

ECONOMIC AND LABOUR LAWS

Time allowed : 3 hours

Maximum marks : 100

PART A

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

Question 1

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

- (i) Deficiency in service*
 - (ii) Exempted categories under the importer-exporter code (IEC) number*
 - (iii) Know your customer (KYC) guidelines*
 - (iv) Anti-competitive agreements*
 - (v) Minimum resale price maintenance*
 - (vi) Contents of complete specification*
 - (vii) Principal display panel.*
- (3 marks each)*

Answer 1(i)

Deficiency in Service

According to Section 2(1)(g) of the Consumer Protection Act, 1986 deficiency means 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.

Examples of Deficiency in Service:

- 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 in service'.
- Default or negligence in regard to settlement of an insurance claim would constitute a deficiency of service on the part of insurance company.

Answer 1(ii)

Exempted Categories under the importer exporter code (IEC) Number

The following categories of importers or exporters have been exempted from obtaining IEC number:

- (i) Ministries/Departments of the Central or State Government.
- (ii) Persons importing or exporting goods for personal use not connected with trade or manufacture or agriculture.

- (iii) Persons importing/exporting goods from/to Nepal provided the CIF value of a single consignment does not exceed Indian Rs. 25,000.
- (iv) Persons importing/exporting goods from/to Myanmar through Indo-Myanmar border areas provided the CIF value of a single consignment does not exceed Indian Rs. 25,000.
- (v) Importers covered by clause 3(1) [except sub-clauses (e) and (l)] and exporters covered by clause 3(2) [except sub-clauses (i) and (k)] of the Foreign Trade (Exemption from application of Rules in certain cases) Order, 1993.

Answer 1(iii)**‘Know Your Customer’ (KYC) Guidelines**

In terms of the guidelines issued by the Reserve Bank of India (RBI) on *Know Your Customer [KYC] Standards – Anti Money Laundering [AML] Measures*, all banks are required to put in place a comprehensive policy framework covering KYC Standards and AML Measures. RBI introduced KYC guidelines for all banks.

KYC enables banks to know/ understand their customers and their financial dealings to be able to serve them better and manage its risks prudently.

The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. KYC procedures also enable banks to know/understand their customers and their financial dealings better which in turn help them manage their risks prudently. Banks should frame their KYC policies incorporating the following four key elements:

- (i) Customer Acceptance Policy;
- (ii) Customer Identification Procedures;
- (iii) Monitoring of Transactions; and
- (iv) Risk management.

Answer 1(iv)**Anti Competitive Agreements**

It is provided under Section 3(1) of the Competition Act, 2002 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 following kinds of agreements entered into between enterprises or association of enterprises or persons or association of persons or person or enterprise or practice carried on, or decision taken by any association of enterprises

or association of persons, including “cartels”, engaged in identical or similar goods or services 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;

shall be presumed to have an appreciable adverse effect on the competition.

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 1(v)

Minimum resale price maintenance

Minimum resale price is prohibited under Sections 39 and 40 of the MRTP Act, 1969. Section 39(1) provides that any term or condition of a contract for the sale of goods by a person to a wholesaler or retailer or any agreement between a person and wholesaler or retailer relating to such sale shall be void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the resale of goods in India.

It is only that portion in the agreement which contains provision for minimum resale maintenance which would be void. The rest of the agreement would not be affected by this provision.

Not only minimum resale price maintenance is statutorily declared void and unenforceable at law, it also gives rise to criminal liabilities and is punishable with imprisonment or fine or both under Section 51 of the Act.

Section 41 empowers the Commission to exempt particular classes of goods from the provisions of minimum resale price maintenance contained Section 39 and 40.

Answer 1(vi)**Contents of Complete Specification**

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

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

Answer 1(vii)**Principal Display Panel**

'Principal display panel', in relation to a package, has been defined under section 2(w) of the Standard Weight and Measure Act, 1976 to mean the total surface area of the package where the information is required to be given. All the information could be grouped together and given in one place; or the pre-printed information could be grouped together and given in one place and online information group together in other place.

Rule 7 of the Standard Weight and Measure (Package Commodities) Rule 1977 specifies the area, size, letter, etc. of the principal display panel in different cases. In case of a package having a capacity of five cubic centimeters or less, the principal display panel may be card or tape affixed firmly to the package or container or bearing the required information.

Rule 7(4) provides that the height of any numeral in the declaration on the principal display package should not be less than that specified in Table I to this rule.

Question 2

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

- (i) *In case an EOU fails to achieve its export obligations, it shall be liable to pay penalty at the time of exit.*
- (ii) *A person resident outside India can sell the shares and convertible debentures of an Indian company to whomsoever he wants.*
- (iii) *'Goods' means every kind of movable property other than actionable claims and includes stock and shares even before allotment.*
- (iv) *Tea is a 'food stuff' and hence constitutes an essential commodity under the Essential Commodities Act, 1955.*

- (v) *An association pursuing a definite cultural, economic, educational, religious or social programme can receive foreign contribution without any limits.*
- (vi) *The provisions contained in the Special Economic Zones Act, 2005 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.* (3 marks each)

Answer 2(i)**True**

Reasons : According to Foreign Trade Policy, the EOU units may, with the prior approval of the Development Commissioner, opt out of the scheme, subject however to payment of Excise and customs duties and in terms of the industrial policy in force at the time of exit. In case the unit has not achieved the export obligations, it shall also be liable to penalty at the time of exit from EOU Scheme.

Answer 2(ii)**False**

Reasons : As per Regulation 9 of FEM (Transfer or Issues of Security by a person Resident outside India) Regulations, 2000 a person resident outside India (Other than NRI) may transfer by way of sale or gift the shares or convertible debentures to any person resident outside India (including NRIs).

A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a registered broker.

Answer 2(iii)**False**

Reasons : Goods, in terms of Section 2(1)(i) of the Consumer Protection Act, 1986 to mean goods as defined in the Sale of Goods Act, 1930. As per Section 2(7) of the Sale of Goods Act, 1930 Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

In *Morgan Stanley Mutual Fund v. Kartik Das* (1994) 3 CLJ 27, the Supreme Court held that an application for allotment of shares cannot constitute goods. It is after allotment, rights may arise as per the articles of association of the company.

Answer 2(iv)**False**

Reasons : In *S. Samuel, AID. Harrison's Malayala v. Union of India*, AIR 2004 SC 218, Supreme Court held that Tea is not foodstuff. Even in a wider sense, foodstuffs will not include tea as tea either in the form of the leaves or in the form of beverage, does not go into the preparation of food proper to make it more palatable and digestible.

In common parlance, any one who has taken tea would not say that he has taken or eaten food. Thus tea is not a food.

Answer 2(v)**True**

Reason : Under Section 6 of the Foreign Contribution Regulation Act, 1976 associations having a definite cultural, economic, educational, religious or social programme, receipt of foreign contribution by any such association is permitted only if it registers itself with the Central Government in accordance with the Foreign Contribution (Regulation) Rules. Moreover, every such association is required, within the prescribed time and manner to give an intimation to the Central Government regarding:

- (a) amount of foreign contribution received;
- (b) source of such foreign contribution;
- (c) manner in which such contribution was received;
- (d) purpose for which such contribution was utilised;
- (e) the manner in which such contribution was utilised.

Answer 2(vi)**True**

Reason : Special Economic Zones Act, 2005 has been given overriding effect. As per Section 51 the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Question 3

- (a) *Distinguish between any two of the following :*
 - (i) 'Seizure' and 'confiscation' under the Essential Commodities Act, 1955.
 - (ii) 'COB licence' and 'industrial licence'.
 - (iii) 'Invention' and 'patentable invention' under the Patents Act, 1970.

(5 marks each)
- (b) *Choose the most appropriate answer from the given options in respect of the following :*
 - (i) *Under the Consumer Protection Act, 1986, the limitation period for filing a complaint from the date of cause of action is —*
 - (a) 60 days
 - (b) 6 months
 - (c) 1 year
 - (d) 2 years.
 - (ii) *The amount representing the full export value of goods is required to be realised and repatriated in India within —*
 - (a) 6 months
 - (b) 3 months

- (c) 1 year
- (d) 2 years.
- (iii) *The issue of Foreign Currency Convertible Bonds (FCCBs) in any financial year is subject to a ceiling of —*
 - (a) Rs.50 crore
 - (b) US \$500 million
 - (c) Rs.100 crore
 - (d) US \$1 million.
- (iv) *A registered trade mark requires to be renewed on expiry of the period of —*
 - (a) 7 years
 - (b) 10 years
 - (c) 14 years
 - (d) 5 years.
- (v) *Foreign direct investment (FDI) is prohibited in —*
 - (a) Infrastructure sector
 - (b) Hospitals
 - (c) Retail trade
 - (d) IT sector.

(1 mark each)

Answer 3(a)(i)

The general distinction between confiscation and seizure, in the context of the Essential Commodities Act, is that an essential commodity which has been seized could be confiscated. Therefore, confiscation is an action posterior to the seizure of the essential commodity.

A commodity that has not been seized cannot be confiscated. Seizure itself does not imply confiscation. The seizure should have been made by virtue of an order passed under Section 3 of the Essential Commodities Act, 1955.

Clause (j) of Section 3 empowers the Government to make an order for seizure of any essential commodity if an order made by the Central Government controlling production, supply, distribution etc. of essential commodities has been or is about to be contravened. Therefore, any contravention or intended contravention of an order passed by the Government under the Act may lead to seizure, and under the circumstances mentioned in Section 6A such seized commodity could be confiscated.

Answer 3(a)(ii)

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

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

Answer 3(a)(iii)

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

The term ‘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.

Patentable invention is an invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However it must not fall in to the categories of inventions that are non-patentable under section 3 and 4 of the Patents Act, 1970.

Answer 3(b)(i)

(d) 2 years

Answer 3(b)(ii)

(c) 1 year

Answer 3(b)(iii)

(b) US\$500 million

Answer 3(b)(iv)

(b) 10 years

Answer 3(b)(v)

(c) Retail trade.

Question 4

- (a) *What are the circumstances under which a registered trade mark is deemed to be infringed under the Trade Marks Act, 1999.* (5 marks)
- (b) *Write a note on global initiatives in the prevention of money laundering.* (5 marks)
- (c) *The insured (since deceased) had taken out four life policies with double accident benefits, premium payable half-yearly. When the third premium fell due, an agent of the insurer met the insured and took a bearer cheque towards the premium payable by him in respect of the policies. Although, the cheque was encashed immediately, it was not deposited with the insurer for 3 months. In the meantime, the insured met with a fatal accident and died. The widow filed a claim for payment of the sum assured. The insurer pleaded that the insurance agent had no implied authority to collect the premium. Will the widow succeed in her claim ?* (5 marks)

Answer 4(a)

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

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

and that such use is likely to cause confusion on the part of the public or is likely to be taken to have an association with the registered trade mark.

Answer 4(b)**Prevention of Money Laundering – Global Initiatives**

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

The major international agreements addressing money laundering include the United Nations Convention against Illicit Trafficking in Drugs and Psychotropic Substances (the Vienna Convention) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

The role of financial institutions in preventing and detecting money laundering has also been the subject of pronouncements by the Basle Committee on Banking Regulation Supervisory Practices, the European Union and the International Organization of Securities Commissions.

Answer 4(c)

The facts of the case are similar to that of *Harshad J. Shah v. Life Insurance Corporation of India* [1997(3) SCALE 423 (SC)] the 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) of LIC of India (Agent) Regulation expressly prohibited the agents from collecting premium. In the facts of this case there was no room to invoke the doctrine of apparent authority underlying Section 237 of the Indian Contract Act.

In this case Supreme Court order for the amount of premium with interest and the costs to be paid to the widow.

Question 5

- (a) *What are the restrictions on the acceptance of foreign contribution by organisations of political nature under the Foreign Contributions (Regulation) Act, 1976 ?* (5 marks)
- (b) *Write a note on regulatory framework for environmental protection in India.* (5 marks)
- (c) *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) *ABC Ltd., a company listed on the National Stock Exchange Ltd., is interested in investing in a company in the USA.*
 - (ii) *Ram, an NRI resident in Nepal, is interested to invest in shares and convertible debentures of an Indian company.*
 - (iii) *A foreign investor wants to invest in an Indian company which is a small scale industrial unit.*
 - (iv) *Brown, a UK citizen, is interested to make investment in the form of foreign direct investment (FDI) in retail trading business.*
 - (v) *XYZ Ltd., a company listed on the Bombay Stock Exchange Ltd., wants to issue shares under the Employees Stock Option Scheme (ESOP) to the employees of its joint venture abroad.* (1 mark each)

Answer 5(a)

Section 5 of Foreign Contribution Regulation Act, 1976 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.

No person resident in India and no citizen resident outside India is allowed to accept without the previous permission of the Central Government, any foreign contribution or acquire or agree to acquire any foreign currency on behalf of an organisation of political nature, not being a political party. Section 5 further prohibits a person resident in India to deliver, without the prior permission of the Central Government, any foreign currency to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to an organisation of political nature. A citizen of India, resident outside India, has also been prohibited from delivering any currency, whether Indian or foreign, which has been accepted from any foreign source to an organisation of a political nature or any person, if he knows or has reasonable cause to believe that such person intends or is likely to deliver such currency to an organisation of a political nature.

It may be noted that for the purposes of Section 5, the Central Government has notified certain organisations as organisations of political nature, not being a political party.

Answer 5(b)

In India, as in other developing countries, the environmental problems are not confined to side effects of industrialisation but reflect the inadequacy of resources to provide infrastructural facilities to prevent industrial pollution.

Though the Indian Penal Code, 1860 contains penal provisions for corrupting or fouling the water or spring or reservoir so as to make it less fit for the purpose for which it is ordinarily used as well as for vitiating the atmosphere so as to make it noxious to the health of any person etc. A number of other Central and State laws covering boilers, dangerous drugs, radiation, forests, etc. were enacted during the middle of the 20th century, however the legislative and administrative measures directed specifically at protection of the environment were introduced in the 1970s and 1980s are as under :

- (i) The Water (Prevention and Control of Pollution) Act, 1974
- (ii) The Air (Prevention and Control of Pollution) Act 1981.
- (iii) Environment (Protection) Act, 1986
- (iv) Public Liability Insurance Act, 1991
- (v) The National Environment Tribunal Act, 1995
- (vi) The National Environment Appellate Authority Act, 1997.

Answer 5(c)(i)

Listed Indian companies are permitted to invest up to 50 per cent of their net worth as on the date of the last audited balance sheet in (i) shares, and (ii) bonds/fixed income securities, rated not below investment grade by accredited/ registered credit rating agencies, issued by listed overseas companies.

In the light of the above provision, ABC Ltd. can invest in a company in the USA.

Answer 5(c)(ii)

NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in shares and convertible debentures of Indian companies under FDI Scheme on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/ FCNR (B) accounts of the NRIs.

In the light of the above, Ram a NRIs can invest in shares and convertible debentures of an Indian company.

Answer 5(c)(iii)

A foreign investor can invest in an Indian company which is a small scale industrial unit provided it is not engaged in any activity which is prohibited under the FDI policy. Such investments are subject to a limit of 24% of paid-up capital of the Indian company/ SSI Unit. However, an SSI Unit can issue equity shares/fully convertible preference shares / fully convertible debentures more than 24% of its paid-up capital if:

- (a) It has given up its small scale status,

- (b) It is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, and
- (c) It complies with the sectoral caps.

Answer 5(c)(iv)

As per Foreign Direct Investment policy, foreign investment in any form is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as Trusts) which is engaged or propose to engage in retail trading business (except single brand product retailing).

In the light of the above provision, Brown can not invest in retail trading business (except single brand product retailing).

Answer 5(c)(v)

XYZ Limited can 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.

PART B

(Answer ANY TWO questions from this part.)

Question 6

Write notes on any four of the following :

- (i) *'Dependent' under the Employees' State Insurance Act, 1948.*
- (ii) *'Methods of fixing and revising minimum rates of wages' under the Minimum Wages Act, 1948.*
- (iii) *Object and scope of the Payment of Bonus Act, 1965.*
- (iv) *'Obligations of the principal employer' under the Contract Labour (Regulation and Abolition) Act, 1970.*
- (v) *Principles laid down by the Supreme Court with regard to retrenchment under the Industrial Disputes Act, 1947.*
- (vi) *'Occupier' under the Factories Act, 1948.* *(5 marks each)*

Answer 6(i)**Dependent under the ESI Act, 1948**

"Dependent" under Section 2(6A) of the ESI Act, 1948 means any of the following relatives of a deceased insured person namely:

- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter,

- (ia) a widowed mother,
- (ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 18 years and is infirm;
- (iii) if wholly or in part dependent on the earnings of the insured person at the time of his death:
 - (a) a parent other than a widowed mother,
 - (b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
 - (c) a minor brother or an unmarried sister or a widowed sister if a minor,
 - (d) a widowed daughter-in-law,
 - (e) a minor child of a pre-deceased son,
 - (f) a minor child of a pre-deceased daughter where no parent of the child is alive or,
 - (g) a paternal grand parent if no parent of the insured person is alive.

Answer 6(ii)

Methods of Fixing and Revising Minimum Rates of Wages

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the two methods specified under Section 5 of the Minimum Wages Act, 1948. These are as follows:

Method One – Appointment of Committee

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of three months from the date of the issue of notification unless the notification otherwise provides. [Section 5(1)(a)]

Method Two- Notification of Proposal in the official Gazettee

The method is known as the 'Notification Method'. While fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration. [Section 5(1)(b)]

After considering the advice of the committee or committees (i.e. method one) or all

representations received by it before the date specified in the notification (i.e. method two), the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of three months from the date of its issue, unless the notification otherwise provides. Where the appropriate Government proposes to revise the minimum rate of wages by method –second, it shall consult the Advisory Board (constituted under Section 7 of the Act) also.

Answer 6(iii)

Object and Scope of the Payment of Bonus Act, 1965

The object of the Payment of Bonus Act, 1965 is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. The Supreme Court has explained the object of the Payment of Bonus Act, 1965 in *Jalan Trading Co. (Pvt.) Ltd. v. Mill Mazdoor Sabha*, AIR 1967 SC 691. Speaking through Justice Shah, the Apex Court observed that:

“ The object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment, and prescribing the maximum and minimum rates of bonus together with the scheme of “set-off” and “set on” not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity”.

On the question whether the Act deals only with profit bonus, it was observed by the Supreme Court in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, (1976) II LLJ 186, that “bonus” is a word of many generous connotations. There is profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materialising in a right. There is attendance bonus and what not. The Bonus Act speaks and speaks as a whole Code on the sole subject of profit based bonus but is silent and cannot, therefore, annihilate by implication, other distinct and different kinds of bonuses, such as the one oriented on custom. The Court held that a discerning and concrete analysis of the scheme of the Bonus Act and reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.

Answer 6(iv)

Obligations of the Principal Employer

Under the Contract Labour (Regulation and Abolition) Act, 1970 a contractor is required to provide canteens, rest-rooms, latrines, urinals, drinking water, washing facilities and first aid facilities for the use of contract labour. (Sections 16-19)

If a contractor fails to provide the prescribed amenities, then the principal employer will be liable to provide such amenities. The principal employer can recover such expenses from the contractor. (Section 20)

Besides, the contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the principal employer. An obligation is also cast on the principal employer to nominate a representative duly authorised by him to be present at the time of disbursement of wages.

In case of failure on the part of the contractor to pay wages either in part or in full, the principal employer is liable to pay the same and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. (Section 21)

Answer 6(v)

Principles Laid Down by Supreme Court with Regard to Retrenchment

The Industrial Disputes Act, 1947 defines retrenchment under Section 2(oo) as “the termination by the employer, of the service of the workman, for any reason, whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include voluntary retirement, compulsory retirement of the workman on reaching the age of superannuation or termination of service on the grounds of continued ill health.”

Thus, the definition contemplates following requirements for retrenchment:

- (i) There should be termination of the service of the workman.
- (ii) The termination should be by the employer.
- (iii) The termination is not the result of punishment inflicted by way of disciplinary action.
- (iv) The definition excludes termination of service on the specified grounds or instances mentioned in it.

The Supreme Court in the case of *Workmen of Subong Tea Estate v. Subong Tea Estate*, (1964) 1 L.L.J. 333, laid down the following principles with regard to retrenchment:

1. The management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimisation or any unfair labour practice.
2. It is for the management to decide the strength of its labour force, and the number of workmen required to carry out efficiently the work in his industrial undertaking must always be left to be determined by the management in its discretion.
3. If the number of employees exceeds the reasonable and legitimate needs of the undertaking, it is open to the management to retrench them.
4. Workmen may become surplus on the ground of rationalisation or on the group of economy reasonably and bona fide adopted by the management or of other industrial or trade reasons.
5. The right of the employer to effect retrenchment cannot normally be challenged but when there is a dispute in regard to the validity of the retrenchment, it would be necessary for the tribunal to consider whether the impugned retrenchment was justified for proper reasons and it would not be open to the employer either capriciously or without any reason at all to say that it proposes to reduce its labour for no rhyme or reason.

Answer 6(vi)**Occupier under the Factories Act, 1948**

Section 2(n) of the Factories Act, 1948 defines the term “occupier” as a person who has ultimate control over the affairs of the factory subject to the condition that-

- (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- (ii) in the case of a company, any one of the directors, shall be deemed to be the occupier;
- (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

The important test whether a person is an occupier or not is the possession or vesting in of the ultimate control of the factory. An occupier may be an owner, a lessee or a mere licensee, but he must have the right to occupy the property and dictate terms of management.

There was a lot of controversy regarding ‘occupier in case of a company, as the Section 2(n)(ii) of the Factories Act provides that any one of the directors of the company shall be deemed to be occupier of the factory. The controversy was set at rest by the Supreme Court in the case of *J.K. Industries Ltd. v. Chief Inspector of Factories* (1997) I-L.L.J. SC 722, holding that only a member of Board of Directors of the Company can be occupier of the factory of the company. The ultimate control of factory owned by company vests in Board of Directors. Ultimate control which vests in Board of Directors cannot be vested in any one else. Company owning factory cannot nominate its employees or officers except director of the company as occupier of its factory.

Question 7

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

- (i) ‘Lay-off’ and ‘lock-out’ under the Industrial Disputes Act, 1947.
- (ii) ‘Arbitration’ and ‘adjudication’ of disputes under the Industrial Disputes Act, 1947.
- (iii) ‘Young person’ and ‘adult’ under the Factories Act, 1948. (5 marks each)

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

- (i) Minimum _____ years of contributory service is required for entitlement of pension under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
- (ii) It is mandatory to register an establishment under the Contract Labour (Regulation and Abolition) Act, 1970 in case it employs _____ labour through a contractor.

- (iii) A factory is required to appoint a welfare officer where _____ workers are ordinarily employed.
- (iv) The employer of an industrial establishment having 100 or more employees is required to submit draft standing orders within _____ months from the date on which the Industrial Employment (Standing Orders) Act, 1946 becomes applicable.
- (v) Contracting out of compensation by a workman under an agreement shall be _____. (1 mark each)
- (c) Choose the most appropriate answer from the given options in respect of the following.
- (i) The appropriate government shall revise the minimum rates of wages under the Minimum Wages Act, 1948 at least once in every —
- (a) 2 years
 - (b) 3 years
 - (c) 4 years
 - (d) 5 years.
- (ii) The disputes relating to benefits under the Employees' State Insurance Act, 1948 are required to be filed in —
- (a) Civil Court
 - (b) Employees' Insurance Court
 - (c) Labour Court
 - (d) Industrial Tribunal.
- (iii) An employee is entitled to receive bonus provided he has worked in an accounting year in the establishment for not less than —
- (a) 30 working days
 - (b) 1 year
 - (c) 8 months
 - (d) 4 months.
- (iv) An employer is not liable to pay compensation under the Workmen's Compensation Act, 1923, if the injury does not result in disablement for a period exceeding —
- (a) 1 week
 - (b) 3 days
 - (c) 1 month
 - (d) 6 months.
- (v) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is applicable to commercial establishments employing —
- (a) 10 or more employees
 - (b) 20 or more employees
 - (c) 50 or more employees
 - (d) 100 or more employees. (1 mark each)

Answer 7(a)(i)**Lay-off and lock-out**

- (1) In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.
- (2) In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.
- (3) In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.
- (4) Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.
- (5) Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation.

Answer 7(a)(ii)**Arbitration and Adjudication**

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

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

The circumstances under which an industrial dispute may be voluntarily referred to arbitration have been stipulated under Section 10A of the Industrial Disputes Act, 1947.

Answer 7(a)(iii)**Young Person and Adult**

“Young Person” as per Section 2(d) of the Factories Act, 1948 means a person who is either a child or an adolescent.

“Adult” according to Section 2(a) of the Factories Act, means a person who has completed his eighteenth year of age.

Answer 7(b)

- (i) Minimum **10 years** of contributory service is required for entitlement of pension under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
- (ii) It is mandatory to register an establishment under the Contract Labour (Regulation

and Abolition) Act, 1970 in case it employs **20 or more** labour through a contractor.

- (iii) A factory is required to appoint a welfare officer where **500 or more** workers are ordinarily employed.
- (iv) The employer of an industrial establishment having 100 or more employees is required to submit draft standing orders within **6 months** from the date on which the Industrial Employment (Standing Orders) Act, 1946 becomes applicable.
- (v) Contracting out of compensation by a workman under an agreement shall be **null and void**.

Answer 7(c)(i)

- (d) 5 years

Answer 7(c)(ii)

- (b) Employees' Insurance Court

Answer 7(c)(iii)

- (a) 30 working days

Answer 7(c)(iv)

- (b) 3 days

Answer 7(c)(v)

- (b) 20 or more employees

Question 8

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

- (i) *Muskan Theatre is maintaining a canteen and a cycle stand through private contractors. Regional Director, ESI Corporation sent notices to the management of the theatre for contribution of the employees engaged in the canteen and cycle stand. The management contends that they are not employees but are the workmen of the contractor. Hence, the management is not liable. Will the management succeed in its contention ?*
- (ii) *Rajat, a workman in a factory, had no vision in his left eye but the defect was not visible. Later, during welding operations, accidentally, a spark hit his blind eye. He lost his eye-ball and the blindness became visible. Though, there was no physical disability, he lost his employment because the defect became visible. Has the accident caused any disablement ? Is the employer liable to pay any compensation ?*
- (iii) *The workman of Bharat Chemicals went on go-slow strike to compel the management to concede to their demands. The management contended that go-slow is a serious misconduct and initiated disciplinary action against the erring workmen. Is the action of the management justified ?*
- (iv) *An employer failed to pay his contribution under the Employees' State Insurance*

Act, 1948. After 6 years, the ESI Corporation issued a demand notice for payment of arrears of contribution. The employer contended that the arrears of contribution beyond 5 years are not recoverable. Will the employer succeed ?

- (v) *Anil, a workman raised an industrial dispute contending that he was employed with effect from 1st April, 1986 on regular basis and his services were illegally terminated on 12th February, 1994. The employer took the stand that the workman was engaged on casual basis on daily wages for a specific period and for the specific work and that his services were not terminated on 12th February, 1994 but he had abandoned his job. The employer did not produce attendance record before the Labour Court and also failed to prove that the workman had worked for less than 240 days. The workman alleged violation of the provisions of the Industrial Disputes Act, 1947 relating to retrenchment. Will he succeed ?*
- (vi) *Ghee brought from various customers is sampled chemically, analysed and packed in tins for transportation to the head office of the company for sale in the market. Does it amount to manufacturing process under the Factories Act, 1948 ?*
- (vii) *Rohit lost his mental balance as a result of an injury by accident and committed suicide. Is the employer liable to pay compensation under the Workmen's Compensation Act, 1923 ?* (4 marks each)

Answer 8(i)

The management will not succeed in its contention. The theatre owner is liable to pay ESI contribution as principal employer.

On a similar issue in the case of *Royal Talkies Hyderabad v. ESI Corpn.*, AIR 1978 SC 1478, the Supreme Court held that if a contractor undertakes to run a canteen or a cycle stand in a theatre, he undertakes the execution of the whole or part of the work which is ordinarily part of the work of the theatre of the principal employer or is incidental to the purpose of the theatre. As such he comes within the definition of 'immediate employer' and the owner of the theatre within the definition of 'principal employer'. The theatre owner is liable for ESI contribution as principal employer of the workmen although they were engaged independently by the owner of the canteen or the cycle stand.

Answer 8(ii)

It is a case of total disablement.

"Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement.

The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. In *Ball v. William Hunt & Sons Ltd.* 1912 A.C.496, it was held that if due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement. It is immaterial that the workman is physically fit to perform some work.

Answer 8(iii)

The action of the management is justified. The act of go-slow of the workers amounts to misconduct. The legality of go-slow has been explained by the Supreme Court in the case of *Bharat Sugar Mills Ltd. v. Jai Singh*, (1961) 11 LLJ 644 (647) SC, in the following words

“Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory, is one of the most pernicious practices that discontented and disgruntled workmen sometimes resort to. Thus, while delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. Apart from this, ‘go-slow’ is likely to be much more harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, ‘go-slow’ has always been considered a serious type of misconduct.”

Answer 8(iv)

The ESI Corporation can recover employer's contribution even after lapse of five years. The Supreme Court in the case of *ESIC v. C.C. Santha Kumar* (JT 2006) (10) SC 549 has held that the limitation period of 5 years specified under section 77 of the ESI Act to bring an action before the Employees Insurance Court is not applicable in case of determination of the contribution payable under section 45A of the ESI Act, 1948. If the employer fails to challenge the determination made by the ESI Corporation under the provisions of section 45A or section 75 of the ESI Act, before the Employees' Insurance Court, it becomes final against the employer. Therefore, the contention of the employer that the ESI Corporation cannot recover the dues pertaining to the period prior to five years, is not tenable in law.

Answer 8(v)

The materials on record clearly establish that the engagement of the workman was on casual basis on daily wages for specific period and for the specific work.

It has been held by the Supreme Court in a series of decisions that the burden of proof is on the workman to show that he had worked for 240 days in the preceding 12 calendar months prior to the alleged retrenchment. Further, presumption as to adverse inference for non production of muster-roll by the employer should not be taken as an inflexible rule. It is always optional, and one of the factors which is required to be taken into consideration is the background of the factors involved in the lis. [*Municipal Corpn. Faridabad v. Shri Niwas* (2004) 8 SCC 195; *Batala Co-op. Sugar Mills Ltd. v. Sowaran Singh*]

As stated above, the workman was on casual basis on daily wages for specific period and for the specific work. The termination of his services does not amount to retrenchment in view of section 2(oo)(bb) of the Industrial disputes Act. Hence, the contention of the workman that the management has violated section 25F of the Industrial disputes Act in terminating his services is devoid of merit. The workman will not succeed.

Answer 8(vi)

It is a manufacturing process. In the case of *Shri Laxmi Dass Premji Ghee Merchant v. R. Inspector of Factories Gantur* (1960) 1 LLJ, where ghee brought from various customers was sampled chemically, analysed and packed in tins for transportation to the Head Office of the concern for sale in the market, the court held that manufacturing process was going in the premises.

Answer 8(vii)

The employer is liable to pay compensation.

In the given problem, the worker lost his mental balance as a result of an injury by accident and committed suicide. Suicide is the effect of injury sustained by him and is not while working for personal benefit or acting outside the scope of his employment. Consequently the employer will be held liable. To succeed in claim, it must be proved that the injury arose out of and in the course of employment because compensation is permitted only for those injuries which are sustained in the course of employment and arise out of employment. If that is not proved, no compensation can be claimed by the workman's dependents.
