

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

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

- (i) Concept of sustainable development*
- (ii) Element of 'novelty' in an invention*
- (iii) Financial Action Task Force*
- (iv) Project exports*
- (v) Predatory pricing*
- (vi) Competition policy.*

(3 marks each)

Answer 1(i)

Concept of Sustainable Development

Universe is one of the rarest gift that the nature has given to the human being. Even after prolonged experiments the scientist could not establish, that human can survive in any other planet except earth. Therefore humanity must live within the carrying capacity of the earth. It is essential for the people who live now to use the resources of earth sustainably and prudently so that they do not deny certain benefits to future generations. Modern states use the natural resources of the earth recklessly. This will result that the Earth will not be able to support everyone unless there is less waste and extravagance. We should, therefore have, a new approach to future, that is, to secure a widespread and deeply held commitment for sustainable living. We have to integrate conservation and development. Conservation to keep our actions within the earth's capacity and development to enable the people everywhere to enjoy long, healthy and fulfilling lives.

The concept of 'sustainable development was first highlighted at the United Nations Conference on the Human Environment held at Stockholm in June, 1972. Since then, various countries such as Japan, US, France, Germany, etc. besides India, have enacted legislative measures for protection of the environment introducing strict penal measures for damages caused due to hazardous substances, etc. Various international conferences have been held on the subject of environmental planning etc. the important being the 'The United Nations Conference on Environment and Development popularly known as the Earth Summit held at Rio De Janeiro in Brazil in June, 1992 which aimed at focusing the attention of the world on problems of our environment and look for ways in which these can be avoided in future. India too has been an active participant at these conferences.

Answer 1(ii)

Elements of 'novelty' in an invention

Section 2(j) of the Patent Act, 1970 defines the term Invention as to mean a new product or process involving an inventive step and capable of industrial application.

In terms of Section 2(ja) Inventive step means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.

Thus there are three criteria for an invention to be a patented namely, Novelty, Inventive step and Industrial application, The term “novelty” has not been defined under the Patent Act, 1970. However, Section 2(l) of the Act defines the term new invention to mean an invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen into public domain or that it does not form part of the state of the art.

Thus the Patent Act recognises the worldwide novelty of an invention.

Answer 1(iii)

The Financial Action Task Force

The main international body engaged in continuous and comprehensive efforts both to define policy and to promote the adoption of countermeasures against money laundering is the Financial Action Task Force (FATF). The FATF, set up by the governments of the G-7 countries at their 1989 Economic Summit, has representatives from twenty-four OECD countries, Hong Kong, Singapore, the Gulf Cooperation Council, and the European Commission. Participants include representatives from members' financial regulatory authorities, law enforcement agencies, and Ministries of Finance, Justice and External Affairs. Representatives of international and regional organizations concerned with combating money laundering also attend FATF meetings as observers. The main tasks of the FATF are:

- Monitoring members' progress in applying measures to counter money laundering.
- Reviewing money laundering techniques and countermeasures.
- Promoting the adoption and implementation of appropriate measures by non-member countries.

Answer 1(iv)

Project Exports

Export of engineering goods on deferred payment terms including execution of turnkey projects and civil construction contracts abroad are collectively treated as project export. Project exports are broadly divided into three categories, i.e. Civil Engineering Construction Projects, Industrial Turn Key Projects and Consultancy Services. Project exports are regarded as a key indicator of technological maturity and industrial capabilities of a country. These projects have occupied an important place in India's export portfolio.

Regulation 18 of the Foreign Exchange Management (Export of Goods and Services) Regulation 2000 deals with project exports and provides that where the export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, the exporter shall before entering into any such export arrangement, submit the proposal for prior approval of the Working Group or the Exim Bank or Authorised dealer, as the case may be, which shall consider

the proposal in accordance with the guidelines issued by Reserve Bank from time to time.

Answer 1(v)

Predatory Pricing

Explanation (b) to section 4(2) of the Competition Act, 2002 defines the term predatory price as to mean the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of goods or provision of services, with a view to reduce competition or eliminate the competitors.

Section 33(1) (j) of the MRTP Act, 1969 also relates to any agreement to sell goods at such prices as would have the effect of eliminating competition or a competitor. This covers the practice of what is called predatory pricing- selling below the cost of production so as to eliminate a competitor or competition, though in cases of very sluggish demand, sale below cost may be necessitated to prevent losses from getting aggravated. For predatory pricing it would be necessary to look for an element of mala fide intention i.e. of elimination competition by creating transitory phase of low pricing which the competitor may not be able to withstand.

Answers 1(vi)

Competition Policy

Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets, and the second 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.

Question 2

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

- (i) *An export oriented unit (EOU) can export goods manufactured by it through another export oriented unit (EOU).*
- (ii) *Unfair trade practices include offering gifts or prizes for promotional contests.*
- (iii) *Tie-up arrangements hardly serve any purpose beyond suppression of competition.*
- (iv) *The object of the Foreign Contribution (Regulation) Act, 1976 is to legalise foreign donations and hospitality to office bearers of political parties.*

(v) *The term of copyright in published literary works and cinematograph films is 60 years.*

(vi) *A patent is granted for a definite period.* (3 marks each)

Answer 2(i)

True

Reason

An EOU may export goods manufactured/software developed by it through other exporter or any other EOU subject to following condition —

- (a) Goods are produced in the EOU concerned
- (b) The level of NFE (Net Foreign Exchange Earnings) or any other conditions relating to the imports and exports or prescribed, continue to be discharged by the EOU concerned.
- (c) The Export orders so procured are executed within the parameters of EOU schemes and goods are directly transferred from the unit to the port of shipment.
- (d) Fulfillments of NFE by EOU units in regard to such exports are reckoned on the basis of the price at which the goods are supplied by EOUs to other exporters or other EOU.
- (e) All export entitlements, including recognition as Status Holder would accrue to the exporter in whose name foreign exchange earnings are realized. However, such export are counted towards fulfillment of obligation under EOU scheme only.

Answer 2(ii)

True

Reason

Section 36A(3)(a) of the MRTP Act, 1969 deals with the unfair trade practices relating to offering of gifts or prizes with the intention of not providing them or creating an impression that something is being given free of charge when it is fully or partly covered by the amount charged in the whole transaction.

Where there has been an increase in the price of the articles/commodity etc. by virtue of an offer of gifts or prizes, the practice of offering such prizes etc. will be treated as unfair trade practice. However, if the charged party can convince the Commission that increase in the price of product has no nexus with the gift scheme, it would not be construed as unfair.

Answer 2(iii)

True

Reason

Tie-up arrangements, within the meaning of Section 33(1)(b) of the MRTP Act, 1969 is one, whereby a seller agrees to sell a product or service (the main or the tying item)

only on the condition that the buyer agrees to buy another (second or tied item) from the seller or not to buy the tied product from any other supplier. Such arrangements are generally used to push the sale of a slow-moving and less in demand product along with a more popular product or for introducing a new product in the market.

How a tying arrangement/agreement affects competition has been explained by the United States Supreme Court [quoted by the MRTP Commission in Hindustan Levers case; RTP Enq. No. 48 of 1983 dt. 4.8.1987] as follows:

Tying agreements serve hardly any purpose beyond the suppression of competition. By conditioning the sale of one commodity on the purchase of another a seller coerces the abdication of buyers independent judgement as to the 'tied products merits and insulates it from the competitive stresses of the open market. Intrinsic superiority of the tied product, if there be any, would convince freely choosing buyers to select it over others anyway. The effect of the tying device on competing sellers attempting to rival the tied product, is indeed drastic as it enables the seller adopting the tying arrangement to enjoy market control while other existing and potential sellers are foreclosed from offering their goods to a free competitive judgment though being effectively excluded from fair market dealing.

Explanation (a) to Section 3(4) of the Competition Act, 2002 defines the term tie-in arrangement as to mean any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.

Answer 2(iv)

False

Reason

Foreign Contribution (Regulation) Act, 1976 has been enacted to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain categories of persons or associations, with a view to ensuring that Parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, and for matters connected therewith or incidental thereto.

Answer 2(v)

False

Reason

Sections 22 to 29 of Copyright Act, 1957 deal with term of copyright in respect of published literary, dramatic, musical and artistic works; anonymous and pseudonymous; posthumous, photographs, cinematograph films, sound recording, Government works, works of PSUs and works of international organisations.

Literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus 60 years beyond i.e. 60 years after his death. In the case of joint authorship which implies collaboration of two or more authors in the production of the work, the term of copyright is to be construed as a reference to the author who dies last.

In the case of copyright in posthumous, anonymous and pseudonymous works, photographs, cinematograph films, sound recordings, works of Government, public undertaking and international organisations, the term of protection is 60 years from the beginning of the calendar year next following the year in which the work has been first published.

Answer 2(vi)

True

Reason

Section 53 of Patent Act provides that the term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 and 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.

Explanation to Section 53(1) clarifies that the term of patent in case of international applications filed under the Patent Cooperation Treaty (PCT) designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.

Question 3

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

- (i) 'Person' and 'authorised person' under the Foreign Exchange Management Act, 1999.
 - (ii) 'Political party' and 'an organisation of political nature' under the Foreign Contribution (Regulation) Act, 1976.
 - (iii) 'Invention' and 'patentable invention' under the Patents Act, 1970.
- (4 marks each)

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

- (i) Offshore banking unit means a branch of a bank located in a _____ and which has obtained the permission under the Banking Regulation Act, 1949.
- (ii) Group means two or more enterprises, which directly or indirectly are in a position to exercise _____ or more of voting rights in other enterprises.
- (iii) The term restrictive trade practice, inter alia, intends to bring about _____ of process or conditions of delivery to effect the flow of supplies in the market relating to goods or services.
- (iv) The total financial commitment of the Indian party in joint ventures/wholly owned subsidiaries does not exceed _____ of the net worth as on the date of the last audited balance sheet.
- (v) Without furnishing the declaration, goods not exceeding the value of _____ per transaction can be exported to Myanmar under the Barter

Trade Agreement between the Government of India and the Government of Myanmar.

- (vi) *Release of foreign exchange exceeding US\$_____ for business travel requires prior approval of the Reserve Bank of India (RBI).*
- (vii) *A remittance exceeding US\$ _____ by an entity in India by way of reimbursement of pre-incorporation expenses requires prior approval of RBI.*
(1 mark each)

Answer 3(a)(i)

Person

Section 2(u) of FEMA, defines the term 'Person' to include (i) an individual, (ii) a Hindu Undivided Family, (iii) a Company, (iv) a Firm, (v) an association of persons or body of individuals whether incorporated or not; and (vi) every artificial juridical person not falling within the above sub clause (vii) any agency, office or branch owned or controlled by such person;

Authorised Person

The term authorized person is defined in Section 2(c) of FEMA to include an authorize dealer, money changer, offshore banking unit or any other person for the time being authorized to deal in foreign exchange or foreign securities.

Under Section 10 of the FEMA, 1999 any person who has made an application to the RBI may be authorised by it to act as an authorised person to deal in foreign exchange or in foreign securities as an authorised dealer, money changer or offshore banking unit or in any other manner as the RBI deem fit. This authorisation is in writing and subject to the conditions laid down by the RBI.

Normally, nationalised banks, leading non nationalized banks and foreign banks are appointed as authorized persons.

Answer 3(a)(ii)

As per Section 2(1)(g) of the Foreign Contribution (Regulation) Act, 1976 FCRA 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 .

Section 5 of FCRA prohibits an organisation of a political nature not being a political party, from accepting any foreign contribution, except with the prior permission of the Central Government. In this context, it has been clarified that an organisation of a political nature not being a political party means such organisation as the Central

Government may specify by order published in the Official Gazette, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with the activities of any political party.

Answer 3(a)(iii)

Section 2(j) of the Patent Act defines invention as to mean a new product or process involving an inventive step and capable of Industrial application The term ‘inventive step’ has been defined under the Patent Act as to mean a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.

Any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen into public domain or that it does not form part of the state of the art, which is registered with Controller of Patent is patentable invention.

Section 3 enumerated the list of inventions which are not patentable.

Answer 3(b)(i)

“Offshore Banking Unit” means a branch of a bank located in a **Special Economic Zone** and which has obtained the permission under the Banking Regulation Act, 1949.

Answer 3(b)(ii)

Group means two or more enterprises which directly or indirectly are in a position to exercise **26%** or more of voting rights in other enterprises.

Answer 3(b)(iii)

The term restrictive trade practice inter alia intends to bring about **manipulation** of price or conditions of delivery or to effect the flow of supplies in the market relating to goods or services.

Answer 3(b)(iv)

The total financial commitment of the Indian party in joint ventures/ wholly owned subsidiaries does not exceed **400 %** of the net worth as on the date of the last audited balance sheet.

Answer 3(b)(v)

Without furnishing the declaration, goods not exceeding the value of **US \$ 1000** per transaction can be exported to Myanmar under the Barter trade Agreement between the Government of India and the Govt. of Myanmar.

Answer 3(b)(vi)

Release of forex exceeding **US \$ 25,000** for business travel requires prior approval of RBI.

Answer 3(b)(vii)

A remittance exceeding **US \$ 1, 00,000** by an entity in India by way of reimbursement of pre-incorporation expenses requires prior approval of RBI.

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) *Tomb Ltd. desires to make payment of commission on the exports made towards equity investment in its wholly owned subsidiary abroad.*
 - (ii) *Hari, while on a visit abroad, used his international credit card for making payment towards meeting stay expenses.*
 - (iii) *Jolly, a resident in India, desires to acquire 5% of the paid-up share capital of the company abroad to hold the post of director in the foreign company, as qualification shares.*
 - (iv) *Ramesh, an NRI, desires to invest on repatriation basis in derivatives contracts, approved by the Securities and Exchange Board of India through stock exchanges.* (2 marks each)
- (b) *Explain the powers of the Central Government to prohibit receipt of foreign contribution under the Foreign Contribution (Regulation) Act, 1976.* (4 marks)
- (c) *Mention briefly powers of the Competition Commission of India under the Competition Act, 2002.* (3 marks)

Answer 4(a) (i)

Rule 3 read with Schedule I to the Foreign Exchange Management (Current Account Transaction) Rules 2000 prohibits Drawal of foreign exchange towards payment of Commission on exports made towards equity investment in joint ventures/wholly owned subsidiaries abroad of Indian companies.

Tomb Ltd can not makes payment of commission on exports made towards equity investment in its wholly owned subsidiary abroad.

Answer 4(a)(ii)

Rule 5 of Foreign Exchange Management (Current Account Transaction) Rules, 2000 requires prior approval of Reserve Bank for release of foreign exchange, exceeding US\$ 25,000 to a person, irrespective of period of stay, for business travel, or attending a conference or specialized training or maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.

As per Rule 7 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 nothing contained in transaction specified in the III Scheduled shall apply to the use of International credit card for making payment by a person towards meeting expenses while such person is on a visit outside India.

In the light of the above provision Hari can use International Credit Card for making payment towards meeting staying expenses, while on visit abroad.

Answer 4(a)(iii)

A person resident in India being an individual may acquire foreign securities as qualifications shares issued by a company incorporate outside India for holding the post of a director in the company subject to the following conditions:

- (a) the number of shares so acquired shall be minimum required to be held for holding the post of director and in any case shall not exceed 1% of the paid-up capital of the company; and
- (b) the consideration of acquisition of such shares does not exceed the ceiling as stipulated by RBI from time to time.

Jolly, can not acquire shares aggregating more than 1% of the paid –up capital of the company abroad to hold the post of director in the foreign company.

Answer 4(a)(iv)

A NRI may invest in exchange traded derivative contracts approved by SEBI from time to time out of INR funds held in India on non-repatriable basis subject to the limits prescribed by SEBI. Such investments are not eligible for repatriation benefits.

Ramesh can not invest on repatriation basis.

Answer 4(b)

Section 10 of the Foreign Contribution (Regulation) Act, 1976 empowers of the Central Government to prohibit the receipt of foreign contribution in certain cases. Accordingly, the central Government has been empowered to

- (a) prohibit any association not specified in Section 4 of the FCRA or any person from accepting any foreign contribution;
- (b) require any association specified in Section 6(1), to obtain prior permission of the Central Government before accepting any foreign contribution;
- (c) require any person or class of persons or any association, not being an association specified in Section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;
- (d) require any person or class of persons, not specified in Section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (e) require any person or class of persons, not specified in Section 9 to furnish intimation, within such time and in such manner as may be prescribed as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received.

However, the Central Government is not authorised to make any such prohibition, unless it is satisfied that the acceptance of foreign contribution/foreign hospitality by such association or person or class of persons, as the case may be, is likely to affect

prejudicially the sovereignty and integrity of India; or the public interest; or freedom or fairness of election to any Legislature; or friendly relations with any foreign state; or harmony between religious, racial, linguistic or regional groups, castes or communities.

Answer 4(c)

The Competition Commission of India has been empowered to lay down its own procedure and regulations. It is not bound by the procedure laid down by the Code of Civil Procedure, 1908 but has been put under obligation to observe the principles of natural justice and subject to the provisions of the Act. Section 36(2) of Competition Act, 2002 makes it clear that the Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying the suit. Section 33 empowers Competition Commission to grant interim relief.

Question 5

Attempt any three of the following :

- (i) *Define the term 'service' as contained in the Consumer Protection Act, 1986. Are railway passengers and telephone subscribers 'consumers' under the Consumer Protection Act, 1986 ? Refer to decided case law.*
- (ii) *Name the persons who can make an application for the sealing of patent under the Patents Act, 1970.*
- (iii) *Mention the remedies for infringement of copyrights under the Copyright Act, 1957.*
- (iv) *What are the acts which do not amount to infringement of a trade mark under the Trade Marks Act, 1999 ? (5 marks each)*

Answer 5(i)

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 the banking, finance, 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.

Passengers traveling by train on payment of stipulated fare charged for the ticket are 'consumers' and the facility or transportation by rail provided by the railway administration is a service rendered for consideration as defined in the Act (*General Manager v. Anand Prasad Sinha*, FA 3/1988 decided on 28.7.1989)

Subscribers of telephones would also be 'consumer' under the Act (*Dist. Manager, Telephones Patna v. Lalit Kumar Bajla*, F.A. No. 18/1989 decided on 31.1.1990). It has been held in various other cases that the Telephones Dept./Mahanagar Telephone Nigam Ltd. fall within the provisions of the Consumer Protection Act, 1986 and the subscribers, as consumers of telephone service, are entitled to seek relief from Forums wherever necessary.

Answer 5(ii)

Section 6 of the Patents Act, 1970 provides that an application for a patent for an invention may be made by any of the following persons that is to say :

- (a) any person claiming to be the true and first inventor of the invention
- (b) any person being an assignee of the person claiming to be the true and first inventor in respect of the right to make such an application.
- (c) the legal representative of any deceased person who immediately before his death was entitled to make such an application.

The application may be made by one of the person either alone or jointly with any other person.

Answer 5(iii)**Remedies against Infringement of Copyright**

Section 55 of the Copyright Act 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 5(iv)

Section 30 of the Trade Marks Act, 1999 enumerates certain acts which do not constitute infringement. This section explicitly states that there will be no infringement, if the use of a mark is in accordance with the honest practices in industrial or commercial matters and is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of a trade mark. This section further enumerates the following acts as not constituting an infringement of trade mark—

- (i) where the use is in relation to goods or services to indicate the kind, quality etc. of the goods or of rendering of services or other characteristics of goods or services.
- (ii) Where a trade mark is registered subject to conditions or limitations, the use of the trade mark in a manner outside the scope of registration.
- (iii) Where a person uses the mark in relation to goods or services for which the registered owner had once applied to mark and had not subsequently removed it or impliedly consented to its use.
- (iv) A trade mark registered for any goods may be used in relation to parts and accessories to other goods or services and such use is reasonably necessary and its effect is not likely to deceive as to the origin.

- (v) The use of a registered trade mark being one of more registered trade marks which are identical or nearly resemble each other in exercise of the right to the use of that registered trade mark.

Question 6

Attempt any three of the following :

- (i) *Rajesh made a complaint before the Consumer Disputes Redressal Forum for seeking compensation against the State Electricity Board contending that due to fluctuations and fall in electricity voltage in his small scale industrial unit, he suffered production loss. Will he succeed ?*
- (ii) *Mention the salient features of the Supreme Court judgement in the matter of M.C. Mehta and Another vs. Union of India and Others (1987) relating to liability for pollution.*
- (iii) *After the date of booking for purchase of a car, Rakshit was asked to pay differential amount of increase in the central excise duty at the time of delivery of the car. Rakshit refused to pay the amount and moved the Consumer Disputes Redressal Forum. Will he succeed ?*
- (iv) *Rohit, the insured (since deceased), took out four life insurance policies with double accident benefits, premium payable half-yearly. When the premium fell due, the general agent of the LIC of India met Rohit and took a bearer cheque towards the premium payable by him in respect of the policies. Although the agent had encashed the cheque immediately thereafter, the amount was not deposited with the LIC of India. Meanwhile, the insured met with a fatal accident. The widow of Rohit filed a claim for the payment of the sum assured. Will she succeed ?* (5 marks each)

Answer 6(i)

Rajesh will succeed. The present problem is similar to that of *Kerale State Electricity Board v. Raveendran*. In this case the National Commission considered a complaint relating to falling electricity voltage, damaging the machine in a plastic factory and affecting production. The National Commission awarded compensation to the complainant.

Answer 6(ii)

The Supreme Court in *M.C. Mehta and Another v. Union of India and others* [(1987) 1 Comp. LJ 99 (SC)] ruled that an application for compensation in a pollution case can be maintained under Article 32 of the Constitution, for, such application is for the protection of the fundamental rights of the people and the Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights.

On the question of liability of an enterprise engaged in hazardous activities, the Supreme Court laid down for the first time a far-reaching ruling, that an enterprise which is engaged in hazardous or inherently dangerous activities and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the surrounding area, owes an absolute and non-delegatable duty to the community to ensure that no harm results to any one on account of an hazardous or inherently dangerous nature of the activity which it has undertaken.

The Court further reiterated that the rule in *Rylands v. Fletcher* [(1861-73) All.E.R. 146 HL] of strict liability would apply in India but without any exceptions whatsoever recognised in England. The Court also ruled that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect.

Answer 6(iii)

Rakshit will succeed. The present problem is similar to that of *Vikas Motors v. Dr. A K Sain*. The Supreme Court held that demand of excess amount when consumer has performed his part of contract making full payment of the car within time, it is not justified on the ground that the manufacturer raised price on account of rise in excise duty after the date of booking.

Answer 6(iv)

Widow of Rohit will not succeed. The present problem is similar to that of *Harshad J. Shah v. Life Insurance Corporation of India* [1997(3) SCALE 423 (SC)]. In this case Supreme Court held that the agent had no express authority to receive the premium on behalf of the Corporation. In his letter of appointment there was a condition expressly prohibiting him from collecting the premium. Nor could it be said that he had an implied authority to collect the premium, as regulation 8(4) expressly prohibited the agents from collecting premiums. Therefore, no case had been set up by the complainant before the State Commission that the Corporation by its conduct had induced the policyholders, including the insured, to believe that the agents were authorised to receive premiums on behalf of the Corporation. Nor was there any material on record that lent support to this contention. In the facts of this case there is no room to invoke the doctrine of apparent authority underlying Section 237 of the Indian Contract Act.

No deficiency of service on the part of the LIC.

Question 7

(a) Discuss any two of the following :

- (i) Persons responsible for the payment of wages under the Payment of Wages Act, 1936.
- (ii) Industrial unrest.
- (iii) Object and scope of the Industrial Disputes Act, 1947. (5 marks each)

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

- (i) The workers in a factory went on sit-down strike resulting in stoppage of work. The management sought the help of the police and removed them forcibly when they refused to vacate the premises and indulged in violence. Later on, the organisation dismissed those workers. The workers claimed immunity from criminal action under the Trade Unions Act, 1926. Will they succeed ?
- (ii) A worker after an accident became partially disabled and could not do his earlier work. However, the employer offered him another kind of job which

he could do without any difficulty. Despite the offer of another job, the worker demanded compensation for partial disablement. Will he succeed ?

- (iii) An electrician, who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. Will it be construed as 'physical injury' ?*
- (iv) A worker was placed under suspension and disciplinary proceedings were initiated against him. The proceedings could not be completed in 90 days after which the suspended worker demanded increase in subsistence allowance under the Industrial Employment (Standing Orders) Act, 1946. Will he succeed ?*
- (v) An employee was suspended, but after an inquiry, he was reinstated with full back wages. He claimed bonus for the period of suspension. Will he succeed ?*
- (vi) A worker went on leave. He continued to remain absent from duty even after the expiry of leave. The employer treated the 'absence from duty without leave' as breach of continuity of service for the purposes of the Payment of Gratuity Act, 1972. Is the employer justified ?*
- (vii) The workers in a factory went on strike. The strike was legal. The employer deducted wages for the strike period on the ground that the legality of strike did not always exempt the workers from deduction of their wages for the period of strike. Was the employer's action justified ? (3 marks each)*

Answer 7(a)(i)

Responsibility for Payment of Wages

As per Section 3 of the Payment of Wages Act, every employer is responsible for the payment to persons employed by him of all wages required to be paid under the Act. In addition, the following persons shall also be responsible for the payment of wages under the Act:

- (i) in a factory, the person named as the manager;
- (ii) in industrial or other establishments, the person if any, who is responsible to the employer for the supervision and control of the industrial or other establishment;
- (iii) upon railways (otherwise than in factories), the person nominated by the railway administration in this behalf for the local area concerned.

Answer 7(a)(ii)

Industrial Unrest

Unrest may be defined as a disturbed state of mind in a human being caused by discontent or dissatisfaction arising out of failure to satisfy certain basic human needs. Industrial unrest, therefore, refers to the discontent or dissatisfaction lurking in the disturbed mind of labourers about certain lapses at the working place or about their wages or security or employment etc. Labourers are always hopeful that their causes of discontent or unrest can be eliminated by their collective strength. Hence they form their own organisations and resort to certain measures with which they try to gain their ends.

Since industrial unrest involves question of right or wrong and also affects every section of society, it thrusts itself upon the attention of the community and becomes a social problem.

Two categories of causes of industrial unrest are: (1) intangible causes and (2) tangible causes.

Intangible causes : These are closely connected with the study of human nature. Man seek to satisfy his wants but the path that he follows in his search for satisfaction is a complex one, governed by reasons, emotions and instincts. Very often the path may appear to be irrational and illogical to the outsider but to the person himself, it is perfectly rational and logical. Different people have different attitudes towards the same fact.

Tangible causes : These include demand for increase in wages, bonus etc.; demand for re-instatement of any dismissed worker; demand for greater facilities; demand for recognition of a trade union; political causes leading to general agitation.

Answer 7(a)(iii)

Object and Scope of the Industrial Disputes Act, 1947

This Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees.

Though the Supreme Court in number of cases has stated the objects of the Industrial Disputes Act, nevertheless the principal objectives of the Act have been laid down by the Supreme Court in the case of *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate*, AIR 1958 S.C. 353, as follows:

- (i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.
- (ii) Investigation and settlement of industrial disputes between employers and employees, employers and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade unions or an association of employers or a federation of associations of employers.
- (iii) Prevention of illegal strikes and lock-outs.
- (iv) Relief to workmen in the matter of lay-off and retrenchment.
- (v) Promotion of collective bargaining.

Subsequently the Supreme Court in *Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728 held that the Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice.

Further the Apex Court held that this being the object of the Act, the court by interpretative process must strive to reduce the field of conflict and expand the area of

agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage

Answer 7(b)(i)

The workers will not succeed.

In the case of *National Labour Relations Board v. Fansteel Metallurgical Corporation*, (1939) 306 US 240, it was held that the workers were not entitled to any immunity. Employees had right to strike but no licence to commit acts of violence or seize plant or building. The fact that it is the unfair labour practice committed by the employer which led to this violent situation, the employees cannot be permitted to take law in their hands and resort to force instead of peaceful remedies

In the above mentioned case, workers went on sit-down strike. They took over and occupied two key buildings of the company resulting in stoppage of work in the organisation. The management sought the help of police who told the workers to vacate the buildings. On their refusal to do so, police removed them forcibly. At this, the workers became angry and indulged in violence. Later on, the company dismissed these workers. The workers pleaded immunity from criminal action in furtherance of their trade dispute.

Answer 7(b)(ii)

The worker will succeed. In *General Manager, G.I.P. Rly. v. Shankar*, A.I.R. 1950 Nag. 307, it was held that if after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement

Answer 7(b)(iii)

The Workmen's Compensation Act contemplates compensation for personal injury. It is not confined to physical or mental injury. It includes psychological and physiological injury as well. Whenever something which is not expected happens and as a result there is an injury, one may not have to look to external injury. Any internal injury in body would also amount to an injury.

The facts of the given problem are similar to the case of *Indian News Chronicle v. Mrs. Lazarus*, AIR 1961, Punj. 102, where a workman, in the course of his duties, had frequently to go into a heating room and from there to a cooling room. One night when he went into the cooling room, he got pneumonia of which he died.

It was held that the death was due to personal injury.

Answer 7(b)(iv)

Subsistence allowance under Section 10A of the Industrial Employment (Standing Orders) Act, 1946 is paid by an employer to a workman who has been suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him. The subsistence allowance is payable-

- (a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

- (b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

An analysis of the legal provisions mentioned above, reveals that if the delay in the completion of disciplinary proceedings is on the part of management, then the workman will succeed. If delay is attributable to the conduct of workman, then he will not succeed.

Apparently from the facts of the given case, it seems that delay is not attributable to the conduct of workman. Delay in the completion of disciplinary proceedings is on the part of management.

Therefore, the workman will succeed.

Answer 7(b)(v)

Under the Payment of Bonus Act, every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. (Section 8)

In the given problem, the employee will succeed. It has been held that an employee suspended but subsequently reinstated with full back wages can not be treated to be ineligible for bonus for the period of suspension. [*Project Manager, Ahmedabad Project, ONGC v. Sham Kumar Sahegal* (1995) 1 LLJ 863]

Answer 7(b)(vi)

Payment of gratuity is a piece of social welfare legislation and deals with matters relating to payment of gratuity which like pension, provident fund etc. is a retrial benefit.

The employer is not justified. He cannot do so without seeking an explanation from the employee when he resumes his duties. After getting the explanation and the documents in support of the explanation, the employer can decide whether the absence from duty can be treated as breach of continuity of service.

Continuous service has been defined under Section 2-A of the Payment of Gratuity Act. Section 2-A of the Act inter-alia an employee shall be said to be in continuous service for a period if he has for that period, been in uninterrupted service, including service which may be interrupted on account of

- sickness,
- accident,
- leave
- absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment),
- layoff
- strike, or
- a lockout, or
- stoppage of work for which the employee is not at fault

It has been held that interrupted service by reason of sickness leave, lay-off, strike,, lock-out, or cessation of work not due to any fault of the employee concerned should not be regarded as a break in continuity of his service. [*Lalappa Lingappa v. Laxmi Vishnu Mills* (1981) 2 SCC 238].

Answer 7(b)(vii)

The employer's action was justified. To be entitled to wages for the strike period, the strike should be both legal and justified.

In *Crompton Greaves Ltd. v. Workmen*, the view taken by the Supreme Court is that the strike must be both legal and justified to entitle the workmen to the wages for the period of strike whereas in *Bank of India v. T.S. Kelawala*, [1990] 4 SCC 744, the Apex Court had taken the view that whether the strike is legal or illegal, the employees are not entitled to wages for the period of strike.

The constitutional bench of the Apex Court in *Syndicate Bank v. K. Umesh Nayak*, [1994] 5 SCC 572, applying the 'no-work no-pay' principle held that wages during the strike period are payable only if the strike is both legal and justified but not payable if the strike is legal but not justified or justified but illegal.
