

ECONOMIC, LABOUR AND INDUSTRIAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer SIX questions including Question No. 1 and 7 which are **COMPULSORY**.

Question 1

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

- (i) Money laundering is inextricably linked to the underlying criminal activity that generates it.*
 - (ii) An Indian citizen resident outside India can acquire any immovable property in India.*
 - (iii) The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of consumers.*
 - (iv) Quasi-judicial forums under the Consumer Protection Act, 1986 are to be construed as judicial authorities and the proceedings before them can be taken to be legal proceedings.*
 - (v) Grant of patent confers on the patentee to commercially exploit his invention without any conditions.*
 - (vi) A copyright owner possesses the individual right of exclusive enjoyment similar to that of a patentee of an invention as also right to dispose of the manuscript.*
- (3 marks each)*

Answer 1(i)

True

Reasons

Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generates it. In essence, the laundering enables criminal activity to continue. Money laundering is the processing of criminal proceeds to disguise its illegal origin. Terrorism, illegal arms sales, financial crimes, smuggling, and the activities of organised crime, including drug trafficking and prostitution rings, generate huge sums. Embezzlement, insider trading, bribery and computer fraud also produce large profits and create an incentive to legitimise the ill-gotten gains through money laundering. When a criminal activity generates substantial profits, the individual or group involved in such activities route the funds to safe heavens by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.

Answer 1(ii)

True

Reasons

An Indian citizen resident outside India may—

- (i) acquire any immovable property in India other than agricultural/plantation/ farm house,

- (ii) transfer any property in India to a person resident in India, and
- (iii) transfer any property other than agricultural or plantation property or farm house to an Indian citizen or to a person of Indian origin, resident outside India.

Answer 1(iii)**True***Reasons*

According to the preamble, the Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers disputes and for matters connected therewith. Therefore, the Act Provides for simple, quick and easy remedy to consumers under a three-tier quasi-judicial redressal agency at the District, State and National levels.

Answer 1(iv)**False***Reasons*

In *N.K. Modi v. Fair Air Engineers Pvt. Ltd.* (decided on 13.11.1992). The National Commission observed that the forums under the Consumer Protection Act are not to be construed as judicial authorities and the proceedings before them cannot be taken to be legal proceedings. For a judicial authority, it is necessary that some part of the judicial power should be transferred to and vested in the forums as in the case of civil/criminal/special courts. Though, the consumer forums have powers to adjudicate dispute, they do not have any trappings of a Court. Except, conforming to the principle of natural justice, consumer forums are not governed by the Evidence Act or the Civil Procedure Code, except for certain limited purposes. Even the Limitation Act is not strictly applicable to the proceedings before them.

Answer 1(v)**False***Reasons*

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 1(vi)

True

Reasons

A copyright owner possesses the right to dispose of the manuscript and an individual right of exclusive enjoyment similar to that of a patentee of an invention. Mere transfer of the manuscript does not transfer the copyright therein. The purchaser of a literary or artistic work, in the absence of an agreement to the contrary, obtains no right to its reproduction, and the right still remains with the author.

Question 2

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

- (i) *Term of patent*
- (ii) *Collective trade marks*
- (iii) *Objective of the Public Liability Insurance Act, 1991*
- (iv) *Remedies against infringement of copyright*
- (v) *Anti-competitive agreements*
- (vi) *Resale price maintenance.* (3 marks each)

Answer 2(i)

Term of Patent

As per Section 53 of the Patents (Amendment) Act, 2002 the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, shall be twenty years from the date of filing of application for the patent.

In case of international applications filed under the Patent Cooperation Treaty (PCT) designating India, the term of patent shall be twenty years from the date of international filing.

Answer 2(ii)

Collective Trade Mark

Collective mark means a trade mark distinguishing the goods or services of members

of an association of persons (not being a partnership within the meaning of Indian Partnership Act, 1932) which is proprietor of the mark from those of others.

Collective marks serve to distinguish characteristic features of the products or services offered by those enterprises. It may be owned by an association which may not use the collective mark but whose members may use the same. The association ensures compliance of certain quality standards by its members, who may use the collective mark if they comply with the prescribed requirements concerning its use. The primary function of a collective mark is to indicate a trade connection with the Association or Organisation.

Answer 2(iii)

Objective of Public Liability Insurance Act, 1991

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. 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(iv)

Remedies against Infringement of Copyright

Section 55 of the Copyright Act, 1957 provides for the civil remedies for infringement of copyright and entitles the owner of the copyright to all such remedies by way of injunction, damages, accounts and otherwise as may be conferred by law for the infringement of copyright. Section 54 defines the term owner of copyright. Section 58 entitles the owner of the copyright to initiate proceedings for the possession of infringing copies and other materials related thereto. In this context, the section clarifies that all infringing copies of any work in which copyright subsists and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright.

Answer 2(vi)

Anti Competitive Agreements

Section 3(1) of the Competition Act, 2002 provides that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition. Section 3(2) further declares that any anti competitive agreement within the meaning of sub-section 3(1) shall be void. Under the law, the whole agreement is construed as 'void' if it contains anti-competitive clauses having appreciable adverse effect on competition. Section 3(3) provides that those agreements shall be presumed to have an appreciable adverse effect on the competition and onus to prove otherwise lies on the defendant, which

- (a) directly or indirectly determines purchase or sale prices;

- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; and
- (d) directly or indirectly results in bid rigging or collusive bidding;

Section 3(4) provides that any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including ?

- (a) tie-in agreement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance;

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Answer 2(vi)

Resale Price Maintenance

As per explanation to Section 3(4) of the Competition Act, 2002 "Resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

Any stipulation that the cement dealer should not sell below the stipulated price is a 'resale price maintenance' practice and is an anti competitive practice. (In *re-India Cement Ltd.* RTP Inquiry 48 /1985).

Question 3

- (a) *Distinguish between any two of the following :*
 - (i) 'Association' and 'political party' under the Foreign Contribution (Regulation) Act, 1976.
 - (ii) 'Registered proprietor of a trade mark' and 'registered user of a trade mark' under the Trade Marks Act, 1999.
 - (iii) 'Relevant market' and 'relevant geographic market' under the Competition Act, 2002.
 - (iv) 'Foreign exchange' and 'net foreign exchange earnings' under the Foreign Exchange Management Act, 1999. (5 marks each)
- (b) *Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :*
 - (i) The total financial commitment of the Indian party in joint ventures/ wholly-

owned subsidiaries abroad does not exceed _____ of the net worth as on the date of its last audited balance sheet.

- (ii) The redressal agencies 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) Every offence punishable under the Prevention of Money Laundering Act, 2002 is a _____ offence.*
- (iv) As per a historic Supreme Court judgement, an application for compensation in a pollution case is maintainable under Article _____ of the Constitution of India.*
- (v) The National Environment Tribunal Act, 1995 provides for _____ liability for damages arising out of any accident occurring while handling any hazardous substance.*
(1 mark each)

Answer 3(a)(i)

Under Section 2(1)(a) of the Foreign Contribution (Regulation) Act, 1976 “Association” means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation, by whatever name called.

Under Section 2(1)(g) of the 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.

Answer 3(a)(ii)

As per Section 2(1) (v) of the Trade Marks Act, 1999 “Registered Proprietor” in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark.

As per Section 2(1) (x) of the Trade Marks Act, 1999 “Registered User” means a person who is for the time being registered as such under Section 49 of the Trade Marks Act, 1999.

Section 49 provides for registration as registered user and largely corresponds to Sections 49 and 52 of the Trade and Merchandise Marks Act, 1958. 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.

In view of the simplification of 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.

Answer 3(a)(iii)

Under Section 2(r) of Competition Act, 2002 “Relevant market” means the market, which may be determined by the Commission with reference to ‘relevant product market’ or ‘relevant geographic market’ or with reference to both the markets.

Under 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.

In terms of 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 reason of characteristics of products or services, their prices and intended use.

Answer 3(a)(iv)

The term ‘foreign exchange’ has been defined under Section 2(n) of the Foreign Exchange Management Act, 1999 to mean foreign currency and includes deposits, credits, balance payable in foreign currency, drafts, travellers cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency. Any draft, travellers cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency has also been included in the definition of foreign exchange.

EOU/EHTP/STP/BTP unit is required to be a positive net foreign exchange earner. Net Foreign Exchange Earnings (NFE) is to be calculated cumulatively for a block of five years from the commencement of production according to the formula given below. Items of manufacture for export specified in the Letter of Permission (LOP)/ Letter of Intent (LOI) alone are taken into account for calculation of NFE.

$$\text{Positive NFE} = A - B > 0$$

Where

- (i) NFE is Net Foreign Exchange Earning.
- (ii) ‘A’ is the FOB value of exports by the EOU/EHTP/STP/BTP unit; and

- (iii) 'B' is the sum total of the CIF value of all imported inputs and the CIF value of all imported capital goods, and the value of all payments made in foreign exchange by way of commission, royalty, fees, dividends, interest on external borrowings/high sea sales during the first five year or any other charges.

Answer 3(b)

- (i) 400/200
- (ii) Two
- (iii) Cognizable
- (iv) Article 32
- (v) Strict

Question 4

- (a) *What are the conditions for making investment in the financial services sector in an overseas entity by an Indian company ?* (4 marks)
- (b) *Mention the specified details and documents to be furnished by a company/body corporate issuing Foreign Currency Convertible Bonds (FCCBs) to the Reserve Bank of India.* (3 marks)
- (c) *With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on any four of the following :*
 - (i) *An Indian company wishes to issue shares under the Employees Stock Option Scheme (ESOS) to its employees who are residents outside India.*
 - (ii) *An Indian company intends to issue bonus shares to its non-resident shareholders.*
 - (iii) *Rameshwar, a person resident in India, wishes to acquire foreign securities as qualification shares issued by a company incorporated outside India for holding the position of a director in the company.*
 - (iv) *An Indian party intends to make direct investment in a joint venture outside India.*
 - (v) *A person resident outside India wants the remittance of proceeds of a security sold in India.* (2 marks each)

Answer 4(a)

In addition to Conditions applicable for direct Investment abroad an Indian Company seeking to make investment in an entity engaged in Financial Services Sector in an overseas entity is required to fulfill the following additional conditions:

- (i) be registered with the appropriate regulatory authority in India for conducting the financial sector activities;
- (ii) have earned net profit during the preceding three financial years from the financial services activities;
- (iii) have obtained approval for investment in financial sector activities abroad from regulatory authorities concerned in India and abroad; and

- (iv) have fulfilled the prudential norms relating to capital adequacy as prescribed by the regulatory authority concerned in India.

Answer 4(b)

The company/body corporate issuing the FCCBs, is required to furnish within 30 days from the date of issue, a report to the RBI giving the specified details and documents as under:

- (a) Total amount for which FCCBs have been issued.
- (b) Names of the investors resident outside India and number of FCCBs issued to each one of them.
- (c) The amount repatriated to India through normal banking channels and/or the amount received by debit to NRE/FCNR accounts in India of the investors (duly supported by bank certificate).

Answer 4(c)(i)**Issue of shares under Employees Stock Option Scheme**

Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad, other than citizens of Pakistan. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:

- (i) The scheme has been drawn in terms of relevant regulations issued by the Securities and Exchange Board of India; and
- (ii) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.

If the company is not listed, it has to follow the provisions of the Companies Act, 1956.

The issuing company is required to report the details of such issues to the concerned Regional Office of the Reserve Bank, within 30 days from the date of issue of shares under ESOPs.

Answer 4(c)(ii)**Bonus shares issued to non-resident shareholder**

FEMA allows Indian companies to freely issue Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus 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.

Answer 4(c)(iii)

Rameshwar, a person resident in India is permitted to acquire a foreign security as qualification shares for becoming a director of a company outside India, provided that It

does not exceed 1 per cent of the paid up capital of the overseas company and the consideration for the acquisition does not exceed USD 20,000/- in a calendar year.

Answer 4(c)(iv)

An Indian party has been permitted to make investment in overseas Joint Ventures (JV) not exceeding 400 per cent of the net worth of the Indian party (corporates) as on the date of the last audited balance sheet. This ceiling is not applicable where the investment is made out of balances held in Exchange Earners' Foreign Currency account of the Indian party or out of funds raised through ADRs/GDRs.

Further the Indian party should not be on the Reserve Bank's Exporters caution list / list of defaulters to the banking system circulated by the Reserve Bank / The Credit Information Bureau (India) Ltd (CIBIL) or under investigation by any investigation / enforcement agency or regulatory body. All transactions relating to a JV should be routed through one branch of an authorised dealer bank to be designated by the Indian party.

Answer 4(c)(v)

A person resident outside India wants the remittance of proceeds of a security sold in India, provided that the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC/tax clearance certificate from the Income Tax Department has been produced.

Question 5

- (a) *Mention the rights considered as intellectual property by the Convention establishing World Intellectual Property Organisation, 1967.* (5 marks)
- (b) *What are the provisions of the Patents Act, 1970 regarding patents of addition ?* (5 marks)
- (c) (i) *Define 'deficiency in service' as contained in the Consumer Protection Act, 1986.* (3 marks)
- (ii) *Dhan-Dhan Bank Ltd., a scheduled bank, was to arrange remittance of a guaranteed amount to Prakash, a non-resident, in foreign currency after obtaining requisite approvals from authorities concerned. There was a delay in payment. Aggrieved by this, Prakash approached the Consumer Disputes Redressal Forum for relief. Will he succeed ?* (2 marks)

Answer 5(a)

World Intellectual Property Organisation, 1967 provides that the intellectual property shall include rights relating to:

- (i) literary, artistic and scientific works;
- (ii) performances of performing artists, phonograms and broadcasts;
- (iii) inventions in the field of human endeavour;
- (iv) scientific discoveries;
- (v) industrial designs;

- (vi) trademarks, service marks, commercial names and designations;
- (vii) protection against unfair competition; and

all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Here, it may be clarified that rights relating to (i) and (ii) above constitute copyright, while (iii), (v) and (vi) constitute industrial property. However, scientific discoveries, as mentioned under (iv) above, belongs to neither of two branches of intellectual property, as scientific discoveries and inventions are not the same.

Answer 5(b)

Section 54, 55 and 56 of the Patent Act, 1970 deals with patents of addition. Section 54 provides that where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification, namely the main invention and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

Where an invention being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Controller may, if the patentee so requests, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date of the patent so revoked. However a patent shall not be granted as a patent of addition unless the date of filing of the application is the same as or later than the date of filing of the application in respect of the main invention. A patent of addition shall not be granted before the grant of the patent for the main invention.

Section 55 deals with term of patents of addition and provides that a patent of addition is granted for a term equal to that of the patent for the main invention or so much thereof as has not expired and remains in force during that term or until the previous ceasser of the patent for the main invention and no longer. No renewal fees is payable in respect of a patent of addition, but if any such patent becomes an independent patent the same fees shall thereafter be payable upon the same dates, as if the patent had been originally granted as an independent patent.

Section 56 which deals with validity of patents of addition provides that the grant of a patent of addition shall not be refused and a patent granted as a patent of addition shall not be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to any publication or use of the main invention described in the complete specification relating thereto; or any improvement in or modification of the main invention described in the complete specification of a patent of addition to the patent for the main invention or of an application for such a patent of addition, and the validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent. In this context, it is clarified that in determining the novelty of the invention claimed in the complete specification filed in pursuance of an application for a patent of addition regard shall be had also to the complete specification in which the main invention is described.

Answer 5(c)(i)

“Deficiency” under Section 2(1) (g) of the Consumer Protection Act, 1986 has been defined to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

The term ‘service’ is defined under Section 2(1)(o) of the Consumer Protection Act, 1986 as to mean service of any description which is made available to potential users and includes, but not limited to the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

Therefore, Failure to maintain the quality of performance required by the law or failure to provide services as per warranties given, by the provider of the service would amount to ‘deficiency’.

Answer 5(c)(ii)

The facts of the case are similar to that of *Union Bank of India v. Seppo Rally OY* (1999) 35 CLA 203. In this case, the Supreme Court held that delay in payment of an unconditionally guaranteed amount by a bank in India to a non-resident in Finland in foreign currency can not be attributed to any deficiency in the service of the bank when the banks stand is that the delay is caused by the failure of a bank in Finland, to which the remittance was to have been made under the non-residents instructions to reply to the Indian Banks valid query in this connection and the RBI took time to grant the necessary permission to make the remittance.

In the light of this decision, Prakash will not succeed.

Question 6

Answer any three of the following :

- (i) *Mention five important entitlements allowed by foreign trade policy to the units established in the Special Economic Zone (SEZ).*
- (ii) *What are the general powers of 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 ?*
- (iii) *Rohit sought admission to a law college affiliated to EXCEL University. The university refused to provide LL.B Degree Certificate to Rohit on completion of the course on the ground that the qualifying examination on the basis of which Rohit was admitted in the LL.B course in the college has not been recognised by it. Rohit has filed a case in the Consumer Disputes Redressal Forum against the university and claimed relief. Will Rohit succeed ?*
- (iv) *What is meant by 'copyright' in the case of a computer programme ? When is a copyright infringed under the Copyright Act, 1957 ? (5 marks each)*

Answer 6(i)

Five entitlements allowed by Foreign Trade Policy to the unit established in the Special Economic Zone (SEZ).

- Income tax exemption as per 80 IA of the Income Tax Act.
- Import/procure goods without payment of Customs/Excise duty.
- Exemption from Service tax.
- Exemption from CST.
- Leasing of Capital Goods.

Answer 6(ii)

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.

Answer 6(iii)

The facts of the case are similar to that of *Sreedharan Nair N. v. Registrar, University of Kerala* [2001 CTJ 561 (CP) (NCDRC)]. In this case the University refused to provide LL.B. degree certificate to the student on completion of course on the ground that the qualifying examination on the basis of which student was admitted in LL.B. course in Law College has not been recognised by it. The National Commission held that this is a clear case of deficiency on part of University.

In the light of above, Rohit will succeed.

Answer 6(iv)

Section 14 of the Copyright Act defines the copyright in the case of a computer programme as -

- (i) to do any of the acts specified in respect of a literary, dramatic or musical work; and
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

Infringement of Copyright

Section 51 of the Copyright Act, 1957 contemplates situation in which a copyright shall be deemed to be infringed. This Section says that a copyright is infringed when any person without a licence granted by the owner of the copyright or the Registrar of Copyright or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority does

- (1) anything for which the exclusive right is conferred upon the owner of the copyright; or
- (2) permits for profit any place to be used for the communication of the work to public where such a communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication would be an infringement of copyright;
- (3) when any person (i) makes for sale or hire or lets for hire or by way of trade display or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or (iii) by way of trade, exhibits in public, or (iv) imports into India any infringing copies of the work.

However, import of one copy of any work is allowed for private and domestic use of the importer. Explanation to Section 51 clarifies that the reproduction of literary, dramatic, musical or artistic work in the form of cinematograph film shall be deemed to be an infringing copy.

Question 7

(a) Discuss any two of the following :

- (i) Personnel policies.
- (ii) Certification of draft standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (iii) Benefits to an insured person under the Employees' State Insurance Act, 1948.
- (iv) General duties of an 'occupier' under the Factories Act, 1948.

(5 marks each)

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

- (i) All the partners of a firm were in full-time employment and worked in the premises of a factory. They sought all the benefits as entitled to the workers under the Factories Act, 1948. Will they succeed ?
- (ii) A workman while returning home after duty was murdered by miscreants within the premises of the employer. The miscreants had no relationship with the employer. The deceased workman's wife sought compensation from the employer. Will she succeed ?
- (iii) The employees of a bank went on strike for a portion of a day. The bank deducted wages against the amount due to them in a month treating the period of strike as absent from duty. There was no provision in the contract of employment for deduction of wages for the period for which the employees refused to work although work was offered to them. Is the bank justified in deducting their wages ?
- (iv) The workmen, who had participated in an illegal strike, did not resume their duties which affected production in the units. The employer dismissed these workmen under the standing orders. Is the employer's action justified ?
- (v) In a factory, the canteen was run by a contractor who used to bring his workers for working in the canteen. These workers later on claimed that they were entitled to salary and other monetary benefits like other regular employees of the factory. Will they succeed ?
- (vi) A contractor was entrusted with the repairs of a defective chimney of a company. A workman engaged by him was injured while carrying out repairs in the premises of the company. The workman claimed compensation from the company. Will he succeed ?
- (vii) After appointment of employees on regular rolls, a bank found, on scrutiny, that one of such employees was irregularly appointed. His appointment was thus, terminated. The aggrieved employee approached the court against the action of termination by the bank. Will he succeed ? (3 marks each)

Answer 7(a)(i)**Personal Policies**

Personnel policies are statements of management's intention in regard to industrial relations. They constitute a business philosophy for the guidance of the human-relations

decisions of the enterprise. Such policies, once formulated and developed must have wide acceptance and constant and consistent application. These policies are expected to condition the successful functioning of the personnel department and must be in conformity with the broad structural relationships governing the organisation as a whole. These policies have to be dynamic. Personnel policies usually cover:

- (i) Policy on recruitment and selection;
- (ii) Policy on manpower planning and development;
- (iii) Policy on industrial relations;
- (iv) Policy on communication with employees at all levels;
- (v) Policy on grievance handling.

Successful functioning of the personnel department depends upon these policies.

Answer 7(a)(ii)

Certification of Draft Standing Orders

Submission of draft Standing Orders by employers to the certifying officer

Section 3 of the Industrial Employment (Standing Orders) Act, 1946 provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment. The Act requires every employer of industrial establishment where one hundred or more workmen are employed on any day of the preceding 12 months, to have standing orders. The objective is to have terms and conditions known to workmen from the very beginning.

Such draft Standing Orders shall be in conformity with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.

The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

If the industrial establishments are of similar nature, a group of employers owning those industrial establishments may submit a joint draft of Standing Orders subject to such conditions as may be prescribed.

Conditions for certification of Standing Orders

According to Section 4 of the Act, Standing Orders shall be certifiable if-

- (a) provision is made therein for every matter stated in the Schedule to the Act which is applicable to industrial establishment; and
- (b) the Standing Orders are otherwise in conformity with the provisions of the Act.

It is further provided in Section 4 that it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions

of the Standing Orders. The objective is to have terms and conditions known to workmen from the very beginning.

The Act has imposed a duty on the Certifying Officer, to consider the reasonableness and fairness of the Standing Orders before certifying the same. The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same.

Procedure to be followed for Certification of Standing Orders

Section 5 of the Act lays down the procedure to be followed by Certifying Officer. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in such manner as may be prescribed, together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders. These objections are required to be submitted to him within 15 days from the receipt of the notice.

On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same. A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.

Answer 7(a)(iii)

Benefits under E.S.I. Act, 1948

The E.S.I. Act, 1948 under Section 46 provides for 6 types of benefits to which the insured persons and their dependants are entitled. These benefits are as follows:

- (a) periodical payments in case of sickness certified by medical practitioner; (Sickness benefit)
- (b) periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement; pre-mature birth of child or mis-carriage; (Maternity benefit)
- (c) periodical payments to an insured person suffering from disablement as a result of employment injury; (Disablement benefit)
- (d) periodical payments to the dependants of an insured person; (Dependants' benefit)
- (e) medical treatment and attendance on insured person; (Medical benefit)
- (f) payment of funeral expenses on the death of insured person at the prescribed rate of Rs. 1,500/-. (Funeral expenses)

All these benefits except the medical benefit are monetary benefits. The rules regarding these benefits are contained in Sections 46 to 58 and Rules 55 to 58. Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment. An insured person

is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

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

The 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 is 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(b)(i)

The partners will not succeed. These partners do not meet the definition of 'worker' as there is no relationship of employer-employee as envisaged in the Act. It has been held that the partners of a concern, even though they work on premises in the factory cannot be considered to be workers within Section 2(l) of the Factories Act, 1948 (1958 (2) LLJ 252 SC).

Answer 7(b)(ii)

The wife of the deceased workman will succeed. In a similar case namely *Naima Bibi v. Lodhne Colliery* (1920) Ltd., 1977 Lab. I.C. NOC 14, it has been held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment, his wife is entitled for compensation.

Answer 7(b)(iii)

The Supreme Court in *Bank of India v. T.S. Kelawala* (1990 II LLJ S. 39) held that where employees are going on a strike for a portion of the day or for whole day and there was no provision in the contract of employment or service rules or regulations for deducting wages for the period for which the employees refused to work although work was offered to them, and such deduction is not covered by any other provision, employer is entitled to deduct wages proportionately for the period of absence or for the whole day depending upon the circumstances.

The bank is justified in deducting the wages of the employees in view of the above mentioned decision of the Supreme Court.

Answer 7(b)(iv)

The employer's action is justified. In the case of *Express Newspaper (P) Ltd. v. Michael Mark*, (1962) II L.L.J. SC 220, the Supreme Court held that where the workmen who had participated in an illegal strike, did not join their duties which resulted in their dismissal under the Standing Orders, participation in strike means that they have abandoned their employment. However, the employer can take disciplinary action against the employees under the Standing Orders and dismiss them.

Answer 7(b)(v)

The workers will succeed. It has been held where the statute casts an obligation to own a canteen in the factory, and the establishment runs a canteen through a contractor who brings the workers for the canteen would be part and parcel of the establishment, and the canteen workers would be deemed to be regular employees of the establishment entitled to arrears of salary and other monetary benefits (*Tamil Manila Thozilalar Sangam v. Chairman TNEB*, 1994 CLA 34 Mad. 63.)

Answer 7(b)(vi)

The workman will not succeed. The company is not liable for compensation as the repairing of chimney is not the part of company's trade or business, whether ordinarily or extraordinarily.

The given problem is governed by Section 12 of the Workmen's Compensation Act, 1923 which envisages the employer's liability to pay compensation to a contractor.

Sometimes, employer may engage a contractor instead of employing his own workman for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of workman engaged by him. If any injury is caused by an accident to any of these workers, the employer cannot be held liable because they are not employed by him and hence are not his workmen. But now Section 12(1) makes the employer liable for compensation to such workmen hired by the contractor under following circumstances:

- (a) The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).
- (b) The workmen were engaged in the course of or for the purpose of his trade or business.

- (c) The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.

However, this section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be to execute the work or which are otherwise under his control or management. [Section 12(4)]

Answer 7(b)(vii)

The employee will succeed. In *Prabhudayal Jat v. Alwar Sehkari Bhumi Vikas Bank Ltd.*, (1997) Lab IC Raj. 944, where the services of an employee irregularly appointed were terminated, the Court held that it was a fit case of retrenchment.
