Pg No.____ of chapter - 2 'Foreign Trade Policy and Procedures'.

2010 - June [3]

Q-3

- (a) Distinguish between any two of the following:-
- (i) 'Intellectual property' and 'industrial property'.

Ans-3 (i)

Please refer 2007 - June [3] (a) under the head 'Distinguish Between' of chapter - 7 'Management of Intellectual Property Rights' on Pg No.____.

Ans-3 (ii)

- (ii) Contract of service and Contract for employment.

Contract of Service	Contract for Employment
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1. In such a case the employer can direct and control the duties and the manner of performance of the employee.	The person performing such contract enjoys larger autonomy and discretion in execution of the contract and the other person cannot decide or direct the manner of performance.
2. Thus, there exists an employer-employee relationship.	Employer-employee relationship does not exist in such a case.
3. The employee is always bound to work as per the supervision of the employer as master-servant relationship is present.	Person himself chalks out the programme and executes them to accomplish the goals. Day to day control of the other party is not seen.
4. Contract of service can thus be seen in case of employment.	Example-professional.

Q-3 (a) (iii)

(iii) 'Patent' and 'patent of additions'

Ans-3 (a) (iii)

For answer to 'patent' please refer to 2000 - June [5] (a) under the head 'Descriptive Question.

Please refer to 1995 - June [5] (a) under the head 'Descriptive Question' for the second part i.e. 'patent of addition'.

Q-3 (b)

(b) Rewrite the following sentences after filling in the blank spaces with appropriate word (s) / figure (s) :-

Ans-3 (b) (i)

- (i) foreign contribution means donation delivery or transfer made by any foreign source of any article, if the market value in India, of such article, on the date of such gift, delivery or transfer exceeds Rs. 1000.
- (ii) Environmental clearance is not required from the Central Government, if investment is less than Rs. 1 crore for any item reserved for the small scale sector.
- (iii) The amount representing the full export value of goods or software exported is required to be realized & repatriated within twelve month (s) from the date of export.
- (iv) The term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 shall be 20 year (s) from the date of application for the patent.
- (v) Literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus 60 year (s) beyond the death of the author.

2010 - June [4]

Q-4

- (a) With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules. and regulations made there under, advise on the following:-

Q-4

- (i) An Indian company engaged in financial sectors is interested in making investment in banking business abroad.

Ans-4 (i)

- (i) No. the Indian company is not entitled to make investment in banking business abroad since real estate and banking business are prohibited areas where in Indian parties are forbidden to invest.

Q-4 (ii)

- (ii) An Indian resident wants to purchase foreign securities by making remittances from his resident foreign currency (RFC) account.

Ans-4 (ii)

Yes, the Indian resident can make use of the RFC i.e. Resident Foreign Currency Account to purchase foreign securities since there exist non restriction in making such remittances from RFC Account.

Q-4 (iii)

- (iii) A Bangladeshi millionaire is interested to invest in India subject to FDI policy of the Government of India.

Ans-4 (iii)

- (iii) As per the provisions of the Foreign Exchange Management transfer or issue of security by a person resident outside India Regulations 2000, a Bangladeshi citizen is prohibited to make investment in India. The term 'person of Indian origin' excludes citizen of Pakistan or Bangladesh or Sri Lanka or China or Afghanistan or Iran or Nepal or Bhutan.

Q-4 (iv)

- (iv) An Indian public limited company wants to issue bonus shares to an existing non-resident shareholder.

Ans-4 (iv)

There is no prohibition to issue bonus shares to existing non-resident as per Foreign Exchange Management Act and regulations made there under provided compliance with sectoral ceiling limit is made and adherence with SEBI regulations is duly followed.

Q-4 (v)

- (v) An Indian citizen resident outside India is interested in acquiring a house in Chennai and a farm house on the outskirts of Delhi.

Ans-4 (v)

- (v) Though there is no restriction on Indian citizen resident outside India to acquire house in Chennai but there is prohibition to acquire farm house.

As per the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 a person of Indian origin resident outside India may acquire any immovable property other than agricultural land/farm house/plantation property in India.

Q-4 (b)

- (b) Critically examine the application of the rule of strict liability while fixing the liability for environmental pollution.

Ans-4 (b)

Please refer to 1998 - Dec [7] (iii) under the head 'Descriptive Questions given on Pg No. 112.

Q-4

- (c) Jolly Ltd. maintained a guest house for the use of its managing director and other executives. It entered into an agreement with a firm for the installation of central air- conditioning system. The system installed did not function, developed snags and there was leakage of water from dusting system. The company filed a complaint claiming compensation for deficiency in service under the consumer Protection Act, 1900. Will it succeed? Give reasons with reference to case law, if any.

Ans-4 (a)

- (a) Yes, Jolly Ltd. is entitled to file a complaint as a consumer and stands eligible for claiming compensation for deficiency in services as per the provisions of Consumer Protection Act, 1986.
- (b) As per the facts provided the company entered into an agreement with a firm for installing central air conditioning in the guest house which developed some snags and was not working properly.
- (c) The use of air conditioner by Jolly Ltd. was not all commercial since the same was not related to the business carried on by the company.
- (d) The facts of the case are similar to that of J.K. Puri Engineers v. Mohan Breweries & Distilleries Ltd.
- (e) In that case the National Commission decided it in favour of the company.

2010 - June [5]

Q-5

- (a) Mention five important grounds for apposition to the grant of patents.

Ans-5 (a)

Please refer to 2003 - June [4] (a) under the head ' Descriptive Questions, on Pg. No. 158.

Q-5 (b)

- (b) Critically examine how environmental Pollution violates human rights.

Ans-5 (b)

- (b) Please Refer 1998 - Dec [7] (iii) of 'Descriptive Questions' on Pg. 112 to define Environmental Pollution and judgement of M.C. Mehta and Another

v/s Union of India and other.

Environmental pollution results in the degradation of resources and therefore deteriorate the quality of human life resulting in violation of human rights. Increase in environmental pollution leads to impure air and water, loss of sources of energy, health problems even to the extent of physical impairment. Thus, environmental pollution has a direct impact on quality of human life and earnest measures should be taken to protect & preserve the environment.

Q-5 (c)

(c) Evaluate the efficacy of the Essential Commodities Act, 1955 in controlling the production, supply and distribution of essential commodities in the country.

Ans-5 (c)

- (1) Essential Commodities Act was passed in the year 1955 by the Central Government.
- (2) As per the preamble of the Essential Commodities Act, 1955 the objective behind the enactment is to -
Provide in the interest of the general public for the control of the production, supply and distribution of and trade & commerce of certain commodities.
Ensure equitable distribution & access at reasonable prices.
- (3) The Act thus seeks to prevent exploitation in form of black marketing, hoarding or any other undesirable means.
- (4) Central Government is empowered by virtue of this Act to issue orders & directions.
- (5) Central Government has the power to delegate its authority to State Government and Union Territories (U.T.).
- (6) Thus it is the Central Government which may be regarded as the highest authority which works for the public interest of all the citizens.

Part - B

2010 - June [6]

Q-6

Write notes on any four of the following:-

Q-6 (i)

(i) Principles governing domestic enquiry.

Ans-6 (i)

Please refer to 1999 - June [5] {C} (c) under the head 'Descriptive Questions' of chapter - 16 'Industrial Disputes Act, 1947' on pg. No.____

Q-6 (ii)

(ii) Purposes for which ESI fund may be expended under the employees State Insurance Act, 1948.

Ans-6 (ii)

Various purposes for which ESI fund may be expended under the

- Employees State Insurance Act, 1948. are as follows :-
- ⇒ Payment of benefits to the insured person or their families.
 - ⇒ Payment in relation to any contract entered for implementing the provisions of the Act.
 - ⇒ Payment of salaries to the employees of Employee State Insurance Corporation.
 - ⇒ Payment of fees to members of standing committee.

Q-6 (iii)

- (iii) Procedure to be followed for the certification of standing orders under the Industrial Employment (Standing Orders) Act, 1946.

Ans-6 (iii)

Please refer to 2003 - June [7] {C} (a) (i) under the head 'Descriptive Questions' of chapter - 17 - Industrial Employment (Standing Orders) Act, 1946.

Q-6 (iv)

- (iv) 'Excluded employee' under the Employee's Provident Fund Scheme, 1952.

Ans-6 (iv)

Section 2 (f) of the Employees Provident Fund Scheme, 1952 defines 'excluded employee' as -

- ⇒ Apprentice
- ⇒ An employee whose pay (Basic Wages + Dearness Allowance i.e. D.A. + cash value of fixed commission) exceed Rs. 5000 per month.
- ⇒ An employee who has withdrawn the amount accumulated in the funds as per the provisions of sub - paragraph 69 clause (a) or (c).

Q-6 (v)

- (v) Prohibition of employment of contract labour under the contract labour (Regulation and Abolition) Act, 1970.

Ans-6 (v)

Please Refer 2001 - June [6] (b) under the head 'Descriptive Questions' of chapter - 15 Contract Labour Act, 1970'.

Q-6 (vi)

- (vi) Theory of notional extension of employment under the workmen's compensation Act, 1923.

Ans-6 (vi)

Please refer to 1999 - Dec [8] (a) under the head 'Descriptive Questions' of chapter - 14 - Workmen's Compensation Act, 1923.

2010 - June [7]

Q-7

- (a) Distinguish between any two of the following:-
- (i) Legal strike and justified strike.

Ans-7 (a) (i)

Legal Strike :-

A legal strike is one which does not violate the provisions of law. Thus, a strike made within the legal boundaries is termed as legal strike.

Justified Strike :-

As the very name suggests 'justified strike' is one which is justified in other words one which is fair as well as reasonable. In case the demands of those involved in strike are legitimate and bonafide the same will get the nomenclature of 'justified strike'.

Thus, the former deals with the legality related aspects while the latter deals with the issue of reasonableness. Thus, a justified strike may be legal or illegal i.e. may be in accordance with legal framework or not but appears just considering the facts of the case.

Q-7 (a) (ii)

(ii) 'Principal employer' and 'Immediate employer' under the 'employees' state Insurance Act, 1948.

Ans-7 (a) (ii)

Please Refer 2008 - Dec [7] (a) (i) under the head 'Distinguish Between'.

Q-7 (a) (iii)

(iii) 'Premises' and 'precincts' under the Factories Act, 1948.

Ans-7 (a) (iii)

Please Refer to 2002 - June [6] (a) under the head 'Distinguish Between' of Chapter - 'Factories Act, 1948'. Thus, premises may be with or without precincts.

Q-7 (b)

(b) Rewrite the following sentences after filling in the blank spaces with appropriate word (s)/figure (s) :-

Ans-7 (b) (i)

(i) The membership of provident fund scheme is compulsory for employees drawing a pay not exceeding Rs. 6,500 per month.

Ans-7 (b) (ii)

(ii) Retrenchment means termination of the services of an employee otherwise than on superannuation.

Ans-7 (b) (iii)

(iii) Wages are to be paid within 2 working days from the date of termination of the employee whatever be the reason of termination.

Ans-7 (b) (iv)

(iv) Superannuation in relation to an employee, who is a member of the pension scheme, means the attainment of the age of 58 years.

Ans-7 (b) (v)

(v) Under the Workmen's Compensation Act, 1923, the employer shall not be liable when the injury does not result in disablement for a period exceeding three days.

Q-7 (c)

- (c) Choose the most appropriate answer from the given options in respect of the following :-

Ans-7 (i)

- (i) An application for the recovery of bonus from employer shall be made within :-
- (a) Six months from the date on which the money become due.
 - (b) One year from the date on which the money due.
 - (c) 60 Days from the date on which the money become due.
 - (d) 90 Days from the date on which the money become due.

Ans - (b) One year from the date on which the money became due.

- (ii) The occupier of a factory is required Chief Inspector of Factories at least :-

- (a) 7 Days before he begins to occupy or use the premises as a factory.
- (b) 15 Days before he begins to occupy or use the premises as a factory.
- (c) 21 Days before he begins to occupy or use the premises as a factory.
- (d) 10 Days before he begins to occupy or use the premises as a factory.

Ans - (b) 15 Days before he begins to occupy or use the premises as a factory.

- (iii) The State Government may make rules regarding the provisions and maintenance of a canteen for the use of workers where in more than :-

- (a) 250 workers are ordinarily employed.
- (b) 500 workers are ordinarily employed.
- (c) 300 workers are ordinarily employed.
- (d) 100 workers are ordinarily employed.

Ans - (a) 250 workers are ordinarily employed.

- (iv) The minimum amount of compensation in case of per moment total disablement is.

- (a) Rs. 1,00,000
- (b) Rs. 90,000
- (c) Rs. 80,000
- (d) Rs. 70,000

Ans - (b) Rs. 90,000

- (v) The Contract Labour (Regulation and Abolition) Act, 1970 applies to every establishment or contractor wherein workmen employed on any day of the proceeding 12 months shall be -

- (a) 100 workmen or more.
- (b) 20 workmen or more.
- (c) 50 workmen or more.
- (d) 10 workmen or more.

Ans - (b) 20 workmen or more.

Q-8

Attempt any five of the following stating relevant legal provisions and decided case law, if any :-

Ans-8 (i)

- (i) A driver of bus belonging to the employer was involved in an accident which resulted in the impairment of free movement of his left hand disabling him from driving vehicles. He was, however, capable of performing other work. He claimed compensation contending that the said accident had resulted in permanent disablement of driving vehicles. Will he succeed ?

Ans-8 (i)

No. The driver will not succeed.

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Please refer to 2007 - June [7] {C} (b) (i) under the head 'practical Questions' of Chapter 'Workmen's Compensation Act, 1923.

Q-8 (ii)

- (ii) The workers were engaged by beedi manufacturer for rolling beedies at home subject to the rejection of defective beedies by manufacturer. The workers claimed that they should be treated as 'workers' under the provisions of the Factories Act, 1948. will they succeed ?

Ans-8 (ii)

Though Beedi making is regarded as a manufacturing process as per the Factories Act, 1948, however persons engaged for rolling beedies at home shall not be treated as worker as was held in *Shankar Balaji Waje v/s State of Maharashtra*. The persons engaged in rolling of beedies were performing the function at their respective homes and were having full freedom and were not subjugated to the direct control or superintendence of the employer. Though the owner enjoys the right to reject the defective beedies yet he doesn't enjoy an effective control over the beedi roller and thus they cannot be regarded as workers within the meaning of Factories Act, 1948.

Q-8 (iii)

- (iii) An out worker prepared goods at his residence and later on supplied these goods to the employer. Will he be treated as an employee under the Minimum Wages Act, 1948.?

Ans-8 (iii)

Yes, the out worker who prepares goods at his residence and later on supplies such goods to the employer shall also be held as an employee as per the Minimum Wages Act, 1948. The same finds its support from the judgement of *Loknath Nathu Lal v. State of Madhya Pradesh*.

Q-8 (iv)

- (iv) Mauji ram was absent from duty without leave. The employer took the plea that it had resulted in the breach of continuous service for the purposes of gratuity under the Payment of Gratuity Act, 1972. Is the plea of the employer legal and enforceable ?

Ans-8 (iv)

No, the plea of the employer on the ground that one of the employee Mauji Ram was absent from duty without leave and so the same has resulted in the breach of continuous service is not valid.

For details Refer 2008 - June [7] {C} (b) (vi) under the head 'Practical Questions'. on Pg No.

Q-8 (v)

- (v) A company was running into losses and was unable to pay the minimum rates of wages to its workers. The workers pleaded that the employer must pay them the minimum rates of wages. The employer (company) intends to go to the court challenging the constitutional validity of the Minimum Wages Act, 1948. Will the Company succeed?

Ans-8 (v)

No. the company will not succeed. Even if the company is running into losses and finds itself unable to pay the minimum wages, the provisions of Minimum Wages Act, 1948 needs to be adhered, to. Mere paucity of funds or poor economic condition serves as no ground to challenge the constitutional validity of the Act.

Q-8 (vi)

- (vi) An employee was on his way to the factory. He met with an accident one kilometer away from the place of his employment. He pleaded that the injury was caused by accident arising out of and in the course of employment injury benefits under the Employees State Insurance Act, 1948. will the employee succeed ?

Ans-8 (vi)

No, the employee will not succeed.

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Please Refer to 2003 - June [7] {C} (b) (v) under the head 'Practical Questions'.

Q-8 (vii)

- (vii) Some contract labour was engaged by an organization. There was subsequently prohibition of employment of contract labour in that category as a consequence of the verifications issued by the central Government. The employee did not absorb the contract labour and employ them on regular basis. The workmen challenged the action of the organization. Will they succeed ?

Ans-8 (vii)

No, the workmen will not succeed.

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Discuss the case law of Steel Authority of India V. National Union of Water Front Workers and others AIR 2001 SC 3527 as discussed in 2002 June [8](iv).