

ECONOMIC AND LABOUR LAWS

Time allowed : 3 hours

Maximum marks : 100

PART A

*(Answer Question No. 1 which is compulsory
and any three of the rest from this part.)*

Question 1

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

- (i) Delayed payments to micro and macro enterprises*
 - (ii) Star Export Houses*
 - (iii) Salient features of the Special Economic Zones Act, 2005*
 - (iv) Legal metrology*
 - (v) Well-known trade mark*
 - (vi) Competition policy*
 - (vii) COB licence.*
- (3 marks each)*

Answer 1(i)

Delayed Payments to Micro and Macro Enterprises

Section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 provides that where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day. However, in no case the period agreed upon between the supplier and the buyer in writing should exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Section 16 provides that in case the buyer fails to make payment of the amount to the supplier, the buyer, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, should pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

In the case of dispute regarding payment of any amount section 18 entitles any of the parties to the dispute to make a reference to the Micro and Small Enterprises Facilitation Council.

Answer to Question No. 1(ii)

Star Export Houses

The Foreign Trade Policy provides that Merchant as well as Manufacturer Exporters, Service Providers, Export Oriented Units (EOUs) and Units located in Special Economic Zones (SEZs), Agri Export Zone (AEZ's), Electronic Hardware Technology Parks (EHTPs),

Software Technology Parks (STPs) and Bio Technology Parks (BTPs) shall be eligible for applying for status as Star Export Houses.

The Foreign Trade Policy categorizes the applicant depending on total FOB (FOR – for deemed exports) export performance during the current plus the previous three years.

A Star Export House is eligible for the following facilities:

- (i) Licence/certificate/permissions etc. and Customs clearances for both imports and exports on self-declaration basis;
- (ii) Fixation of Input-Output norms on priority within 60 days;
- (iii) Exemption from compulsory negotiation of documents through banks except the remittance, which is to be received through banking channels;
- (iv) 100% retention of foreign exchange in EEFC account;
- (v) 360 days normal repatriation period.
- (vi) Exemption from furnishing of Bank Guarantee in Schemes under the Policy.
- (vii) Two star export houses and above permitted export warehouses as per the Guidelines specified by Department of Revenue.

Answer 1(iii)

Salient Features of the Special Economic Zone Act, 2005

The Salient Features of the Special Economic Zone Act are as under -

- (i) matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;
- (ii) matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;
- (iii) the fiscal regime for developers of Special Economic Zones and units set up therein;
- (iv) single window clearance mechanism at the Zone level;
- (v) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and
- (vi) designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

Answer 1(iv)

Legal Metrology

Legal Metrology is the name by which the law relating to weights and measures is known in international parlance. Legal Metrology is very vital for scientific, technological and industrial progress of any country. The establishment of national standards of weights and measures and their proper enforcement, aim at ensuring accuracy of measurements

and measuring instruments and thus legal metrology strengthens the national economy in a broader sense besides being a potential instrument of consumer protection.

The scope of legal metrology according to international practice extends to three broad fields of human activities, namely, commercial transactions, industrial measurements and measurements needed to ensure public health and human safety. The coverage of legal metrology varies from country to country. In some, almost all practical measurements are brought under the purview of legal metrology, whereas in other countries legal metrology finds restricted application in a few quantities like mass, length and volume used in trade and commerce. In most of the countries, however, legal metrology encompasses measurements which have a bearing on the protection of individuals from the financial and environmental points of view.

Legal metrology can be defined as that part of metrology which deals with units of measurement, methods of measurement and measuring instruments in so far as they concern statutory, technical and legal requirements which have the ultimate object of assuring public guarantee from the point of view of security and of appropriate accuracy of measurements.

Answer 1(v)

Well-Known Trade Mark

In terms of Section 2(1)(zg) of the Trademarks Act, 1999, a well known trade mark in relation to any goods or services means a mark which has become so to the substantial segment of the public which uses such goods or services such that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

Answer 1(vi)

Competition Policy

The basic purpose of Competition Policy is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy. Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets. The second element is legislation designed to prevent anti-competitive business practices with minimal Government intervention, i.e., a competition law. Competition law by itself cannot produce or ensure competition in the market unless this is facilitated by appropriate Government policies. On the other hand, Government policies without a law to enforce such policies and prevent competition malpractices would also be incomplete.

Competition policies cover a much broader set of instruments than competition law, and typically include all policies aimed at increasing the intensity of competition or rivalry in local and national markets by lowering entry barriers and opportunities for harmful coordination, to ensure that markets work effectively and serve the interests of all citizens. Competition law is only a subset of a nation's competition policies. Competition policies typically include pro-competition approaches to trade, investment, sectoral regulation, and consumer protection.

Answer 1(vii)**Carry on Business (COB) Licence**

A COB licence is required when a small scale unit exceeds the prescribed small scale limit of investment in plant and machinery by way of natural growth and continues to manufacture small scale reserved items(s). Also, if exemption from Industrial licensing granted for any item is withdrawn, the industrial undertakings manufacturing such item(s) require COB licence.

The application for COB licence should be submitted in prescribed form to the SIA, Department of industrial Policy and Promotion, along with a crossed demand draft of prescribed amount drawn in favour of the Pay & Accounts Officers, Department of industrial Development, Ministry of Industry, payable at the State Bank of India, Nirman Bhawan, New Delhi.

Question 2

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

- (i) *The Competition Act, 2002 prohibits dominance as well as the abuse of dominant position.*
- (ii) *In all legal proceedings relating to trade marks, registered under the Trade Marks Act, 1999, the original registration and all subsequent assignments and transmissions thereof shall be conclusive proof of its validity.*
- (iii) *Money laundering is a national phenomenon and stern measures are of critical importance at the national level.*
- (iv) *The Public Liability Insurance Act, 1991 was enacted for the purpose of providing immediate relief to the workers affected by accidents occurring while handling the hazardous substances.*
- (v) *Duty Free Replenishment Certificate (DFRC) is issued to a merchant exporter or manufacturer exporter for the imports used in the manufacture of goods without payment of any basic customs duty whatsoever.*
- (vi) *The erroneous description of manufacturing company in an advertisement amounts to misleading representation and hence an unfair trade practice.*

(3 marks each)

Answer 2(i)**False***Reasons*

The Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position, i. e. , a position of strength, enjoyed by an enterprise or group, in the relevant market, in India, which enables it to—

- (i) operate independently of competitive forces prevailing in the relevant market; or
- (ii) affect its competitors or consumers or the relevant market in its favour”.

Section 4(2)(a) states that there shall be abuse of dominance position, if an enterprise or group-directly or indirectly imposes unfair or discriminatory;

- (i) condition in purchase or sale of goods or services; or
- (ii) price in purchase or sale (including predatory price) of goods or service.

In terms of section 4(2)(b) abuse of dominant position by an enterprise or group include limiting or restricting

- (i) production of goods or provision of services or market therefor; or
- (ii) technical or scientific development relating to goods or services to the prejudice of consumers.

Similarly Section 4 (2) (c), (d) and (e) specify three other forms of abuses namely, if any person indulges in practice or practices resulting in denial of market access in any manner; or makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts and also, if any person uses dominant position in one relevant market to enter into, or protect, other relevant market.

Answer 2(ii)

True

Reasons

Section 31 of the Trademarks Act, 1999 stipulates that in all legal proceedings relating to trade mark registered under the Act, the original registration and all subsequent assignments and transmission thereof shall be prima facie evidence of its validity. However, as per Section 34 the proprietor or a registered user of a registered trademark is not entitled to interfere with or restrain the use by any person of a trademark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in his title has continuously used that trade mark from a prior date.

Answer 2(iii)

False

Reasons

Money laundering is an international phenomenon and therefore transnational co-operation is of critical importance in the fight against this menace. A number of initiatives have been taken to deal with the problem at international level. In this context, the United Nations or the Bank for International Settlements, took some initiatives in 1980s to address the problem of money laundering. However, with the creation of the Financial Action Task Force (FATF) in 1989, regional groupings, such as the European Union, Council of Europe, and organisation of American States also established anti- money laundering standards for their member countries.

The major international agreements addressing money laundering include the United Nations Convention against Illicit Trafficking in Drugs and Psychotropic Substances

(the Vienna Convention) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The role of financial institutions in preventing and detecting money laundering has also been the subject of pronouncements by the Basle Committee on Banking Regulation Supervisory Practices, the European Union and the International Organization of Securities Commissions.

Answer 2(iv)**False***Reasons*

The Public Liability Insurance Act, 1991, was enacted for the purpose of providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for other incidental and connected matters.

The growth of hazardous industries, processes and operations in India has been accompanied by growing risks of accidents, not only to the workmen of such undertakings, but also members of the public in the vicinity. Whereas the workers are generally protected under the Workmen's Compensation Act and the Employees State Insurance Act, members of the public who may be victims are not assured of any relief except through long-drawn legal processes. Considering that majority of the affected people belong to weaker sections of the society, and very limited resources available with them to go through legal proceedings, this Act provides for Mandatory Public Liability Insurance to be taken by companies for installations handling any hazardous substance notified under the Environment Protection Act.

Answer 2(v)**True***Reasons*

Duty Free Replenishment Certificate is issued to a merchant-exporter or manufacturer-exporter for the import of inputs used in the manufacture of goods without payment of basic customs duty. DFRC is issued on minimum value addition of 25% except for items in gems and jewellery sector for which prescribed value addition is applicable.

In fact, DFRC is issued only in respect of products covered under the Standard Input Output Norms as notified by DGFT.

DFRC is issued for import of inputs as per SION as indicated in the shipping bills. The validity of such authorisation is 24 months. DFRC and/or the material(s) imported against it are freely transferable. However, DFRC with actual user condition or the material(s) imported against it is non-transferable.

Answer 2(vi)**False***Reasons*

The question as to what amounts to misleading advertisement was considered by the Supreme Court (in the first case decided by it relating to unfair trade practice) in

Lakhanpal National Ltd. v. MRTP Commission and Another (1989) 2 Comp. L.J. 159 (SC). The precise question was whether erroneous description of manufacturing company in an advertisement amounted to misleading representation under Section 36A(1).

Explaining the meaning of the term 'unfair trade practice' the Supreme Court observed that the definition of this term in Section 36A is not inclusive or flexible but specific and limited in its contents. The object is to bring honesty and truth in the relationship between the manufacturer and the consumer. When a problem arose as to whether a particular act could be condemned as an unfair trade practice or not, the key to the solution is to examine whether it contains a false statement and is misleading and further what is the effect of such representation made by the manufacturer on the common man.

The Supreme Court pointed out that Mitsushita Ltd., is not a popular name in India while its product 'National' and 'Panasonic' is indeed popular. An advertisement mentioning merely Mitsushita Ltd. would, therefore, fail to convey anything to an ordinary buyer unless he is also told that it is the same company which manufactured products known to him by the names National and Panasonic. Therefore, the erroneous description of the manufacturing company in the advertisements do not attract the provisions of Section 36A of the MRTP Act. The Supreme Court, however, pointed out that it would be more proper for the company to give the full facts by referring to Mitsushita Ltd., by its correct name and further stating that its products is known by the name National and Panasonic.

Question 3

(a) *Distinguish between any two of the following :*

- (i) 'Relevant geographic market' and 'relevant product market'.
 - (ii) 'Small scale industrial undertaking' and 'ancillary industrial undertaking',
 - (iii) 'Current account transactions' and 'capital account transactions'.
- (5 marks each)

(b) *Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :*

- (i) Release of foreign exchange facilities for emigration exceeding US\$ _____ or amount prescribed by the country of emigration requires prior approval of RBI.
 - (ii) No permission from the Central Government is required to receive foreign contribution from a relative not exceeding value of Rs. _____ per year subject to its intimation to the Central Government.
 - (iii) An Indian citizen resident outside India may acquire any immovable property in India other than _____.
 - (iv) Remittance of foreign exchange exceeding US\$ _____ per project for any consultancy services procured from abroad requires prior approval of RBI.
 - (v) The minimum time for applying for technological upgradation of the existing capital goods imported under the Export Promotion Capital Goods (EPCG) Scheme is _____ from the date of issuance of the authorisation.
- (1 mark each)

Answer 3(a)(i)**Relevant Geographic Market**

As per Section 2(s) of the Competition Act, 2002 Relevant Geographic Market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from conditions prevailing in neighbouring areas.

Relevant Product Market

As per Section 2(t) of the Competition Act, 2002 Relevant Product Market means a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reasons of characteristics of products or services, their prices and intended use.

The terms 'relevant market', 'relevant geographical market' and 'relevant product market' have relevance in determination of the agreements being anti competitive, in evaluating combinations and dominance of an enterprise or group.

Answer 3(a)(ii)**Small Scale Industrial Undertaking**

An industrial undertaking in which the investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees one crore.

Ancillary Industrial Undertaking

An industrial undertaking which is engaged or is proposed to be engaged in the manufacturing or production of parts, components, sub-assemblies, tooling or intermediates, or the rendering of services, and undertaking supplies or proposes to supply or renders not more than fifty per cent of its production or services, as the case may be, to one or more other industrial undertakings and whose investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees one crore.

No small scale or ancillary industrial undertaking can be subsidiary of, or owned or controlled by any other industrial undertaking. According to Section 11B of Industries (Development and Regulation) Act, 1951, the Central Government has been empowered to specify by notification the requirements which shall be complied with by an industrial undertaking to enable it to be regarded as an ancillary or a small scale industrial undertaking.

Answer 3(a)(iii)**Capital Account Transaction**

'Capital account transaction' has been defined under Section 2(e) of the Foreign Exchange Management Act, 1999 to mean 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 person resident outside India and includes the transactions specified in Sub-section (3) of Section 6 of the Act.

Section 6 of the Foreign Exchange Management Act, 1999 allows capital account transactions subject however to certain conditions. Reserve Bank of India has been empowered to specify, in consultation with the Central Government, any class or classes of capital account transactions permissible and the limit upto which foreign exchange shall be admissible for such transactions.

Current Account Transaction

The term current account transaction has been defined under Section 2(j) of the Foreign Exchange Management Act, 1999 to mean a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments; remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Under the Foreign Exchange Management Act freedom has been granted for selling and drawing of foreign exchange to or from an authorized person for undertaking current account transactions. However, the Central Government has been vested with powers in consultation with Reserve Bank to impose reasonable restrictions on current account transactions. The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000 dealing with various aspects of current account transactions.

Section 5 of the Act allows any person to sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction as defined under Section 2(j) of the Act. However, the Central Government may, in the public interest and in consultation with the Reserve Bank impose reasonable restrictions for current account transactions.

Answer 3(b)

- (i) 5000
- (ii) 8000
- (iii) Agricultural/plantation/farm house.
- (iv) one million
- (v) 5 years.

Question 4

- (a) *With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on the following:*
 - (i) *Indotech Ltd. desires to make payments of commission on exports made towards equity investment in its joint venture company abroad.*
 - (ii) *Rupa intends to take an insurance policy in her name from an insurance company abroad involving payment of premium amounting to US\$20,000.*

- (iii) *A non-resident shareholder has applied for the issue of additional shares over and above his entitlement of rights shares in an Indian company.*
- (iv) *Girish intends to transfer his shareholding in rupee equivalent to US\$20,000 as gift to his son who is a resident outside India.*
- (v) *Microtech Ltd., a software exporter company, desires to receive 25% of the value of its exports in the form of shares in an overseas software company without entering into joint venture agreement.*
- (b) *Mention the provisions of the Foreign Contribution (Regulation) Act, 1976 in respect of exemptions from accepting foreign contributions. (5 marks)*
- (c) *Explain the provisions of the Trade Marks Act, 1999 regarding infringement of registered trade marks. (5 marks)*

Answer 4(a)(i)

As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transaction) Rules, 2000 making payments of commission on export made towards equity investment in its joint venture company abroad is prohibited.

Hence in view of the aforesaid legal provision, Indotech Ltd. can not make payments of commission on export made towards equity investment in its joint venture company abroad.

Answer 4(a)(ii)

Schedule I of the Foreign Exchange Management (Capital Account Transaction) Regulation 2000 allows a person resident in India for taking out of insurance policy from an insurance company outside India.

Hence in view of the aforesaid legal provision, Rupa can take insurance policy in her name from an insurance company abroad involving payment of premium exceeding US\$ 20,000.

Answer 4(a)(iii)

FEMA allows Indian companies to freely issue rights shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of rights shares have to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Disclosure and Investor Protection) Guidelines (in case of listed companies) etc.

The price of shares offered on rights basis by the Indian company to non-resident shareholders should not be lower than the price at which such shares are offered to resident shareholders.

Hence in view of the aforesaid legal provision, a non – resident shareholder could apply for the additional shares over and above his entitlement of right shares of Indian company.

Answer 4(a)(iv)

Girish required prior approval of Reserve Bank of India for transferring his shareholding

in rupee equivalent to US\$ 20, 000 as gift to his son who is a resident outside India. Provided that -

- The gift does not exceed 5 per cent of the paid-up capital of the Indian company.
- The applicable sectoral cap limit in the Indian company is not breached.
- The transferor (donor) and the transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time.
- The value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 during a calendar year.
- Such other conditions as stipulated by Reserve Bank in public interest from time to time.

Answer 4(a)(v)

Foreign Exchange Management Act allows Indian software exporters to receive 25 per cent of the value of their exports to an overseas software startup company in the form of shares without entering into Joint Venture Agreements, with prior approval of the Reserve Bank of India.

Hence in view of the aforesaid legal position, Microtech Ltd. can receive shares in an overseas software company without entering into joint venture agreements, with prior approval of the Reserve Bank of India.

Answer 4(b)

Section 8 of the Foreign Contributions (Regulation) Act, 1976 contains exemptions to the prohibition on the acceptance of foreign contribution by any person specified in Section 4. Accordingly, Section 8 allows the acceptance of foreign contribution by the persons, subject however to Section 10 of the Act and where such contribution is accepted by him

- (a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or
- (b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or
- (c) as an agent of a foreign source in relation to any transaction made by such foreign source with Government; or
- (d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the regulations made by the Central Government with regard to the acceptance or retention of such gift or presentation; or
- (e) from his relative when such foreign contribution has been received with the previous permission of the Central Government. However no such permission is required if the amount of foreign contribution received by him from his relative does not exceed in value, eight thousand rupees per annum and an intimation is given by him to the Central Government as to the amount received, the source

from which and the manner in which it was received and the purpose for which and the manner in which it was utilised by him;

- (f) by way of remittance received, in the ordinary course of business, through any official channel, post office, or any authorised dealer in foreign exchange under the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Answer 4(c)

Section 29 of the Trademarks Act, 1999 dealing with infringement of trade marks, explicitly enumerates the grounds which constitute infringement of a trademark. This section lays down that when a registered trade mark is used by a person who is not entitled to use such a trade mark under the law, it constitutes infringement. This section clearly states that a registered trade mark is infringed, if —

- (a) the mark is identical and is used in respect of similar goods or services; or
- (b) the mark is similar to the registered trade mark and there is an identity or similarity of the goods or services covered by the trade mark; or
- (c) the trade mark is identical and is used in relation to identical goods or services;

and that such use is likely to cause confusion on the part of the public or is likely to be taken to have an association with the registered trade mark. Additionally in respect of cases falling in category (c) above, there will be a legal presumption of likelihood of confusion on the part of the public.

A person has been prohibited from adopting someone else's trade mark, as his trade name or name of his business concern or part of the name of his business concern dealing with goods or services in respect of which trade mark is registered.

A person shall be deemed to have used a registered trade mark in circumstances which include affixing the mark to goods or packaging, offering or exposing the goods for sale or supply of services, importing or exporting the goods, the use of the mark as trade name or trade mark on business paper or in advertising. A person shall be deemed to have infringed a trade mark if he applies such registered trade mark knowing that application of such mark is not authorised by the proprietor or licensee. Advertising of a trade mark to take unfair advantage of, or against the reputation of the trade mark also constitutes an infringement under Section 29(8) of the Act. Where the distinctive element of a registered trade mark consists of words, the spoken use of such words as well as visual representation for promoting the sale of goods or promotion of service would constitute infringement under section 29 (9) of the Act.

Question 5

- (a) *Mention any five inventions which are not patentable under the Patents Act, 1970. (5 marks)*
- (b) *State the provisions of the Environment (Protection) Act, 1986 relating to the offences by companies. (5 marks)*
- (c) *Sangeetha filed a complaint against a bank where her ornaments kept in the*

bank's locker were found missing and sought compensation through the Consumers Disputes Redressal Forum against the deficiency in service by the bank. The bank submitted a certificate recorded by the custodian of the bank on the day Sangeetha had operated the locker which stated that all lockers operated during the day had been checked and found properly locked. Will Sangeetha succeed in her claim ?
(5 marks)

Answer 5(a)

The following are not inventions within the meaning of Section 3 of the Patent Act, 1970:

- (a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- (b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- (c) the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature;
- (d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation to this clause clarifies that salts, esters, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.

- (e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance.
- (f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- (g) a method of agriculture or horticulture;
- (h) any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- (i) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- (j) a computer programme per se other than its technical application to industry or a combination with hardware;
- (k) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

- (l) a mere scheme or rule or method of performing mental act or method of playing game;
- (m) a presentation of information;
- (n) topography of integrated circuits;
- (o) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

Answer 5(b)

Section 16 of the 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. 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 5(c)

Sangeetha will succeed in her claim. The facts of the case are similar to that of *Punjab National Bank v. K.B. Shetty* (First Appeal No. 7 of 1991 decided on 6th August, 1991) In this case, the ornaments kept in the banks locker were found lost though the certificate recorded by the custodian of the bank on the day the customer operated the locker stated that all lockers operated during the day have been checked and found properly locked. The National Commission, held that the bank guilty of negligence and therefore, liable to make good the loss.

PART B

(Answer ANY TWO questions from this part.)

Question 6

Write notes on any four of the following :

- (i) 'Employment injury' under the Employees' State Insurance Act, 1948.
- (ii) 'Prohibition of employment of contract labour' under the Contract Labour (Regulation and Abolition) Act, 1970.
- (iii) 'Philosophy' behind the enactment of the Minimum Wages Act, 1948.
- (iv) 'Manufacturing process' under the Factories Act, 1948.
- (v) Matters within the jurisdiction of industrial tribunals constituted under the Industrial Disputes Act, 1947.
- (vi) Tests for determination of 'industry' under the Industrial Disputes Act, 1947.

(5 marks each)

Answer 6(i)**Employment Injury**

Employment injury under Section 2(8) of the E.S.I. Act, 1948 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”.

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. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. 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 (*Regional Director, E.S.I. Corpn. v. L. Ranga Rao*, 1982 I-L.L.J. 29).

Where an employee who is on his way to factory meets with an accident, one K M from the place of employment, the Court held that the injury cannot be said to be caused by accident arising out of and in the course of his employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory (*Regional Director ESI v. Francis de Costa*, 1997 LLJ I 34 SC).

Answer 6(ii)**Prohibition of Employment of Contract Labour**

Prohibition of employment of contract labour has been stipulated under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. This is the most significant provision in the Act. It empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment by issuing a notification in the Official Gazette. However, before doing so it shall consult the Central Board or the State Board as the case may be.

Considerations to be taken into account : Before issuing any notification under Section 10 in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors such as:

- (a) whether the process, operation or other work incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having

regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole time workmen.

The Explanation appended to the Section states that if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

Answer 6(iii)

Philosophy behind the enactment of the Minimum Wages Act, 1948

The Minimum Wages Act of 1948 is a landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi v. State of Kerala* (A.I.R. 1962 SC 12), as follows:

“What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”.

Answer 6(iv)

Manufacturing Process

Section 2(k) of the Factories Act, 1948 defines 'manufacturing process'. It means any process for :

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water or sewage or any other substance; or
- (iii) generating, transforming, transmitting power; or
- (iv) composing types for printing, printing by letter-press, lithography, photogravure or other similar process, or book-binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage.

The definition is quite important and it has been the subject of judicial interpretation in large number of cases. The Madras High Court in the case of *In re. Seshadrinatha Sarma* 1966 (2) LLJ 235, held that to constitute a manufacture there should not be essentially

some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance in commercially marketable.

The Division Bench of A.P. High Court held that to determine where certain premises is a factory, it is necessary that it should carry on manufacturing process and it does not require that the process should end in a substance being manufactured (*Alkali Metals (P) Ltd. v. ESI Corpn.*, 1976 Lab.I.C.186). In another case it was observed that manufacturing process merely refers to particular business carried on and does not necessarily refer to the production of some article. The works of laundry and carpet beating were held to involve manufacturing process. A process employed for purpose of pumping water is manufacturing process. Each of the words in the definition has got independent meaning which itself constitutes manufacturing process.

Answer 6(v)

Matters within the jurisdiction of Industrial Tribunals

As per Section 7A of the Industrial Disputes Act, 1947 the appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act

The Third Schedule of the Industrial Disputes Act, 1947 deals with matters within the jurisdiction of Industrial Tribunals. These are as follows:-

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalization;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

Answer 6(vi)

Industry

As per Section 2(j) of the Industrial Disputes Act, 1947 industry means “any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen”.

The Supreme Court carried out an in-depth study of the definition of the term industry in a comprehensive manner in the case of *Bangalore Water Supply and Sewerage Board v. A Rajappa*, AIR 1978 SC 548 after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term industry.

Tests for determination of industry

After discussing the definition from various angles in the above case, the Supreme Court laid down the following tests to determine whether an activity is covered by the definition of industry or not. It is also referred to as the triple test.

- I. (a) Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g., making, on a large scale, prasada or food) prima facie, there is an industry in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.
- II. Although Section 2(i) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-stretch itself. Undertaking must suffer a contextual and associational shrinkage, so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements in (i) although not trade or business, may still be industry, provided the nature of the activity, viz., the employer - employee basis, bears resemblance to what we find in trade or business. This takes into the fold of industry, undertaking, callings and services, adventures analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity, viz., in organising the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms, there is analogy.
- III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition, nothing less, nothing more.

Hence, the Supreme Court observed that professions, clubs, educational institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if they fulfil the triple tests listed in (I), cannot be exempted from the scope of Section 2(j). A restricted category of professions, clubs, co-operatives and gurukulas and little research labs, may qualify for exemption if,

in simple ventures, substantially and going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

Question 7

- (a) *Distinguish between any two of the following :*
- (i) *'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.*
 - (ii) *'Individual dispute' and 'industrial dispute' under the Industrial Disputes Act, 1947.*
 - (iii) *'Partial disablement' and 'total disablement' under the Workmen's Compensation Act, 1923.* (5 marks each)
- (b) *Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figures :*
- (i) *Minimum wages are to be fixed on the basis of standard normal working hours namely _____ hours a week.*
 - (ii) *Every employee shall be entitled to be paid by his employer in an accounting year, bonus, provided he has worked in the establishment for not less than _____ working days in that year.*
 - (iii) *_____ means the temporary closing of a place of employment or suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.*
 - (iv) *_____ means the termination by the employer of the services of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action.*
 - (v) *The Trade Unions Act, 1926 provides for the _____ of an unfair labour practice either by the employer or the trade unions or workmen.* (1 mark each)
- (c) *Choose the most appropriate answer from the given options in respect of the following :*
- (i) *To make an employer liable under the Workmen's Compensations Act, 1923, it is necessary that the injury is caused by an accident which must arise —*
 - (a) *Out of employment*
 - (b) *In the course of employment*
 - (c) *Out of employment and in the course of employment*
 - (d) *By any other reason.*
 - (ii) *An insured person under the Employees' State Insurance Act, 1948 is entitled to receive certain benefits. But the insured person is —*
 - (a) *Not entitled to receive more than one benefit for the same period*

- (b) *Entitled to receive more than one benefit for the same period on compassionate grounds*
 - (c) *Entitled to receive one benefit partly in cash and receive the other benefit in kind for the same period*
 - (d) *Entitled to receive more than one benefit on proof of authorities concerned.*
- (iii) *Under the Payment of Gratuity Act, 1972 where the services of an employee have been terminated for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment, the gratuity payable to the employee may be —*
 - (a) *Wholly or partially forfeited*
 - (b) *Only partially forfeited*
 - (c) *Wholly forfeited*
 - (d) *Forfeited in instalments.*
- (iv) *Under the Contract Labour (Regulation and Abolition) Act, 1970, the principal employer of an establishment can employ contract labour if —*
 - (a) *The principal employer has not obtained the certificate of registration*
 - (b) *The work is of urgent nature*
 - (c) *The work is not of perennial nature*
 - (d) *The work provides instant employment to a considerable number of unemployed persons.*
- (v) *A premises including precincts thereof is a 'factory' within the meaning of the Factories Act, 1948 wherein a manufacturing process is being carried on with the aid of power and where the number of workers working is —*
 - (a) *10 or more workers*
 - (b) *20 or more workers*
 - (c) *15 or more workers*
 - (d) *50 or more workers.*

(1 mark each)

Answer 7(a)(i)

Immediate employer & principal employer under E.S.I. Act, 1948

According to Section 2(13) of the E.S.I. Act, 1948 “immediate employer”, in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on, in or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

“Principal Employer” as per Section 2(17) of the Act means the following:

- (i) in a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;
- (ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department.
- (iii) in any other establishment, any person responsible for the supervision and control of the establishment.

Answer 7(a)(ii)

Individual dispute and industrial dispute

Industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 means “any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

Till the provisions of Section 2-A (*dismissal, etc., of an individual workman to be deemed to be an industrial dispute*) were inserted in the Industrial Disputes Act, 1947, it has been held by the Supreme Court that an individual dispute *per se* is not an industrial dispute. But it can develop into an industrial dispute when it is taken up by the union or substantial number of workmen (*Central Province Transport Service v. Raghunath Gopal Patwardhan*, AIR 1957 S.C. 104). This ruling was confirmed later on in the case of *Newspaper Ltd. v. Industrial Tribunal*.

In the case of *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate* (1958) I. L.L.J. 500, the Supreme Court held that it is not that dispute relating to ‘any person can become an industrial dispute. There should be community of interest. A dispute may initially be an individual dispute, but the workmen may make that dispute as their own, they may espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. All workmen need not to join the dispute. Any dispute which affects workmen as a class is an industrial dispute, even though, it might have been raised by a minority group.

The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of *Dimakuchi Tea Estate* 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.

Answer 7(a)(iii)

Partial disablement and total disablement

Disablement means loss of capacity to work or to move. The Workmen’s Compensation Act, 1923 does not define the word ‘disablement’, but defines partial disablement under Section 2(1)(g). Partial disablement may be temporary or permanent.

"Partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time. [Section 2(1)(g)]

The distinction between these two types of disablement depends on the fact as to whether an injury results in reduction of earning capacity in all the employments in which the workman was capable of undertaking or only in that particular employment in which he was engaged at the time of injury. The type of disablement suffered can be determined only from the facts of a case. But it is provided by the Act that injuries specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. These injuries are known as scheduled injuries.

Total disablement : Total disablement can also be classified as temporary total disablement and permanent total disablement.

"Total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more. [Section 2(1)(l)]

Answer 7(b)

- (i) 48 Hours
- (ii) 30 Days
- (iii) Lay-off
- (iv) Retrenchment
- (v) *Prohibition (Read Industrial Disputes Act, 1947)*

Answer 7(c)(i)

- (c) Out of employment and in the course of employment

Answer 7(c)(ii)

- (a) Not entitled to receive more than one benefit for the same period

Answer 7(c)(iii)

- (a) Wholly or partially forfeited

Answer 7(c)(iv)

- (c) The work is not of perennial nature

Answer 7(c)(v)

- (a) 10 or more workers.

Question 8

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

- (i) A contractor made short payment of wages to a worker employed by him as contract labour. The worker sought the amount due from the principal employer. Will he succeed ?*
- (ii) The services of workmen engaged on casual basis for doing a particular urgent work were terminated after the completion of the said work. Workmen sought compensation as the termination amounted to retrenchment. Will they succeed?*
- (iii) Workmen of an electricity generation station claimed that their unit is covered under the definition of 'factory' considering the process of transforming and transmission of electricity generated at the power station as a 'manufacturing process'. Will their claim succeed ?*
- (iv) An employee contended that subsistence allowance given during the period of his suspension should be included in his total wages for the purpose of calculation of bonus entitlement. Will he succeed ?*
- (v) The company declined to pay gratuity to a deceased employee's wife stating that the employee had worked for two years only whereas eligibility for receiving gratuity accrues only if he served for a period of five completed years of continuous service. Will she succeed ?*
- (vi) An establishment discontinued deduction towards contribution to provident fund from its employees' salary and stopped remitting contribution of its share of provident fund when the number of its employees on rolls fell to fifteen. Do the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 cease to be applicable to the establishment under such circumstances?*
- (vii) A workman, who was a carpenter, had to get his left arm amputated from elbow in an injury caused in the course of employment. The company paid compensation towards partial permanent disablement. The workman demanded compensation claiming it to be total disablement. Will the workman succeed ?*
(4 marks each)

Answer 8(i)

The worker will succeed. Section 21 (1) of the Contract Labour (Regulation & Abolition) Act, 1970 provides that a contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

Under Section 21(4) of the Act, it has been provided that if the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover

the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Answer 8(ii)

The workmen will not succeed. The Calcutta High court in *Tapan Kumar v. the General Manager Calcutta Telephones*, (1980) Lab.I.C.508) has held that where the workmen were engaged on casual basis for doing only a particular urgent work, the termination of their service after the particular work is over, is not a retrenchment.

Answer 8(iii)

The workmen will not succeed. The Supreme Court in *Workmen of Delhi Electric Supply Undertaking v. Management of D.E.S.U.*, AIR 1973 S.C. 365 has held that the process undertaken in zonal and sub-stations and electricity generating stations, transforming and transmitting electricity generated at the power station does not fall within the definition of manufacturing process and could not be said to be factories.

Answer 8(iv)

The employee will not succeed. It has been held in the case of *Motor Industries Co.Ltd. v. Popat Muralidhar Patil & Ors*, (1997) 1 CLR 169 Bom. that bonus is not payable on subsistence allowance firstly because the employee does not actually work during that period and secondly because the subsistence allowance cannot be considered as salary or wage.

Answer 8(v)

The wife of the deceased will succeed. According to Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease.

It is further provided under the proviso that the completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

Answer 8(vi)

No. According to Section 1(5) of the EPF Act, 1952 once an establishment falls within the purview of the Act, it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

Answer 8(vii)

The workman will succeed. It is a total disablement as per the Supreme Court decision in *Pratap Narain Singh Deo v. Srinivas Sabata* (1976) 1 L.L.J.235.

In this case, a workman who was a carpenter had amputated his left arm from elbow in an injury. It was held by the Supreme Court that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.
