

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) Basic rights of consumers*
 - (ii) Money laundering*
 - (iii) Competition policy*
 - (iv) Absolute grounds for refusal of registration of a trade mark*
 - (v) Bid rigging*
 - (vi) Potential infringement of a patent*
 - (vii) Persons entitled to claim compensation under the National Environment Tribunal Act, 1995.*
- (3 marks each)*

Answer 1(i)

Basic rights of consumers

The basic rights of consumers are:

- (a) The right to be protected against marketing of goods and services which are hazardous to life and property;
- (b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods, or services so as to protect the consumer against unfair trade practices;
- (c) The right to be assured, wherever possible, access to variety of goods and services at competitive prices;
- (d) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- (e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- (f) The right to consumer education.

Answer 1(ii)

Money Laundering

Money laundering is the processing of criminal proceeds to disguise its illegal origin. Terrorism, illegal arms sales, financial crimes, smuggling, and the activities of organised crime, including drug trafficking and prostitution rings, generate huge sums. Embezzlement, insider trading, bribery and computer fraud also produce large profits and create an incentive to legitimize the ill-gotten gains through money laundering. When a criminal activity generates substantial profits, the individual or group involved in such

activities route the funds to safe heavens by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.

Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generates it. In essence, the laundering enables criminal activity to continue.

Answer 1(iii)

Competition Policy

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

Competition policies cover a much broader set of instruments than competition law, and typically include all policies aimed at increasing the intensity of competition or rivalry in local and national markets by lowering entry barriers and opportunities for harmful coordination, to ensure that markets work effectively and serve the interests of all citizens. In many countries, competition authorities have become the focal point for consultations and putting forward pro-competition viewpoints across a broad range of policy areas.

Answer 1(iv)

Absolute Grounds for Refusal of Registration of a trade mark

Section 9(1) of the Trade mark Act containing provisions relating to absolute grounds for refusal for registration prohibit the registration of those trade marks which are devoid of any distinctive character or which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, etc., or which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade. However, a trademark shall not be refused registration, if the mark has in fact acquired a distinctive character as a result of use or is a well known trade mark before the date of application. In short, a trade mark which has been demonstrated to be distinctive in the market place shall be regarded as distinctive in law as well and be registerable.

Sub-section (3) prohibits registration of a mark, if it consists exclusively of shape of goods which result from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods. It is, however, explained that the nature of goods or services in relation to which the Trade Mark is used or proposed to be used shall not be a ground for refusal of registration.

Answer 1(v)

Bid rigging

The explanation appended to the Section 3 of the Competition Act, 2002 defines the term 'bid rigging' as any agreement between enterprises or persons which has the effect

of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

Bid rigging takes place when bidders collude and keep the bid amount at a pre-determined level. Such pre determination is by way of intentional manipulation by the members of the bidding group. Bidders could be actual or potential ones, but they collude and act in concert.

Answer 1(vi)

Potential infringement of a patent

Section 19 of the Patents Act, 1970 provides that if in consequence of the investigations it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent, be inserted in the applicant's complete specification by way of notice to the public within such time as may be prescribed, unless

- (a) The applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or
- (b) The complete specification is amended to the satisfaction of the Controller.

Answer 1(vii)

As per Section 4 of National Environment Tribunal Act, 1995 an application for compensation may be made -

- (i) By the person who has sustained the injury;
- (ii) By the owner of the property to which the damage has been caused;
- (iii) Where death has resulted from the accident, by all or any of the legal representatives of the deceased;
- (iv) By any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased as the case may be;
- (v) By any representative body or organization, functioning in the field of environment and recognised in this behalf by the Central Government, under all or any of the heads specified in the Schedule; or
- (vi) By the Central Government or a State Government or a local authority under all or any of the heads specified in the Schedule.

Question 2

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

- (i) *The provisions of the Consumer Protection Act, 1986 are in derogation of the provisions of other existing laws.*
- (ii) *Patents, copyrights and trade marks are included in the category of intangible personal property.*
- (iii) *Competition kills competition.*

- (iv) *No government servant can, under any circumstances whatsoever, receive foreign hospitality.*
- (v) *An application for compensation in a pollution case can be maintained under Article 32 of the Constitution of India.*
- (vi) *The 'licence raj' was given a decent burial by the liberalisation policy of the government.* (3 marks each)

Answer 2(i)

False

Reason : Section 3 of the Consumer Protection Act, 1986 provides that the provision of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Answer 2(ii)

True

Reason : Patent, Copyrights and Trade Marks are included in the category of intangible personal property as they do not have any physical existence.

Answer 2(iii)

True

Reason : In the corporate world, the term competition is generally understood as a process whereby the economic enterprises compete with each other to secure customers for their product. In the process, the enterprises compete to outsmart their competitors, sometimes to eliminate their rivals. Competition in the sense of economic rivalry is unstable and has a natural tendency to give way to a monopoly. Thus, competition kills competition.

Answer 2(iv)

False

Reason : Section 9 of Foreign Contribution Regulation Act, 1976 prohibits acceptance of foreign hospitality by certain persons except with the prior permission of the Central Government. Accordingly no member of a Legislature, office bearer of a political party, Judge, Government servant or employee of a corporation shall, while visiting any country or territory outside India accept, without the prior permission of the Central Government any foreign hospitality.

The Central Government has vide notification dated January 3, 1986 granted general exemption to members of delegations sponsored by the Central Government from seeking prior permission for acceptance of foreign hospitality while visiting any country or territory outside India. Similarly, vide notification dated December 30, 1987 Government servants and employees of the Corporation have also been granted exemption from seeking prior permission of the Central Government for acceptance of foreign hospitality while visiting any country or territory outside India, in pursuance of bilateral agreement between the Government of India and the Government of any foreign country, duly approved by the Department of Economic Affairs and/or for attending long- term/short-term training programme duly approved by the Department of Personnel Affairs.

Answer 2(v)**True**

Reason : 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.

Answer 2(vi)**True**

Reason : Liberalization Policy of Government has injected a substantial measure of competitive environment and market thrust to industry. Many areas earlier reserved for the public sector are now open to private sector participation. The restrictions on the expansion of large industrial houses have been removed. Licensing requirements for industries have been abolished except for a few strategic and defence industries.

Indian industry has undergone a sea change in terms of the basic parameters governing its structure and functioning. The major reforms include large scale reduction in the scope of industrial licensing, simplification of procedural rules and regulations, reduction of areas reserved exclusively for the public sector, disinvestment of equity in selected public sector undertakings, enhancing the limits of foreign equity participation in domestic industrial undertakings, liberalisation of trade and exchange rate policies, rationalisation and reduction of customs and excise duties and personal and corporate tax.

Question 3

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

- (i) *'Current account transaction' and 'capital account transaction'.*
- (ii) *'Foreign contribution' and 'foreign hospitality'.*
- (iii) *'Unfair trade practice' and 'restrictive trade practice'.*
- (iv) *'Intellectual property' and 'industrial property'. (5 marks each)*

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

- (i) *The term of every patent granted under the Patents Act, 1970 shall be _____ years from the date of filing of the application for the grant of patent.*
- (ii) *The Trade Marks Act, 1999 allows renewal of registration for successive periods of _____ years from the date of the original registration or the last renewal.*
- (iii) *A person aggrieved by the decision of the Appellate Tribunal under the Foreign Exchange Management Act, 1999 has a right to appeal to the High Court within _____ days from the date of the communication of the decision of the tribunal.*

- (iv) *The Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibit remittances exceeding US \$_____ by an entity in India by way of reimbursement of pre-incorporation expenses.*
- (v) *Every candidate for election who had received any foreign contribution at any time within _____ days immediately preceding the date on which he is duly nominated as such, the candidate is required to give an intimation as to the amount, source, manner of its receipt to the Central Government.*
(1 mark each)

Answer 3(a)(i)**Current Account Transaction**

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

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

Capital Account Transaction

As per Section 2(e) of the FEMA, 1999 'Capital account transaction' to mean any transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India and includes the transactions specified in Sub-section (3) of Section 6 of the Act.

Section 6 empowers the Reserve Bank of India to specify, in consultation with the Central Government, any class or classes of capital account transactions permissible and the limit upto which foreign exchange shall be admissible for such transactions.

Schedule I & II to Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 classifies the capital account transactions of a person under the following two heads viz.

1. Classes of capital account transactions of persons resident in India.
2. Classes of capital account transactions of persons resident outside India.

Answer 3(a)(ii)**Foreign Contribution**

As per Section 2(1)(c) of the Foreign Contribution Regulation Act, 1976 "Foreign Contribution" means the donation, delivery or transfer made by any foreign source—
(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed

one thousand rupees; (ii) of any currency, whether Indian or foreign, (iii) of any foreign security as defined in clause (o) of Section 2 of the Foreign Exchange Management Act, 1999.

Foreign Hospitality

As per Section 2(1) (d) of the Foreign Contribution Regulation Act, 1976 “Foreign Hospitality” means any offer, not being a purely casual one, made by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free board, lodging, transport or medical treatment.

Answer 3(a)(iii)

Unfair Trade Practice

Section 36A of the MRTP Act, 1969 provides that unfair trade practice means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services adopts any unfair method or unfair or deceptive practice including:

- (1) The practice of making any misleading advertisements and false representations.
- (2) Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.
- (3) Permits the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole, or the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.
- (4) Permits the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reasons to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (5) Permits the hoarding or destruction of goods or refusal to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

Restrictive Trade Practice

The term restrictive trade practice has been defined under section 2(o) of the MRTP Act, 1969 to mean a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular:

- (i) Which tends to obstruct the flow of capital or resources into the stream of production; or

- (ii) Which tends to bring about manipulation of prices, or conditions of delivery or to effect the flow of supplies in the market relating to goods or services,

In such a manner as to impose on the consumers unjustified costs or restrictions?

The definition of 'restrictive trade practice as given in Section 2(o) is exhaustive, not inclusive and is result oriented, i.e. the restriction must have the actual or likely effect of restricting, distorting or preventing competition.

Answer 3(a)(iv)

Intellectual Property

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

Usually intellectual property is divided into two branches, namely, industrial property and copyright.

Industrial Property

'Industrial Property' is a kind of intellectual property and relates to creation of human mind, e.g., inventions and industrial designs. Simply stated, inventions are new solutions to technological problems, and industrial designs are aesthetic creations determining the appearance of industrial products. In addition, industrial property includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and the protection against unfair competition.

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

Answer 3(b)

- (i) The term of every patent granted under the Patents Act, 1970 shall be **20** years from the date of filing of the application for the grant of patent.
- (ii) The Trade Marks Act, 1999 allows renewal of registration for successive periods of **10** years from the date of the original registration or the last renewal.
- (iii) A person aggrieved by the decision of the Appellate Tribunal under the Foreign Exchange Management Act, 1999 has a right to appeal to the High Court within **60** days from the date of the communication of the decision of the tribunal.
- (iv) The Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibit remittances exceeding US \$ **1,00,000** by an entity in India by way of reimbursement of pre-incorporation expenses.

- (v) Every candidate for election who had received any foreign contribution at any time within **180** days immediately preceding the date on which he is duly nominated as such, the candidate is required to give an intimation as to the amount, source, manner of its receipt to the Central Government.

Question 4

- (a) *Mention the duties, powers and functions of the Competition Commission of India.* (9 marks)
- (b) *With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on any three of the following :*
- (i) *Shashi, an Indian resident, has received a letter from her friend Ruchi, an NRI to visit India on a business trip for 15 days. Shashi is interested to incur expenditure on her hospitality.*
 - (ii) *Aditya wants to draw foreign exchange for attending a conference in Bangladesh.*
 - (iii) *Rohit, a person resident in India, is keen to make a gift of US \$2,500 to his brother Mohit who is a resident outside India on the occasion of his marriage.*
 - (iv) *An Indian party, after having won the bid, approached an authorised dealer for further remittance towards acquisition of a foreign company.* (2 marks each)

Answer 4(a)

Duties, Powers and Functions of Competition Commission of India specified under Chapter IV (section 18 to 39) of Competition Act, 2002.

As per Section 18 of the Act, duties of the CCI are:

- (a) to eliminate practices having adverse effect on competition;
- (b) to promote and sustain competition;
- (c) to protect interests of consumers; and
- (d) to ensure freedom of trade carried on by other participants, in markets in India.

A proviso to Section 18 empowers the Commission to enter into any memorandum or arrangement, with the prior approval of the Central Government, for the purpose of discharging the duties and functions under this Act with any agency of any foreign country.

CCI has been empowered to inquiry into certain agreements, dominant position and combinations.

Section 27 empowers the Commission after any inquiry into agreement entered into by any enterprise or association of enterprises or person or association of persons, or an inquiry into abuse of dominant position may pass all or any of the following orders, namely,—

- (i) direct that such agreement, or abuse of dominant position shall be discontinued and such agreement, which is in contravention of Section 3 shall not be re-

entered or the abuse of dominant position in contravention of Section 4 shall be discontinued, as the case may be.

- (ii) the Commission may impose penalty.
- (iii) The Commission may direct that the agreements shall stand modified to the extent and in the manner as specified in the order.

As per section 28 CCI may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise or group does not abuse its dominant position.

The Competition Commission of India has also been empowered to lay down its own procedure and regulations. It is not bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall have to observe the principles of natural justice and subject to the provisions of the Act.

Answer 4(b)(i)

In pursuance of the provisions of section 3 of the Foreign Exchange Management Act, 1999 the Reserve Bank of India permits a person resident in India, to make any payment in rupees towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India who is on a visit to India.

In the light of the above provision, Shashi can incur expenditure on the hospitality of Ruchi.

Answer 4(b)(ii)

As per Rule 5 of the FEM (Current Account Transaction) Rule, 2000 requires prior approval of the Reserve Bank of the Release of foreign exchange, exceeding US\$ 25,000 to a person, irrespective of period of stay, for business travel, or attending a conference or specialised 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.

In the light of the above provision, Aditya can draw foreign exchange upto US\$ 25,000 without approval of RBI for attending conference in Bangladesh.

Answer 4(b)(iii)

As per Rule 5 of the FEM (Current Account Transaction) Rule, 2000 requires prior approval of the Reserve Bank of Release of foreign exchange, exceeding US\$ 5,000 for gift remittance per remitter/donor per annum.

In the light of the above provision, Rohit can give Mohit who is a resident outside India a gift of US\$ 2,500.

Answer 4(b)(iv)

Regulation 14 of FEM (Transfer or Issue of Foreign Security) Regulations authorises the authorised dealer may allow further remittances towards acquisition of the foreign

company, subject to the ceilings specified in Regulation on the Indian Party winning the bid.

The Indian Party is required to submit through the designated authorised dealer concerned a report to the Reserve Bank within 30 days of effecting the final remittance.

Question 5

- (a) *A contract contained an arbitration clause. One of the parties, however, made a complaint before the Consumer Disputes Redressal Forum seeking relief. The other party, in defence, pleaded that the consumer forum has no jurisdiction to entertain the complaint. Will the defending party succeed ? Give reasons. (5 marks)*
- (b) *Briefly mention the precautions you would take to ensure that your application for the grant of patent is not rejected. (5 marks)*
- (c) *State the principles of sustainable living. (5 marks)*

Answer 5(a)

The defending party will not succeed. The facts of the case are similar to the case of *N.K. Modi v. Fair Air Engineers Pvt. Ltd.* (decided on 13.11.1992). The National Commission observed that the forums under the Consumer Protection Act are not to be construed as judicial authorities and the proceedings before them cannot be taken to be legal proceedings. For a judicial authority, it is necessary that some part of the judicial power should be transferred to and vested in the forums as in the case of civil/criminal/special courts. Though, the consumer forums have powers to adjudicate dispute, they do not have any trappings of a Court. Except, conforming to the principle of natural justice, consumer forums are not governed by the Evidence Act or the Civil Procedure Code, except for certain limited purposes. Even the Limitation Act is not strictly applicable to the proceedings before them. Observing this, the National Commission came to the conclusion that consumer forums can entertain a complaint arising out of the contract which provides for arbitration of disputes, and Section 34 of the Arbitration Act shall not be a bar on the jurisdiction of the forums.

Answer 5(b)

Section 7 of the Patents Act, 1970 dealing with form of application requires every application for a patent to be made for one invention only. Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application proof of the right to make the application.

Section 10 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.

The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification.

Answer 5(c)

Principles of Sustainable Living

The principles of sustainable development as laid down in strategy for sustainable living, focus on respect and care for the community of life, improving the quality of human life, conserving the earth's vitality and diversity, minimizing the depletion of non-renewable resources, keeping within the earth's carrying capacity, changing personal attitudes and practices, enabling communities to care for their own environments, providing a natural framework for integrating development and conservation.

An ethic based on respect and care for each other and for Earth is the foundation of sustainable living. Development ought not to be at the expense of other groups or later generations. Development should not threaten the survival of other species. The benefits and costs of resource use and environmental conservation should be shared fairly among different communities, among people who are poor and those who are rich and between the present and the future generation.

The other aspect is the improvement of quality of human life. The aim of development is to improve the quality of human life. It should enable people to realize their potential and lead lives of dignity and fulfilment. Economic growth is part of development but it cannot be a goal in itself. Some of universally accepted goals are, healthy life, education, access to the resources needed for a decent standard of living, political freedom etc.

Question 6

Attempt any three of the following :

- (i) *A contract was entered into between the landlord and the tenant for hiring a residential flat at Anand Niketan, Mumbai. Contrary to the contract, the landlord refused to provide the agreed facilities to the tenant. As a consequence, the tenant and his family members suffered ill-health and mental agony. On being aggrieved, the tenant lodged a complaint before the Consumer Disputes Redressal Forum. Will he succeed ?*
- (ii) *What are the situations in which a copyright shall be deemed to be infringed ?*
- (iii) *What are the acts which do not constitute an infringement of a trade mark ?*
- (iv) *What is meant by 'hazardous substance' ? What are the provisions of the Environment (Protection) Act, 1986 relating to the handling of hazardous substances ?*
(5 marks each)

Answer 6(i)

Tenant will not succeed. The facts of the case are similar to that of *Luxmi Singhania*

v. *Rani Debi Lohia* (1992) 1 CPR 109(NC). In this case National Commission held that dispute between tenants and landlords are not entertainable by consumer forum. Tenant can not be considered as consumer under Section 2(1)(d) of the Consumer Protection Act, 1986.

Answer 6(ii)

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

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

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

Answer 6(iii)

Section 30 of the Trade mark 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 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, quantity, 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 the 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 two or 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.

Answer 6(iv)

The term Hazardous Substance under Section 2(e) of the Environment Protection Act, 1986 has been defined to mean any substance or preparation which, by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, micro-organism, property or the environment.

Section 8 provides that no person shall handle or cause to be handle any hazardous substance except in accordance with such procedure and after comply with such safeguards as may be prescribed.

The Central Government has been granted general powers under Section 3 to take all such measures as it deems necessary, for protecting and improving the quality of the environment and for preventing, controlling and abating environmental pollution. Such measure include with respect to laying down procedures and safeguards for the handling of hazardous substances.

Section 6 empowers the Central Government, to make rules for the procedures and safeguards for the handling of hazardous substances.

Section 25 also empowers the Central Government to make rules for carrying out the purpose of the Act. These rules may provide for the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or cause to be handled under Section 8.

Question 7

- (a) *Write notes on any two of the following :*

- (i) *Privileges of a registered trade union*
- (ii) *Workers participation in management*
- (iii) *Grievance handling procedure*
- (iv) *Principles governing domestic enquiry.*

(5 marks each)

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

- (i) *Some workmen were engaged on casual basis for doing a particular urgent work. Their services were terminated after the particular work was completed. Would it amount to retrenchment ?*
- (ii) *During the pendency of proceedings before the industrial tribunal, the employer wants to make certain changes in the conditions of services of workmen. The said changes are, however, not in respect of any matter connected with the dispute pending before the tribunal. Can the employer do so ?*

- (iii) *A dispute arose about the payment of subsistence allowance to a suspended employee. He claimed the allowance as per the rates prescribed by the law of the particular State. The employer wanted to pay as per the rate specified in the Industrial Employment (Standing Orders) Act, 1946. Will the employee succeed ?*
- (iv) *An industrial undertaking engaged a person in employment to assist in one or the other operations incidental to its main industrial operations. However, the employer denied such an employee the status of a workman on the ground that his work was not directly connected with the main operations of the industry. Will the employer succeed ?*
- (v) *An employee retired on attaining the age of superannuation. The employer withheld his gratuity on the ground that certain criminal proceedings which had commenced prior to his retirement against him for causing misappropriation of substantial cash were still pending. Is the action of the employer justified ?*
- (vi) *A registered trade union initially supported an individual dispute of a workman. The support was subsequently withdrawn by the trade union. Will the jurisdiction of the adjudicating authority be affected by such withdrawal ?*
- (vii) *Certain vacancies of posts of technical and scientific nature have occurred in an establishment. These vacancies carry a basic salary of Rs.10,000 and above. To which employment exchange should these vacancies be notified ?* (3 marks each)

Answer 7(a)(i)

Privileges of a Registered Trade Union

The privileges granted to a Registered Trade Union under the Trade Unions Act, 1926 are as follows:

Immunity from criminal proceedings : According to Section 17 of the Trade Unions Act, no office-bearer of a registered Trade Union shall be liable to punishment under Section 120B of IPC in respect of any agreement made between the members for the purpose of furthering any such objects of the Trade Union as is specified in Section 15 unless the agreement is an agreement to commit an offence.

Immunity from civil suits in certain cases. No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that :

- (a) such act induces some other person to break a contract of employment; or
- (b) it is in interference with the trade, business or employment of some other person; or
- (c) it is in interference with the right of some other person to dispose of his capital of his labour as he wills. [Section 18(1)]

Section 18(2) of the Act further provides that a registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of or contrary to express instructions given by, the executive of the Trade Union.

Answer 7(a)(ii)**Workers Participation in Management**

With democracy taking roots in social and political life, the principle of sharing authority to manage is extended to all types of co-operative human endeavour.

Workers participation in management is an important part of human relations because it offers an enormous potential for higher productivity, improved satisfaction and creative thinking. The rationale of labour participation in management lies not merely in raising productivity and promoting industrial peace but more importantly in creating a sense of involvement of workers in the enterprise. In 1975, the Constitution was amended and Article 43(A) was inserted in the Directive Principles of State Policy to encourage and secure the participation of workers in management. As pointed out by Keith Davis, "it is a mental and emotional involvement of a person in a group situation which encourages him to contribute to group goals and share responsibility in them."

It does not extend to matters which are subject to collective bargaining such as wages, hours of work etc.

Answer 7(a)(iii)**Grievance Handling Procedure**

The key to industrial peace is prompt and effective disposal of workers grievances. Grievances are symptoms of conflicts in the organization. Literally, grievance means any real or imagined feeling of personal injustice which an employee has, concerning his employment relationship.

Grievances are commonly filed over employee disciplinary incidents, disputes over seniority issues, work assignment, job classifications, scheduling transfers, promotions, lay-off and recalls, etc.

Grievance procedure is the problem solving or dispute settling machinery. It is orderly means by which the union or the employee raises and processes a claim for settlement. Grievance procedure is a formal process. While analysing a grievance, therefore, both the nature of complaint and nature of person should be studied. Even when an employee has not given vent to his grievance, the existence of grievance can be spotted by clear observation of symptoms, like poor output, low level efficiency, lack of co-operation, depressive mood etc.

The principal benefit of grievance system is that human problems are brought into the open so that the management can learn about them and try corrective action and adjust the grievance. Moreover, grievance system helps to catch and solve problems before they become serious.

Answer 7(a)(iv)**Principles Governing Domestic Enquiry**

Following are the principals governing domestic inquiry:

- (a) The enquiry should be conducted by an unbiased person.
- (b) He should conduct the enquiry impartially, objectively and fairly.
- (c) The employee should be given a fair opportunity to defend himself.
- (d) If any criminal proceeding is pending against the employee, the Enquiry Officer need not wait for the completion of those proceedings [*DCM v. Kushal Bhim* AIR 1960 SC 806].
- (e) Preliminary enquiry is fact finding and differs from domestic enquiry.
- (f) Proper procedure, rules/regulations, principals of natural justice should be followed while conducting enquiry.
- (g) The enquiry officer should report whether charges are proved or not.

Answer 7(b)(i)

Where the workmen were engaged on casual basis for doing only a particular urgent work the termination of their service after the particular work is over is not a retrenchment. *Tapan Kumar Jana v. The G.M. Calcutta Telephones* (1980) Lab. I.C. 508.

Answer 7(b)(ii)

During the pendency of a proceeding before the Tribunal, the employer can make changes in the condition of service of workmen in respect of matters not connected with the dispute immediately before the commencement of such proceeding vide Section 33(2) of the Industrial Disputes Act, 1947.

Section 33(2) of the Industrial Disputes Act says that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, - (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding.

Answer 7(b)(iii)

The employee will succeed. Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 stipulating provisions for Payment of subsistence allowance inter-alia provides that where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

Answer 7(b)(iv)

The employer will not succeed. In *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. L.A.T.* AIR 1964 SC 737, the Supreme Court has held that wherever it is shown that an

industry has employed an employee to assist in one or the other operations incidental to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry.

Answer 7(b)(v)

The action of the employer is not justified. Withholding of gratuity is not permissible under any circumstance other than those enumerated in Section 4(6) of the Payment of Gratuity Act, 1972. Section 4 (6) of the Payment of Gratuity Act says:

- (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer' shall be forfeited to the extent of damage or loss so caused;
- (b) the gratuity payable to an employee may be wholly or partially forfeited-
 - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
 - (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Answer 7(b)(vi)

If after supporting an individual dispute by a Trade Union, the support is subsequently withdrawn, it will not affect the jurisdiction of the adjudicating authority.

By insertion of Section 2-A (Amendment Act, 1965), the scope of individual dispute has been converted into industrial dispute. No other workman or union of workmen need to be a party to a dispute/difference connected with or arising out of discharge, dismissal, retrenchment, termination of individual workman. It does not affect the power of appropriate Government to make or not to make reference under Section 10(1) of the Industrial Disputes Act, 1947 [*Radhey Sham and Another v. State of Haryana and Another*, 1998(1) LLJ1200 (P&H)].

Answer 7(b)(vii)

These vacancies should be notified to the Central Employment Exchange.

As per Rule 3 of the Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 the vacancies are to be notified either to Central Employment Exchange or local Employment Exchange as the case may be.

Central Employment Exchange means the Employment Exchange established by the Government of India, Ministry of Labour and Employment, and to which the vacancies in the posts of a technical and scientific nature carrying a basic pay of Rs. 1400 or more per month occurring in the establishments in respect of which the Central Government is the Appropriate Government under the Act.
