

ECONOMIC, LABOUR AND INDUSTRIAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer SIX questions including Question No. 1 which is **COMPULSORY**.

Question 1

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

- (i) Industrial entrepreneur memorandum*
- (ii) Foreign security*
- (iii) Water pollution*
- (iv) Contents of complete specification*
- (v) International copyright*
- (vi) Objectives of the Competition Act, 2002*
- (vii) Registered user.*

(3 marks each)

Answer 1(i)

Industrial Entrepreneur Memorandum (IEM)

Industrial undertakings exempt from obtaining an industrial licence are required to file Industrial Entrepreneur Memorandum (IEM) in Part 'A' (as per prescribed format) with the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India, and obtain an acknowledgment.

No further approval is required. Immediately after commencement of commercial production, Part B of the IEM has to be filled in the prescribed format. The facility for amendment of existing IEMs has also been introduced.

Answer 1(ii)

Foreign Security

The term Foreign Security has been defined under Section 2(o) of The Foreign Exchange Management Act, 1999, to mean any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividend is payable in Indian currency.

Answer 1(iii)

Water Pollution

The object of the Water (Prevention and Control of Pollution) Act, 1974 is to prevent and control water pollution and maintain or restore wholesomeness of water.

Water Pollution, refers to pollution of Water as per the Act . According to Section 2(e) Pollution means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may,

or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

Hence, pollution in above mentioned form is called as Water Pollution

Answer 1(iv)

Contents of Complete Specification

Section 10 of the Patents Act, 1970 dealing with contents of specifications provides that every specification, whether provisional or complete, shall describe the invention and begin with a title sufficiently indicating the subject matter to which the invention relates.

Every complete specification is required to –

- (a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
- (b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection;
- (c) end with a claim or claims defining the scope of the invention for which protection is claimed; and
- (d) be accompanied by an abstract to provide technical information on the invention.

Answer 1(v)

International copyright

The Copyright Act, 1957 applies only to works first published in India, irrespective of the nationality of the author. However section 40 of the Act empowers the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country. The benefits granted to foreign works does not extend beyond what is available to the works in the home country and that too on a reciprocal basis i.e. the foreign country must grant similar protection to works entitled to copyright under the Act. The term of Copyright protection in India to the foreign work, can not exceed that conferred by the foreign country.

Government of India has passed the International Copyright Order, 1958. According to this order any work first published in any country which is a member of the Berne Convention or the Universal Copyright Convention will be accorded the same treatment as if it was first published in India.

Answer 1(vi)

Objectives of Competition Act, 2002

The objectives of the Competition Act is to provide for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets in India, to protect the interests of consumers, and to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

Answer 1(vii)**Registered User**

Section 48 of Trade Marks Act, 1999 deals with registered users. Section 49 provides for registration as registered user. Section 50 deals with the power of the Registrar to vary or cancel registration as registered user on the ground that the registered user has used the trade mark otherwise than in accordance with the agreement or in such a way as to cause or likely to cause confusion, or deception or the proprietor/registered user misrepresented or has failed to disclose any material facts for such registration or the stipulation in the agreement regarding the quality of goods is not enforced or the circumstances have changed since the date of registration, etc. However, Registrar has been put under obligation to give reasonable opportunity of hearing before cancellation of registration.

With a view to simplify the procedure for registration of registered user and to ascertain whether the registered user agreement is in force, section 51 empowers the Registrar to require the proprietor to confirm at any time during the continuation of registration as registered user, whether the agreement, on the basis of which registered user was registered is still in force, and if such confirmation is not received within a period of one month, the Registrar shall remove the entry thereof from the Register in the prescribed manner. Section 52 recognises the right of registered user to take proceedings against infringement. Section 54 provides that the registered user will not have a right of assignment or transmission. However, it is clarified that where an individual registered user enters into partnership or remains in a reconstituted firm, the use of the mark by the firm would not amount to assignment or transmission.

Question 2

State, with reasons in brief, whether the following statements are true or false. Attempt any five :

- (i) *All 'inventions' are patentable.*
- (ii) *Competition kills competition.*
- (iii) *A 'trade practice' does not include a single or isolated action of any person in relation to any trade.*
- (iv) *The Monopolies and Restrictive Trade Practices Act, 1969 seeks to regulate 'trade practices' and not 'trade'.*
- (v) *The three-tier machinery for the redressal of consumer disputes and grievances under the Consumer Protection Act, 1986 is 'quasi-judicial in nature'.*
- (vi) *'Person resident of India' is a person residing in India for more than 182 days during the preceding financial year.*
- (vii) *A certification trade mark is a 'trade mark' under the Trade Marks Act, 1999.*

(3 marks each)

Answer 2(i)

Invention is the subject matter of patent under The Patents Act, 1970. However, section 3 of The Patents Act, 1970 lists out certain inventions/discoveries and other things which cannot be patented under the Act.

Hence, it is clear that all inventions are not patentable.

Therefore, the statement is false.

Answer 2(ii)

The term “Competition” is not defined in the Act. However, in the corporate world, the term is generally understood as a process whereby the economic enterprises compete with each other to secure customers for their product. In the process, the enterprises compete to outsmart their competitors, sometimes to eliminate their rivals. Competition in the sense of economic rivalry has a natural tendency. In other words, competition kills competition.

Thus, the statement is true.

Answer 2(iii)

In terms of section 2(u) of the The Monopolies and Restrictive Trade Practices Act, 1969, Trade Practice means any practice relating to the carrying on of any trade and includes-

- (i) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,
- (ii) a single or isolated action of any person in relation to any trade.

To be a ‘practice a particular conduct must be repetitive in nature; if it has happened in one particular case for which there is some explanation, it cannot be said to be practice. (In Re : *Auto Agents and Bajaj Auto Ltd.* RTP Enq. No. 129/1986 order dated 10.12.1990)

Hence, the statement is true.

Answer 2(iv)

The Monopolies and Restrictive Trade Practices Act, 1969 seeks to regulate trade practice and not the trade. Various kinds of trade practices viz. (i) Monopolistic trade practices (MTP); (ii) Restrictive Trade Practices; and (iii) Unfair Trade Practices (UTP) are regulated under MRTP Act, 1969.

Hence, the statement is true.

Answer 2(v)

For the purposes of protecting the interest of consumers, and at the same time , providing for remedies which are simpler, more accessible, quicker and less expensive, the Consumer Protection Act, 1986 provides for three tier machinery for the redressal of consumer disputes grievances at the district, State and National Levels. These agencies are quasi judicial in nature, as, they are not required to follow strict rules of Civil Procedure Code regarding pleadings and evidence. At the same time these agencies are required to observe principles of natural justice.

Hence, the statement is true.

Answer 2(vi)

In terms of section 2(v) of the foreign Exchange Management Act, 1999, 'Person resident of India' has been defined to mean a person residing in India for more than 182 days during the course of the preceding financial year. However, two categories of persons are excluded from the purview of definition.

The first category includes any person who has gone out of India or who stays outside India for or on taking up employment outside India, or for carrying on outside India a business or vocation. The definition also includes person who stays outside India for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

The second category of persons which have been excluded from the definition of person resident in India include:

A person who has come to stay or stays in India, in either case otherwise than

- (i) for or taking up employment in India; or
- (ii) for carrying on in India a business or vocation in India; or
- (iii) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

Hence, the statement is true.

Answer 2(vii)

Section 2(1)(e) of the Trademarks Act, 1999, defines the term certification trade mark as to mean a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person. Certification trade mark may be used in addition to the users own trademark on his goods. Hence, the statement is true.

Question 3

(a) Distinguish between any two of the following :

- (i) *'Letter of intent' and 'industrial licence'.*
- (ii) *'Intellectual property' and 'industrial property'.*
- (iii) *'Political party' and 'an organisation of political nature'. (5 marks each)*

(b) *Re-write the following sentences after filling-up the blank space with appropriate word(s) so as to convey the correct meaning :*

- (i) *Literary, dramatic, musical or artistic works enjoy copyright protection for _____ years after the death of the author.*
- (ii) *The District Forum, the State Commission or the National Commission constituted under the Consumer Protection Act, 1986 shall not admit a*

complaint unless it is filed within _____ years from the date on which the cause of action has arisen.

- (iii) Foreign contribution means the donation, delivery or transfer made by a foreign source of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed Rs. _____.*
- (iv) The Noise Pollution (Regulation and Control) Rules, 2000 provide that a loud speaker or a public address system shall not be used at night between _____ except in closed premises.*
- (v) Any transaction, which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of any person resident outside India, is defined as a _____.*

(1 mark each)

Answer 3(a)(i)

Letter of intent

Letter of intent is a provisional license. It has initial validity of 3 years within which the unit is required to commence production. The validity of the letter of intent may be extended further upto 3 years by the Competent Authority. Proposals for extension beyond 6 years are considered in exceptional circumstances on case to case basis.

Industrial licence

An industrial licence is a written permission from the Government to an industrial undertaking for manufacture of specified articles, listed in the First Schedule and includes particulars of industrial undertaking, its location, articles to be manufactured, the capacity on the basis of maximum utilization of plant and machinery etc. The licence is subject to a validity period within which the licensed capacity of the undertaking should be established.

Answer 3(a)(ii)

Intellectual Property

As the term intellectual property relates to the creations of human mind and human intellect, this property is called Intellectual property. In other words, intellectual property relates to pieces of information which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property right does not vest in those copies but in the information reflected in those copies. Similar to property rights in movable and immovable property, intellectual property is also characterised by certain rights as well as limitations such as right to use and licence and also limited duration in the case of copy right and patents.

Industrial Property

Industrial property right is a collective name for rights referring to the commercial or industrial activities of a person. These activities may include the activities of industrial or commercial interests. They may be called inventions, creations, new products, processes of manufacture, new designs or model and a distinctive mark for goods etc.

The term industrial property has acquired a meaning which clearly covers inventions as well as other marks. The Paris Convention also recognised industrial property to cover patent, trademark, service mark, trade names, utility models, industrial designs, indication of source and appellations of origin and the repression of unfair competition.

Answer 3(a)(iii)

Political party

In terms of section 2(1)(g) of Foreign Contribution (Regulation) Act, 1976, Political Party means –

(i) an association or body of individual citizens of India which is, or is deemed to be, registered with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force for the time being; or which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968; (ii) a political party mentioned in column 1 of Table I to the notification of the Election Commission of India No. 56/J&K 84, dated the 27th September, 1984 as in force for the time being.

An Organisation of Political Nature

Section 5 of FCRA prohibits an organisation of a political nature not being a political party, from accepting any foreign contribution, except with the prior permission of the Central Government.

For the purposes of section 5, the Central Government has notified certain organisations as organisations of political nature, not being a political party. These include trade unions, friendship societies/associations and students bodies besides organisations like Anand Marg, Congress Seva Dal, Seva Dharma Mission, Peoples Union for Civil Liberties, Rashtriya Swayam Sewak Sangh, Moral Re-armament, All India Peace and Solidarity Organisation, Shiromani Gurudwara Prabhandhak Committee and Jammāt-e-Islami Hind etc.

Answer 3(b)(i)

Literary, dramatic, musical or artistic work enjoy copyright protection for **60 years** after the death of the author.

Answer 3(b)(ii)

The District Forum, the State Commission or the National Commission constituted under the Consumer Protection Act, 1986 shall not admit a complaint unless it is filed within **2** years from the date on which the cause of action has arisen.

Answer 3(b)(iii)

Foreign contribution means the donation, delivery or transfer made by a foreign source of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed **Rs. One thousand**.

Answer 3(b)(iv)

The Noise Pollution (Regulation and Control) Rules, 2000 provides that a loud speaker or a public address system shall not be used at night between **10 PM to 6 AM** except in closed premises.

Answer 3(b)(v)

Any transaction, which alters the assets or liabilities, outside India of persons resident in India or assets or liabilities in India of any person resident outside India, is defined as a **capital account transaction**.

Question 4

- (a) *State whether the following transactions are valid and permitted under the Foreign Exchange Management (Current Account Transactions) Rules, 2000 :*
- (i) *An NRI sent a gift of US \$6,000 to his younger sister on her marriage in June, 2006 and again sent another gift of US \$4,000 on the occasion of marriage of his younger brother in November, 2006.*
 - (ii) *An Indian patient is in need of specialised medical treatment in a US hospital at a cost of US \$1,25,000.*
 - (iii) *A student, after graduation, wants to proceed to USA for pursuing higher studies in an engineering course for which he requires US \$1,25,000 per academic year, which is the estimate from the foreign university.*
 - (iv) *An Indian businessman wants to remit US \$10,000 for purchase of a trade mark/franchise in India.*
 - (v) *A company incorporated in India has to make a remittance of US \$90,000 by way of reimbursement of pre-incorporation expenses. (1 mark each)*
- (b) *Explain the concept of 'special economic zone' (SEZ). (5 marks)*
- (c) *Mention the important factors which the Competition Commission of India will take into consideration for determining whether an agreement has an 'appreciable adverse effect' on competition. (5 marks)*

Answer 4(a)(i)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for Gift remittances exceeding US \$ 5000 per remitter/donor per annum.

In view of the aforesaid legal position, the transaction requires approval of the Reserve Bank as the amount exceed US \$ 5000, except the remitter makes payment out of RFC Account.

Answer 4(a)(ii)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for release of foreign exchange for meeting expenses of medical treatment exceeding US \$ 1,00,000 or its equivalent.

In view of the aforesaid legal position, the transaction requires approval of the Reserve Bank as the amount exceed US \$ 1,00,000 except the remitter makes payment out of RFC Account.

Answer 4(a)(iii)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for release of foreign exchange for studies abroad exceeding the estimates from the institution abroad or US \$ 1,00,000 “per academic year” whichever is higher.

In view of the aforesaid legal position, the transaction requires approval of the Reserve Bank as the amount exceed US \$ 1,00,000, except remitter makes payment out of RFC Account.

Answer 4(a)(iv)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for remittance towards purchase of trademark/franchise.

In view of the aforesaid legal position, and since the amount has not been prescribed the transaction requires prior approval of the Reserve Bank, except the remitter makes payment out or RFC Account.

Answer 4(a)(v)

In terms of rule 5 of Foreign Exchange Management (Current Account Transaction) Rules 2000, no person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank.

Schedule III provides for remittances exceeding US \$ 1,00,000 by an entity in India by way of reimbursement of pre-incorporation expenses.

In view of the aforesaid legal position, the transaction does not requires prior approval of the Reserve Bank.

Answer 4(b)

Special Economic Zones

Special Economic Zones (SEZ) are growth engines that can boost manufacturing, augment exports and generate employment. The private sector has been actively associated with the development of SEZs. The SEZs require special fiscal and regulatory regime in order to impart a hassle free operational regime encompassing the state of the art infrastructure and support services.

The Government of India had announced a Special Economic Zone scheme in April, 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth. Foreign Trade Policy explains the policy of the Government relating SEZs and the law relating thereto is contained in special Economic Zones Act, 2005.

Eligibility

Special Economic Zone (SEZ) a specifically delineated duty free enclave is deemed to be foreign territory for the purposes of trade operations and duties and tariffs. Goods and services going into the SEZ area from DTA are treated as exports and goods coming from the SEZ area into DTA are treated as if these are being imported. SEZ units may be set up for manufacture of goods and rendering of services.

Management of SEZ

SEZ has been put under the administrative control of the Development Commissioner. All activities of SEZ units within the Zone, unless otherwise specified, including export and re-import of goods have been permitted through self-certification procedure.

Entitlement for SEZ Developer

For development, operation and maintenance of infrastructure facilities in SEZs, the developer have been made eligible for the following entitlements

- (a) Income tax exemption as per 80 IA of the Income Tax Act.
- (b) Import/ procure goods without payment of Customs/Excise duty.
- (c) Exemption from Service tax.
- (d) Exemption from CST.

Answer 4(c)

Section 19(3) of the Competition Act, 2002 provides that while determining whether an agreement has appreciable adverse effect on competition, the Commission shall give due regard to all or any of the following factors, namely –

- (a) creation of barriers to new entrants in the market;
- (b) driving existing competitors out of the market;
- (c) foreclosure of competition by hindering entry into the market;
- (d) accrual of benefits to consumers;
- (e) improvements in production or distribution of goods or provision of services; and
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Question 5

Attempt any three of the following :

- (i) A tenant entered into a lease agreement of a flat for use as residential house. After occupying the flat, the tenant demanded of the landlord to effect some repairs and re-paint the building. The owner refused on the ground that there was no such clause in the lease agreement. The tenant filed a complaint in the Consumer Disputes Redressal Forum for 'deficiency in service'. Will he succeed? (5 marks)
- (ii) What are the powers of the Central Government to prohibit receipt of foreign contribution under the Foreign Contribution (Regulation) Act, 1976 ? (5 marks)
- (iii) Mention the conditions subject to which a patent is granted under the Patents Act, 1970. (5 marks)
- (iv) Enumerate the general powers of the Central Government for protecting and improving the quality of the environment and for preventing, controlling and abating environmental pollution under the Environment (Protection) Act, 1986. (5 marks)

Answer 5(i)

Facts of the case are similar to *Laxmiben Lakshmidhand Sha v. Sakerben Kanji Chandan & others* [1986-2004 CONSUMER 7414 (NS)], wherein the Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under section 2(1)(d) of the Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service. [See also *C.P. Balliappa v. Indo American Hybrid Seeds*, 2001 CTJ 57 (CP) (SCDRC)]

In view of the aforesaid legal position, tenant claim for compensation will fail, since there was no provision in the lease agreement for cleaning, repairing or maintaining the building and the rent paid was not a consideration for the cleaning, repairing or maintaining the building. Hence, tenant cannot be said to be consumer for the purposes of the claim.

Answer 5(ii)**Power of the Central Government to Prohibit Receipt of Foreign Contribution**

Section 10 of Foreign Contribution (Regulation) Act, 1976 deals with the powers of Central Government to prohibit the receipt of foreign contribution, etc. in certain cases. Accordingly, the Central Government has been empowered to:

- (a) prohibit any association not specified in section 4 or any person from accepting any foreign contribution;
- (b) require any association specified in section 6(1), to obtain prior permission of the Central Government before accepting any foreign contribution;
- (c) require any person or class of persons or any association, not being an association specified in section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by

such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

- (d) require any person or class of persons, not specified in section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (e) require any person or class of persons, not specified in section 9 to furnish intimation, within such time and in such manner as may be prescribed as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received.

However, the Central Government is not authorised to make any such prohibition, unless it is satisfied that the acceptance of foreign contribution/foreign hospitality by such association or person or class of persons, as the case may be, is likely to affect prejudicially the sovereignty and integrity of India; or the public interest; or freedom or fairness of election to any Legislature; or friendly relations with any foreign State; or harmony between religious, racial, linguistic or regional groups, castes or communities.

Answer 5(iii)

Grant of patents subject to conditions

Section 47 of the Patents Act, 1970 dealing with grant of patents subject to conditions provides that the grant of a patent shall be subject to the conditions that:

- (1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;
- (2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;
- (3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and
- (4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

Answer 5(iv)

The Central Government has been granted general powers under Section 3 of Environment (Protection) Act, 1986 to take all such measures as it deems necessary, for protecting and improving the quality of the environment and for preventing, controlling

and abating environmental pollution. Such measure include with respect to all or any of the following matters:

- (i) coordinating the actions of various State Governments, officers and authorities under the Act or rules made thereunder or under any other law concerning environmental pollution;
- (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
- (iii) laying down standards for the quality of environment;
- (iv) laying down standards for emission or discharge of environmental pollutants (different standards may be laid down for different sources of emission or discharge of environmental pollutants);
- (v) restricting the carrying on of industries, operations or processes in certain areas or permitting them to be carried out subject to certain safeguards;
- (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- (vii) laying down procedures and safeguards for the handling of hazardous substances;
- (viii) examining manufacturing processes, materials and substances as are likely to cause environmental pollution;
- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- (x) inspecting any premises, plant, equipment, machinery, manufacturing process, materials, etc. and issuing directions to any person, officer or authority etc. to take steps for the prevention, control and abatement of environmental pollution;
- (xi) establishing or recognising environmental laboratories;
- (xii) collecting and disseminating information relating to environmental pollution;
- (xiii) preparing manuals, codes, guides etc. to prevent control and abate environmental pollution;
- (xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of the Act.

Question 6

Attempt any three of the following :

- (i) *Mention the provisions of the National Environment Tribunal Act, 1995 relating to compensation for death, injury to a person and damage to property and environment. (5 marks)*
- (ii) *Discuss the provisions of the Trade Marks Act, 1999 regarding assignment and transmission of registered trade marks. (5 marks)*
- (iii) *Mention the provisions of the Environment (Protection) Act, 1986 relating to offences by companies. (5 marks)*
- (iv) *Avtar made a complaint to the Consumer Disputes Redressal Forum that the Regional Provident Fund Commissioner had not settled his provident fund dues*

within the period stipulated in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and for the 'deficiency in service'. he also claimed damages for non-settlement of the dues within the stipulated period. The Regional Provident Fund Commissioner in his reply contended that there was no hiring of service for consideration since he was performing a statutory function. Will Avtar succeed? (5 marks)

Answer 6(i)

Compensation for Death, Injury to a Person and Damage to Property and Environment

Chapter II of the National Environment Tribunal Act, 1995 deals with compensation for death of or injury to a person and damage to property and environment. Section 3(1) states that where death of or injury to any person (other than workman) or damage to any property or environment has resulted from an accident, the owner shall be liable to pay compensation for such death, injury or damage.

A claimant in any claim for compensation, is under no obligation to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. In this context the term injury includes, permanent total or permanent partial disability or sickness resulting out of an accident.

Sub-section (3) provides that if the death, injury or damage caused by an accident cannot be attributed to any individual activity but is the combined and resultant effect of several such activities, operations and processes, the Tribunal may apportion the liability for compensation amongst those responsible for such activities, operations and processes on an equitable basis.

Answer 6(ii)

Assignment and Transmission

Trademarks Act, 1999 contains provisions relating to Assignment and Transmission of registered trademarks, which are discussed herein below:

Section 37 of the Act, entitles the registered proprietor of a trademark to assign the trade mark and to give effectual receipts for any consideration for such assignment. Section 38 deals with the assignability and transmissibility of a registered trade mark with or without goodwill of the business either in respect of all goods or services or part thereof. Section 39 provides that unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.

Section 40 contains restriction on assignment or transmission of trade mark where multiple exclusive rights would be created in more than one person in relation to same goods or services; same description of goods or services; goods or services or description of goods or services which are associated with each other, which would be likely to deceive or cause confusion. Nevertheless, such assignment is not deemed to be invalid, if having regard to the limitations imposed, the goods are to be sold in different markets- either within India or through exports.

The Act under section 42 stipulates conditions for assignment of a trade mark without goodwill of business. Such an assignment shall not take effect unless the assignor obtains directions of the Registrar and advertises the assignment in accordance with the directions of the Registrar in the prescribed manner.

Section 43 deals with the assignability and transmissibility of certification trade marks and provides that the assignment of certification trade mark can only be done with the consent of the Registrar. Section 44 states that associated trade marks shall be assignable and transmissible only as a whole but they will be treated as separate trade marks for all other purposes. Section 45 deals with the procedure for registration of assignment and transmission and provides that where the validity of an assignment is in dispute between the parties, the Registrar may refuse to register the assignment or transmission unless the rights of parties are determined by the competent court.

Answer 6(iii)

Offences by Companies under Environment (Protection) Act, 1986

Section 16 of Environment (Protection) Act, 1986 deals with offences by the companies and provides that where any offence has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, and the company itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against. Further, when an offence has been committed by a company, and it is proved that the offence was committed with the consent or connivance of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officers shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Answer 6(iv)

Facts of the case are similar to *Regional Provident Fund Commissioner, Faridabad v. Shiv Kumar Joshi* [Revision Petition No. 238 of 1994 decided on 30.1.1996 (NCDRC)] wherein the complainant had alleged that his provident fund dues had not been settled within the period of 20 days of the claim as provided in the 1952 Act and Scheme and that this constituted deficiency in service. He claimed damages of Rs. 65,000 for the Commissioners failure and negligence in setting his claim within the stipulated time. The Commissioner in reply contended that there was no hiring of service for consideration in this case since he was performing a statutory function.

The District Forum allowed the complaint and its view was affirmed by the State Commission. In appeal to National Commission, it was contended on behalf of the Commissioner that the expression service excludes rendering of service free of charge, and that the Act and the Scheme did not provide for any consideration being charged for executing statutory functions.

Dismissing the revision petition the National Commission observed that it was not correct to contend that the Commissioner was exercising statutory power and was discharging statutory functions under the 1952 Act and the Scheme and therefore, he could not come within the ambit of the expression service.

Administration charges were levied and recovered by the Commissioner for payment of services rendered by him and his staff. Under the Scheme it is the responsibility of the principal employer to pay both the contribution payable by himself and also administrative charges. A duty is also cast for investment of moneys belonging to the employees provident fund just as any banker or financial institution under the control of the Central Government. The Commissioner is required to credit interest to each account.

Referring to Lucknow Development Authority's case, the National Commission observed that the Commissioner under the Act gave statutory service on payment of administrative charges and they were required to invest the contributions to the provident fund like any banker or financing institution and to credit interest to the subscribers account. This was rendering of service for consideration as defined in the Act.

In view of the aforesaid legal position, Avtar can succeed in his claim for deficiency in services for not settling his provident fund dues within the period stipulated in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Question 7

(a) *Discuss any two of the following :*

- (i) *Adjudication as a method of resolution of industrial disputes*
- (ii) *Lay-off compensation*
- (iii) *General duties of the occupier*
- (iv) *Employee welfare.* (5 marks each)

(b) *Attempt any five of the following stating relevant legal provisions and case law, if any :*

- (i) *A driver of a bus was involved in an accident which impaired the movement of his left hand. He claimed compensation for permanent total disablement under the Workmen's Compensation Act, 1923. The employer contested the claim stating that the driver is capable of performing other duties. Will the driver succeed ?*
- (ii) *Rajat was suspended from service by the company. He was subsequently reinstated with full back wages. The company refused to pay bonus for the period of his suspension. Is Rajat entitled to get bonus for the period of his suspension ?*
- (iii) *Arpit was dismissed from service for an act of misconduct. The company did not pay him any bonus. Arpit contended that he was eligible for payment of bonus for the accounting year in which dismissal took place. Will he succeed ?*
- (iv) *Jay-Kay Ltd. employed casual workmen for a short duration of two months to execute a contingency plan of its operations. Are the casual workmen entitled for provident fund contribution from the employer ?*
- (v) *Kailash, a teacher in a private school having a basic salary of Rs.3,500 per month, claims gratuity from the school management when he resigned from the service after serving for a period of 12 year. Will he succeed ?*
- (vi) *Cement Employees' Union took up the case of a dismissed non-union member employee and raised an industrial dispute. The management of the company contended that the employee was not a member of any union recognised by the company and, therefore, there cannot be any industrial dispute in this case. Will the employer's stand succeed ?*

- (vii) *Bahadur, an employee deputed by the management to participate in a football match, met with an accident resulting in his death while on his way to the playground. Is it an 'employment injury' under the Employees' State Insurance Act, 1948 ?* (3 marks each)

Answer 7(a)(i)

Adjudication as a Method of Resolution of Industrial Disputes

Adjudication involves intervention in the dispute by the third party appointed by the government for the purpose of deciding the nature of final settlement. On getting a report of the failure of conciliation, the government has to decide whether it would be appropriate to refer the dispute to adjudication.

Adjudication is conditioned by various constitutional, political and socio economic aspects. The decisions or awards of these adjudication bodies have far-reaching effects. These awards have a much wider appeal and influence over the course developments in industrial relations and even the national economy as a whole.

The Industrial Disputes Act, 1947 provides for a three-tier system of adjudication:

- (1) Labour Courts;
- (2) Industrial Tribunals; and
- (3) National Tribunals.

These are the adjudicating bodies which decide the disputes referred to them by the appropriate government and pass their awards. The constitution, duties and powers of these authorities have been stipulated under the Industrial Disputes Act, 1947. (See Sections 7, 7-A, 7-B, & 7-C)

The Labour Courts adjudicate upon disputes listed in Schedule II of the Act. The Industrial Tribunals adjudicate upon disputes listed in schedule II or III of the Act. The National Tribunals adjudicate upon disputes which are of national importance, or when the dispute is of such a nature as to affect industrial establishments situated in more than one State.

The Presiding Officers of a Labour Court, Tribunal or National Tribunal are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Every Labour Court, Tribunal or National Tribunal is deemed to be Civil Court for the purposes of Section 345, 316 and 348 of the Code of Criminal Procedure, 1973. Thus, we see that Section 11(1) gives wide powers to various authorities. However, power to lay-down its own procedure is subject to rules made by the appropriate Government.

The Industrial Disputes (Central) Rules, 1957 have prescribed a detailed procedure which these authorities are required to follow. (See Rules 9 to 30). The authorities are not bound to follow the rules laid down in Civil Procedure Code, 1908 or the Indian Evidence Act. However, being quasi-judicial bodies, they should use their discretion in a judicial manner without caprice and act according to the general principles of law and rules of natural justice.

Answer 7(a)(ii)**Lay-Off Compensation**

Under Section 2(kkk) of the Industrial Disputes Act, 1947 “lay-off” means failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:

- (a) shortage of coal, power or raw materials, or
- (b) accumulation of stocks, or
- (c) break-down of machinery, or
- (d) natural calamity, or
- (e) for any other connected reason [Section 2(kkk)].

If the employees are laid off in pursuance to the provisions of the Section 2(kkk) of the Industrial Disputes Act, 1947, they are entitled to lay-off compensation in accordance with the provisions of Section 25-C of the Industrial Disputes Act, 1947. The right of a workman to lay-off compensation is designed to relieve the hardship caused by unemployment due to no fault of the workman. It is based on grounds of humane public policy. The requisites regarding payment of compensation to a workman, who is laid-off, are contained in Section 25-C which inter-alia provides:

Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent (50%) of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off.

If during any period of 12 months a workman is laid-off for more than 45 days, no such compensation shall be payable to the workman during any period of 12 months after the expiry of the first 45 days if there is an agreement to that effect between the workman and the employer.

Where a workman is laid-off for a period of more than 45 days during a period of 12 months, the employer can lawfully retrench him in accordance with the provisions contained in Section 25-F at any time after the expiry of the first 45 days of lay-off. When the employer does so, any compensation paid to the workman for having been laid-off during the proceeding 12 months may be set-off against the compensation payable for retrenchment.

Answer 7(a)(iii)**General Duties of the Occupier**

These general duties of the Occupier have been spelled out under Section 7A of the Factories Act, 1948. Section 7A which has been inserted by the Factories (Amendment) Act, 1987 provides as under:

- (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

- (2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends shall include :
- (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
 - (b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
 - (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
 - (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
- (3) Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

Answer 7(a)(iv)

Employee Welfare

Welfare work in its accepted parlance means voluntary effort of employers to improve the conditions of their employees. It is this activity that puts the human factor in its true light. The most valuable possessions of a workman are his health, strength and intelligence. The prolongation of working life and prevention of diseases are problems which affect every employee. It is both in the interest of the employer himself and the workers that welfare activities are carried out by the employers. Because some employers do not follow the example of their enlightened brethren, the State provides for minimum requirements with respect to health and safety as well as welfare, makes special provisions for specific welfare activities, particularly inside the factories, such as washing facilities, first aid appliances, canteens, restrooms, crèches, etc.

The State has also introduced measures for social security of the workers in the Employees State Insurance Act, 1948, Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Payment of Gratuity Act, 1972. These measures provide financial assistance to employees inside and outside the work establishment, especially in organised sector. For unorganised sector, Government through constitution of welfare funds extends a measure of social assistance. The Government has constituted certain Funds to provide housing, medical care, educational and recreational facilities to workers employed in beedi industry, cine workers and coal-mine workers.

However, State alone cannot be expected to provide measures to overcome the difficulties of the workers. The employers in their own interest and that of the worker must provide services for the welfare of the workers and their family.

Answer 7(b)(i)

The driver will not succeed.

In *Divisional Manager KSRTC v. Bhimaiah*, 1977 II L.L.J. 521, it has been held that where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury is to be determined not on the basis of the work he was doing at the time of accident.

Answer 7(b)(ii)

Rajat is entitled to get bonus for the period of suspension. Bonus can be paid to a dismissed employee if he is reinstated with full back wages. It was held in the case of *Project Manager, Ahmadabad Project, ONGC v. Sham Kumar* (1995) 1 LLJ 863 that an employee suspended but subsequently reinstated with full back wages cannot be treated to be ineligible for bonus for the period of suspension.

Answer 7(b)(iii)

Arpit will not succeed. If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place. [*Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court*, (1996) 2 LLJ 606].

Answer 7(b)(iv)

Persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular features of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to applicability of Section 1(3)(b) of the EPF Act, 1952. In the case of *R.P.F. Commr., A.P. v. T.S. Hariharan*, A.I.R (1971) SC 1519, the Supreme Court held that casual workers are not covered under Section 1(3)(b). The Supreme Court observed as follows:

“Considering the language of Section 1 (3) (b) of the Act it appears that the *employment of a few persons on account of some emergency or for a very short period necessitated by some abnormal contingency which is not a regular feature of the business of the establishment* and which does not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment can in the normal way bear the burden of contribution towards the provident fund under the Act would not be covered by this definition. The word ‘employment’ must, therefore, be construed as employment in the regular course of business of the establishment. Such employment obviously would not include employment of a few persons for a short period

on account of some pressing necessity or some temporary emergency beyond the control of the company”.

Answer 7(b)(v)

Kailash will not succeed. Teacher is not an employee under the Payment of Gratuity Act, 1972. The Supreme Court in *Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer LLJ (2004)*, has held that since the teacher cannot be called an employee under Section 2(e) of the Act because he is not doing any work which can be called as skilled, unskilled, manual, supervisory, technical or clerical work, he is not entitled to make any claim for gratuity.

Earlier, the Apex Court in *Sunderambal v. Government of Goa [AIR (1988) SC 1700. (1989) LAB 1C 1317]*, held that the teachers employed by the educational institution cannot be considered as workmen within the meaning of Section 2(s) of the Industrial Disputes Act, as imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. The teacher necessarily performs intellectual duties and the work is mental and intellectual as distinct from manual.

Answer 7(b)(vi)

Employers stand will not succeed. It has been provided under Section 2-A that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute even if no other workman nor any union of workmen is party to the dispute.

In *Western India Match Co. Ltd. v. Western India Match Co. Workers' Union, (1970) 2 LL.J. 256*, it was held that a dispute may become an industrial dispute if other workmen take it up. A dispute may initially be an individual dispute. The workmen may make that dispute as their own on the ground that they have a community of interest and are directly and substantially interested in the conditions of employment. It is immaterial whether the individual workman was a member of the union when the cause arose

The Supreme Court in *Dimakuchi Tea Estate Case* held that only condition for an individual dispute turning to an industrial dispute is the necessity of a community of interest and not whether the concerned workman was or was not a member of the Union at the time of his dismissal. Further, the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred, for without his being a member the dispute may be such that other workmen by having a common interest therein would be justified in taking up the dispute as their own and espousing it.

Answer 7(b)(vii)

It is an employment injury. Employment injury under Section 2(8) of the E.S.I. Act means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India. An 'insurable employment' means an employment in a factory or establishment to which this Act applies.

In *Regional Director, E.S.I. Corpn. v. L. Ranga Rao, (1981) Lab. I. C. 1563*.

It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors. There should be a nexus between the circumstances of the accident and the employment. It is sufficient if it is proved, that the injury to the employee was caused by an accident arising out of and in the course of employment no matter when and where it occurred. There is not even a geographical limitation. The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and employment. The place or time of accident should not be totally unrelated to the employment

In view of the above mentioned legal provisions and the decision on the point, it as an employment injury
