

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) Predatory pricing*
- (ii) Declarations for export of goods and services*
- (iii) Standards for emission of environmental pollutants*
- (iv) Restoration of lapsed patents*
- (v) Term of copyright*
- (vi) Process of money laundering*
- (vii) 'Complainant' under the Consumer Protection Act, 1986. (3 marks each)*

Answer 1(i)

Predatory Pricing

Predatory price has been defined under section 4 of the Competition Act, 2002 to mean the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Thus, the two conditions precedent to bring a case within the ambit of predatory pricing are:

- selling goods or provision of service at a price which is below its cost of production; and
- that the practice is resorted to eliminate the competitors or to reduce competition.

Answer 1(ii)

Declaration for Export of Goods and Services

Section 7 of the Foreign Exchange Management Act, 1999 deals with export of goods and services. Every exporter is required to furnish to Reserve Bank of India or any other authority as prescribed a declaration containing true and correct particulars including the amount representing the full export value or if the full export value of the goods is not ascertainable at the time of export, the value which the exporter having regard to prevailing market conditions expects to receive on sale of the goods in a market outside India. However, there are a few exceptions wherein export of goods or services is permitted without declaration.

Answer 1(iii)**Standards of Emission**

Section 7 of the Environment (Protection) Act, 1986 prohibits carrying on of any industry, operation or process which discharges or emits any environmental pollutant in excess of prescribed standards. Schedule I to the Environment Protection Rules, 1986 specifies the standards for emission or discharge of environmental pollutants. In addition, the Central/State Boards have been empowered to prescribe more stringent standards in respect of any specific industry, operation or process.

Answer 1(iv)**Restoration of lapsed patent**

Section 60 of the Patents Act, 1970 provides that where a patent has ceased to have effect by reason of failure to pay any renewal fee within the period prescribed under section 53 or within period as may be allowed under section 142(4), the patentee or his legal representative and where the patent was held by two or more persons jointly, then with the leave of the Controller one or more of them without joining the others, may within eighteen months from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

Answer 1(v)**Term of copyright**

Sections 22 to 29 of the Copyright Act, 1957 deal with term of copyright.

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

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

The broadcast reproduction rights in respect of broadcasts by a broadcasting organisation are to be enjoyed by every for a period of twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made. In terms of Copyright (Amendment) Act, 1999 if any performer appears or engages in any performance, he has a special right in relation to such performance called performers right to be enjoyed for a period of fifty years.

Answer 1(vi)**Process of money laundering**

The process of money laundering can be classified into 3 stages namely placement, layering and integration. In the placement stage of money laundering, the launderer

introduces his illegal profits into the financial system, by breaking up large amounts of cash into less conspicuous smaller sums and are deposited in a bank account or by purchasing a series of monetary instruments that are later collected and deposited into accounts at another location.

In the layering stage, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channeled through the purchase and sale of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe.

In the integration stage the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

Answer 1(vii)

“Complainant” under the Consumer Protection Act, 1986

Section 2(1) (b) of the Consumer Protection Act, 1986 defines the terms “Complainant” as to mean

- (i) a consumer, or
- (ii) any voluntary consumer association registered under the Companies Act, 1956, or under any other law for the time being in force; or
- (iii) the Central Government or any State Government, who or which makes a complaint; or
- (iv) one or more consumers where there are numerous consumers having the same interest;
- (v) in case of death of a consumer, his legal heir or representative;

who or which makes a complaint.

Question 2

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

- (i) *Small scale units are free from locational restrictions.*
- (ii) *A SEZ unit may opt out of the SEZ scheme at any time.*
- (iii) *The manufacture of items reserved for the small scale sector can also be taken up by non-small scale units.*
- (iv) *Patents are granted merely to enable the patentees to enjoy a monopoly for the importation of the patented article.*
- (v) *The jurisdiction of the State Consumer Disputes Redressal Commission is only appellate or revisional.*
- (vi) *Retail package includes a package for retail sales to ultimate consumers who may be institutional or industrial consumers.* (3 marks each)

Answer 2(i)**True**

Reason : Industrial undertakings are free to select the location of a project. However, in the case of cities with population of more than one million (as per the 1991 census), the proposed location should be at least 25 KM away from the Standard Urban Area limits of that city unless, it is to be located in an area designated as an industrial area before the 25th July, 1991. Industries related to electronics, computer software and printing (and any other industry which may be notified in future as non polluting industry) are exempt from such locational restriction. However, the small scale units are free from locational restrictions.

Answer 2(ii)**True**

Reason : SEZ Unit may opt out of the scheme with the approval of the Development Commissioner. Such exit from the scheme is subject to payment of applicable customs and excise duties on the imported and indigenous capital goods, raw materials etc and finished goods in stock.

Answer 2(iii)**True**

Reason : Manufacture of items reserved for the small scale sector can also be taken up by non-small scale units, if they apply for and obtain an industrial licence. In such cases, it is mandatory for the non-small scale unit to undertake an export obligation.

Answer 2(iv)**False**

Reason : Section 83 of the Patents Act 1970, provides that in exercising the powers conferred for working of patents and compulsory licences, regard shall be had to that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article.

Answer 2(v)**False**

Reason : According to Section 17 of the Consumer Protection Act, 1986 the Jurisdiction of State Consumer Dispute Redressal Commission covers original complaint from consumers for value of goods or services or compensation exceeding Rs.20 lakhs but not to exceed one crore. The State Commission has also been empowered to entertain appeals against the orders of any District Forum within the State and to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State,

Therefore, the State Commission's jurisdiction may be original, appellate or revisional.

Answer 2(vi)**False**

Reason : According to Rule 2(p) of Standards of Weights and measures (Packaged Commodities) Rules, 1977 Retail packages which are included for retail sales to the

ultimate consumers for the purpose of consumption as the commodity contained therein and includes the imported packages. The ultimate consumers however does not include industrial or institutional consumer.

Question 3

- (a) *Distinguish between any two of the following :*
- (i) *'Foreign exchange' and 'foreign security'.*
 - (ii) *'Trade mark' and 'certification trade mark'.*
 - (iii) *'Automatic route' and 'approval route' under the FDI policy. (5 marks each)*
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *The foreign trade policy allows export proceeds to be realised within _____ months.*
 - (ii) *The prior approval of RBI is necessary to make overseas donation exceeding US \$ _____ per remitter per annum.*
 - (iii) *Essential commodity is a commodity specified in _____ to the Essential Commodities Act, 1955.*
 - (iv) *The Consumer Disputes Redressal Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed, within _____ year(s) from the date on which the cause of action has arisen.*
 - (v) *Authorised person under the Foreign Exchange Management Act, 1999 includes an authorised dealer, _____, off-shore banking unit or any other person for the time being authorised to deal with foreign exchange or foreign security. (1 mark each)*

Answer 3(a)(i)

Distinction between Foreign Exchange and Foreign Security

Foreign Exchange

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

Foreign Security

Section 2(o) of Foreign Exchange Management Act, 1999 defines foreign security as to mean any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividend is payable in Indian currency.

Answer 3(a)(ii)**Distinction between Trade mark and Certification Trade Mark**

The term Trade mark has been defined under Section 2(1)(zb) of the Trade Marks Act, 1999 as to mean a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and

- (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and
- (ii) in relation to other provisions of the Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.

Certification Trade Mark

Section 2(1)(e) of the Trade Marks Act, 1999 defines the term certification trade mark as to mean a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person.

Answer 3(a)(iii)**Distinction between Automatic Route and Government Route**

Foreign Direct Investments (FDI) can be made under two routes—Automatic Route and Government Route.

Automatic Route

Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment. For example, 100% FDI is allowed under the automatic route in Mining and Exploration of metal and non-metal ores and Film Industry.

Government Route

Under the Government Route, prior approval of the Government of India, Ministry of Finance, and Foreign Investment Promotion Board (FIPB) is required. For example, FDI is permissible in Defence Industry, Print Media under Government Route.

Answer 3(b)

- (i) The foreign trade policy allows export proceeds to be realised within **12** months.
- (ii) The prior approval of RBI is necessary to make overseas donation exceeding **US \$ 5000/-** per remitter per annum.
- (iii) Essential commodity is a commodity specified in **the schedule** to the Essential Commodities Act, 1955.
- (iv) The Consumer Disputes Redressal Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed, within **2** year(s) from the date on which the cause of action has arisen.
- (v) Authorised person under the Foreign Exchange Management Act, 1999 includes an authorised dealer, **money changer**, off-shore banking unit or any other person for the time being authorised to deal with foreign exchange or foreign security.

Question 4

- (a) *With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on the following:*
 - (i) *Shyam, an Indian businessman, is interested in remitting US \$8,000 for purchase of trade mark/franchise in India.*
 - (ii) *Suresh, a person resident in India, desires to take a life insurance policy from a foreign insurance company, the yearly premium of which is US \$25,000.*
 - (iii) *Desire Ltd., a company incorporated outside India, wants to buy shares up to 10% of paid-up capital of an Indian company engaged in infrastructure development.*
 - (iv) *Aadarsh Ltd., an Indian company, wants to issue FCCBs for the purpose of investing in the stock market.*
 - (v) *An Indian company engaged in software business intends to adjust the value of its exports towards the value of imported items. (1 mark each)*
- (b) *Explain the provisions for confiscation of an essential commodity seized in contravention of the Essential Commodities Act, 1955. (5 marks)*
- (c) *Prakash, aged 37 years, was travelling from Mumbai to Delhi by air. When he occupied his seat in the aircraft, an announcement was made that his luggage was lying on the ground unidentified and that he should disembark to identify his luggage. When Prakash was stepping down from the aircraft, the ladder was suddenly removed as a result of which he fell down sustaining bodily injuries causing 10% disablement. As against the claim of Rs.10 lakh filed by Prakash towards compensation, the airlines was willing to pay Rs.40,000 which according to it was the maximum statutory liability of the airlines under the Carriage by Air Act, 1972. However, the State Commission awarded Rs.4 lakh towards compensation and an additional Rs.1 lakh for mental agony and distress plus costs. Is the order passed by the State Commission justified ? If so, give reasons and refer to the decided case law. (5 marks)*

Answer 4(a)

- (i) Shyam is allowed to remit US \$ 8000 for purchase of Trade Mark/Franchise in India [*VIDE-A.P.(DIR SERIES) CIRCULAR NO. 14, DATED 28/11/2006 ISSUED BY RBI*].

Earlier, as per Rule 5 read with Schedule III to the Foreign Exchange Management (Current Account Transaction) Rules 2000 prior approval of RBI was required for release of foreign exchange towards purchase of Trade Mark/Franchise.

- (ii) Suresh, a person resident in India, can take a life insurance policy from a foreign insurance company with a yearly premium of US\$25,000 [*VIDE-A.P.(DIR SERIES) CIRCULAR NO. 76, DATED 24/02/2004 ISSUED BY RBI*].

Earlier, as per Rule 4 read with Schedule II to the Foreign Exchange Management (Current Account Transaction Rules, 2000, payment for securing insurance for health from a company abroad required prior permission of Central Government.

- (iii) Generally 100% FDI is permitted in companies engaged in infrastructure development, subject however to conditions prescribed. In the case of Infrastructure Companies in securities market, Foreign Direct investment is subject to compliance with SEBI Regulations and subject to the following conditions:

- Foreign investment upto 49% of the paid up capital, is allowed in these companies with a separate Foreign Direct Investment (FDI) cap of 26% and Foreign Institutional Investment (FII) cap of 23%;
- FDI is allowed with specific prior approval of FIPB; and
- FIIs can invest only through purchases in the secondary market.

In the light of the above legal provision, Desired Ltd., a company incorporated outside India can buy shares up to 10% of paid up capital of the Indian Company engaged in infrastructure development.

- (iv) In terms of Regulation 21(2) read with Schedule I of the Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulation, 2000, FCCB proceeds are not allowed to be investment in stock market.

In the light of the above legal provision, Adarsh Ltd., an Indian company can not issue FCCBs for the purpose of investing in stock market.

- (v) In terms of Regulation 14 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 any arrangement involving adjustment of value of goods imported into India against value of goods exported from India, requires prior approval of Reserve Bank of India.

In the light of the above legal provision, an Indian company engaged in software business may adjust the value of its exports towards the value of imported items subject to prior approval of RBI.

Answer 4(b)

Section 6A of the Essential Commodities Act, 1955 provides that where any essential commodity is seized in pursuance of an order made under Section 3, a report of such seizure shall be made, without any unreasonable delay, to the collector of the district or

the Presidency town in which such essential commodity is seized. The Collector at his discretion, may direct for the production of the seized commodity before him and if he is satisfied that there has been contravention of the order he may pass order for confiscation of (a) the essential commodity so seized, (b) any package, covering or receptacle in which such essential commodity is found, and (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under Section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section.

However, in the case of any animal, vehicle, vessel or other conveyance the owner of such animal, vehicle etc., shall be given an option to pay in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel, or other conveyance.

Therefore, a commodity which has been seized in pursuance of an order under Section 3 can be confiscated under the circumstances mentioned in Section 6A.

Answer 4(c)

Yes, the order of the State Commissions justified. The present case is similar to the case of *Station Manager, Indian Airlines v. Dr. Jiteswar Ahir* [First Appeal No. 270 of 1994 decided on 28.2.1996 (NCDRC)] In this case the National Commission held that in terms of regulations relied upon by the appellant Corporation, if it was proved that the accident caused to the complainant had resulted in a permanent disablement, incapacitating him from engaging in or being occupied with his usual duties or his business or occupation, the liability could not exceed Rs. 5 lakhs. This case related to the incapacity and permanent disability to the extent of 10 per cent and, therefore, the compensation could not exceed Rs. 5 lakhs. The State Commissions assessment of compensation of Rs. 4 lakhs was justified, considering the age of the complainant (37 years) at the time of accident and his having lost earning capacity. The State Commission was also right in awarding compensation of rupees one lakh for the complainants mental suffering and agony as well as feeling of inferiority in social relations.

Question 5

- (a) *How is the property involved in money laundering dealt with under the Prevention of Money Laundering Act, 2002 ?* (5 marks)
- (b) *What are the exemptions to the prohibition of acceptance of foreign contribution under the Foreign Contribution (Regulation) Act, 1976 ?* (5 marks)
- (c) *Write a note on recent government initiatives to contain environmental pollution in the country.* (5 marks)

Answer 5(a)

Section 5 of the Prevention of Money Laundering Act, 2002 dealing with attachment of property involved in money laundering provides that where the Director or any officer not below the rank of Deputy Director authorised by him, has reason to believe on the basis of material in his possession that any person is in possession of any proceeds of money laundering; such person has been charged of having committed a scheduled

offence and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, such officer may by order in writing, provisionally attach such property for a period not exceeding 150 days from the date of the order, in the manner provided in the Second Schedule of the Income-tax Act, 1961.

Answer 5(b)

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

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

Answer 5(c)

The primary responsibility for administration and implementation of the Policy of the Government of India with respect to environmental management, conservation, ecological sustainable development and pollution control rests with the Ministry of Environment and Forest (MoEF). To ensure that the economic growth and development in our country is in conformity with regulations for environmental conservation, the Ministry of Environment and Forest has notified Environmental Impact Assessment Notification 2006. The MoEF is the agency responsible for the review and approval of Environmental Impact Assessment. Under this notification certain activities must obtain clearance from Central and State Governments and also to obtain No Objection Certificate before commencement of the operations. The MoEF is responsible to enforce the Regulations

established pursuant to National Conservation Strategy, National Forest Policy and implementation of Environment Protection Act, 1986, National Biodiversity Act, 2002 and National Green Tribunal Act, 2010 etc.,

PART B

(Answer ANY TWO questions from this part)

Question 6

Write notes on any four of the following :

- (i) Provisions relating to 'hazardous processes' under the Factories Act, 1948.*
- (ii) The concept of 'compensation' under the Workmen's Compensation Act, 1923.*
- (iii) Concept of 'continuous service' under the Payment of Gratuity Act, 1972.*
- (iv) Employees' Insurance Court constituted under the Employees' State Insurance Act, 1948.*
- (v) Procedure for fixing and revising minimum wages under the Minimum Wages Act, 1948.*
- (vi) Unfair labour practices on the part of workmen and trade unions of workmen under the Industrial Disputes Act, 1947.*

(5 marks each)

Answer 6(i)

Hazardous process

Hazardous process has been defined under Section 2(cb) of the Factories Act, 1948 as follows:

"Hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution of the general environment;

The State Government may, by notification in the Official Gazette amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.

Answer 6(ii)

The concept of Compensation

"Compensation" has been defined under Section 2(1)(c) of the Workmen's Compensation Act, 1923 (Now Employees' Compensation Act) to mean compensation as provided for by this Act.

Amount of compensation : Amount of compensation is payable in the event of a workman meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV.

Schedule II contains a list of persons engaged in different employments/ operations specified therein who are covered by the definition of workman and entitled to compensation e.g. a person employed for loading/unloading of materials in a factory or ship, persons employed in work incidental or connected with manufacturing process. Schedule III contains a list of occupational diseases which if contracted while in employment entitles a workman to compensation such as disease caused by lead, mercury, etc. Schedule IV lays down the relevant factor (a certain figure) related to the age of the workman at the time of death, injury or accident by which wages are multiplied to arrive at compensation.

Time of payment of compensation : Section 4A of the Act provides that compensation under Section 4 shall be paid as soon as it falls due.

The employer is required to deposit or to make provisional payment based on the extent of liability which he accepts with the Commissioner or hand over to the workman as the case may be even if the employer does not admit the liability for compensation to the extent claimed.

Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the workman or his dependent as the case may be.

Answer 6(iii)

Concept of continuous service

Section 2(c) of the Payment of Gratuity Act, 1972 defining continuous service says "continuous service" means continuous service as defined under section 2A.

According to Section 2A, of the Payment of Gratuity Act, 1972

- (1) An employee shall be said to be in continuous service for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of
 - (a) sickness,
 - (b) accident,
 - (c) leave,
 - (d) absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment),
 - (e) layoff,
 - (f) strike or
 - (g) a lock-out or
 - (h) cessation of work not due to any fault of the employee it makes no difference whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

- (2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service for any period of one year or six months, he shall be deemed to be in continuous service under the employer:
- (a) for the said period of 1 year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:
 - (i) 190 days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
 - (ii) 240 days in any other case;
 - (b) for determining the continuous service for the said period of six months for the payment of gratuity, the number of days the employee should have actually worked should be half the number of days actually worked which constitute continuous service for a period of 1 year, i.e., 95 days and 120 days respectively.

For the above purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which:

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946; or under the Industrial Disputes Act, 1947; or under any other law applicable to the establishment;
 - (ii) he has been on leave with full wages, earned in the previous year;
 - (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
 - (iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.
- (3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of 1 year or 6 months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75 per cent, of the number of days on which the establishment was in operation during such period.

Answer 6(iv)

Employees' Insurance Court (E.I. Court)

Constitution : Section 74 of the E.S.I Act, 1948 provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I. Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and may regulate the distribution of business between them.

Matters to be decided by E.I. Court

- (i) *Adjudication of disputes* : The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.
- (ii) *Adjudication of claims* : The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

Proceedings in both the above cases can be initiated by filing application in the prescribed form by the employee or his dependent or employer or the corporation depending who has cause of action.

No Civil Court has power to decide the matters falling within the purview/ jurisdiction of E.I. Court.

Answer 6(v)

Procedure for fixing and revising minimum wages

As per section 5 of the Minimum Wages Act, 1948 in fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method

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 advise of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government. [Section 5(1)(a)]

Second Method

The method is known as the 'Notification Method'. When 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.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. [Section 5(1)(b)]

Answer 6(vi)**Unfair Labour practices on the part of workmen and trade unions of workmen**

Unfair labour practice as per Section 2(ra) of the Industrial Disputes Act, 1947 means any of the practices specified in the Fifth Schedule to the Act. This Schedule declares certain labour practices as unfair on the part of employers and their trade unions and on the part of the workmen and their trade unions.

Unfair Labour practices on the part of workmen and trade unions of workmen : Following practices have been declared as unfair Labour practices on the part of workmen and trade unions of workmen under the Industrial Disputes Act, 1947

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say:
 - (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
 - (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as wilful go slow, squatting on the work premises after working hours or gherao of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employers property connected with the industry.
8. To indulge in acts of force or violence to hold out threats of intimidation against any workman with a view to prevent him from attending work.

Question 7

- (a) *Distinguish between any two of the following :*
- (i) 'Award' and 'settlement' under the Industrial Disputes Act, 1947.
 - (ii) 'Partial disablement' and 'total disablement' under the Workmen's Compensation Act, 1923.

- (iii) 'Draft standing orders' and 'certified standing orders* under the Industrial Employment (Standing Orders) Act, 1946. (5 marks each)
- (b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- (i) The ESI corporation to function efficiently has been provided with two wings namely _____ and Medical Benefit Council.
 - (ii) A workman is not entitled to apply under the Workmen's Compensation Act, 1923, if he seeks remedy for grant of compensation in a _____.
 - (iii) The Contract Labour (Regulation and Abolition) Act, 1970 shall not apply to establishments in which work is of _____.
 - (iv) An 'arbitrator' under the Industrial Disputes Act, 1947 includes an _____.
 - (v) The rate of contribution towards the Employees' State Insurance Fund is _____ % and _____ % of employees' wages by the employers and employees respectively. (1 mark each)
- (c) Choose the most appropriate answer from the given options in respect of the following :
- (i) The employer of an establishment to which the Industrial Employment (Standing Orders) Act, 1946 applies shall submit to the certifying officer draft standing orders proposed by him for adoption in that establishment within —
 - (a) 6 Months
 - (b) 4 Months
 - (c) 30 Days
 - (d) 2 Months.
 from the date on which the Act becomes applicable to the establishment.
 - (ii) When a new manager is appointed for a factory, the occupier shall send to the Inspector of Factories a notice in writing within —
 - (a) 7 Days
 - (b) 15 Days
 - (c) 30 Days
 - (d) 45 Days.
 - (iii) 'Basic wages' under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 does not include —
 - (a) Emoluments earned by an employee while on leave
 - (b) Emoluments earned by an employee while on holiday with wages
 - (c) The cash value of any food concession
 - (d) Emoluments earned by an employee which are payable in cash.
 - (iv) 'Dependent' under the Employees' State Insurance Act, 1948 does not mean any of the following relatives of a deceased insured person —
 - (a) A widowed mother

- (b) *A widowed grand-mother*
- (c) *A widowed daughter-in-law*
- (d) *A widow.*
- (v) *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) *One year*
 - (c) *6 Months*
 - (d) *8 Months.*

(1 mark each)

Answer 7(a)(i)

Award : As per Section 2(b) of the Industrial Disputes Act, 1947 “Award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal. It also includes an arbitration award made under Section 10-A.

Settlement : “Settlement” has been defined under Section 2(p) of the Industrial Disputes Act, 1947. It means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

Answer 7(a)(ii)

Partial disablement and total disablement

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

“*Partial disablement*” means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time.

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

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

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

Answer 7(a)(iii)

Draft standing orders and certified standing orders

Standing Orders as per section 2(g) of the Industrial Employment (Standing Orders) Act, 1946 means rules relating to matters set out in the Schedule to the Act.

Draft Standing Orders : Within 6 months from the date on which the Act becomes applicable to an industrial establishment the employer is required to frame draft ‘standing orders’ and submit them to the Certifying Officer for certification. The draft should cover all the matters specified in the Schedule to the Act and any other matter that Government may prescribe by rules. These are called draft standing orders.

Certified Standing orders : The Certifying Officer after following the procedure laid down for certification of standing orders under the Act will certify the standing orders. These are called Certified Standing orders.

Answer 7(b)

- (i) The ESI corporation to function efficiently has been provided with two wings namely **Standing Committee** and Medical Benefit Council.
- (ii) A workman is not entitled to apply under the Workmen’s Compensation Act, 1923, if he seeks remedy for grant of compensation in a **Civil Court**.
- (iii) The Contract Labour (Regulation and Abolition) Act, 1970 shall not apply to establishments in which work is of **an intermittent or casual nature**.
- (iv) An ‘arbitrator’ under the Industrial Disputes Act, 1947 includes an **Umpire**.
- (v) The rate of contribution towards the Employees’ State Insurance Fund is **4.75%** and **1.75 %** of employees’ wages by the employers and employees respectively.

Answer 7(c)

- (i) Six months
- (ii) Seven days
- (iii) The cash value of any food concession
- (iv) A widowed grand mother
- (v) 30 working days

Question 8

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

- (i) *Suresh retired on attaining the age of superannuation. After retirement, it was noticed that he had misappropriated travelling allowance drawn by him. The employer decided to deduct the misappropriated amount from the gratuity payable to him. Is the action of the employer legally tenable ?*
- (ii) *Growell Ltd. declared minimum bonus in an accounting year as there was no allocable surplus. However, the workmen claimed that the management was liable to pay higher amount of bonus in view of the terms of settlement entered into between the workmen and the management. Is the plea of the workmen tenable in law ?*
- (iii) *Mohan has been working in a foundry for the last 20 years. Recently, it was found that he was suffering from diabetes. Based on that, the management terminated his services. Does the action of the management tantamount to retrenchment ?*
- (iv) *Naresh, a workman, abused his supervisor in a public place outside the factory premises, for having refused to sanction leave on compassionate grounds. On a complaint lodged by the supervisor, the management initiated disciplinary proceedings against Naresh for the act of misconduct. Naresh contended that his action did not amount to misconduct. Is his contention tenable ?*
- (v) *Galaxy Hotels Ltd., located in Aurangabad (Maharashtra), is covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Recently, it started a new restaurant in Belgaum (Karnataka) where 15 employees were employed. The provident fund authorities demanded contribution in respect of 15 employees in the new establishment contending that it is a part of Galaxy Hotels Ltd. Is the demand of provident fund authorities justified ?*
- (vi) *Sajid 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 ?*
- (vii) *A copy of the memorandum of settlement was not despatched by the conciliation officer to the appropriate government. Will the settlement be treated as invalid ? Give reasons. (4 marks each)*

Answer 8(i)

The action of the employer is not justified. Once the services have been put an end to, it is not competent for the employer either to commence or continue disciplinary action against the employee who has gone out of his employment and in such situation it is not possible to involve Section 4(6)(b) of the Payment of Gratuity Act. [Mathur Spinning Mills v. D.C. of Labour & Others 1983 (11) LLJ 50]

Answer 8(ii)

The demand of the workmen is justified in view of the provisions of Section 34 read with Section 31-A of the Payment of Bonus Act, 1965.

Answer 8 (iii)

It amounts to retrenchment. It has been held in the case of *Harvilas Kushwah v. Sports Authority of India & Others*, 1996(1) LLJ 450 that merely because a person is suffering from diabetics, it cannot be said that he is unfit. A bald statement that the person is medically unfit is not enough to put an end to the service tenure on the ground of continued ill-health. There is no evidence too show that the ill-health of the employee was continuous. The termination service amounts to retrenchment.

Answer 8(iv)

Any act subversive of discipline committed outside the premises is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct. But when misconduct vis-à-vis the officers of the management is committed outside the factory, certainly be an act subversive of discipline.[*Palghat BPL & PSP Thozhilali Union v. BPL India Ltd. & others*, 1996(11) LLJ 335(SC)]

Answer 8(v)

The demand of the provident fund authorities is not justified. The Supreme Court in *RPF Commissioner v. Dharamsi Morarjee Chemical Co. Ltd.*, 1998 (1) LLJ 1060(SC) has held that if the departments and branches are located at different places, the establishment would still be covered by the net of Section 2A and the branches and departments cannot be said to be only on that ground not a part and parcel of the parent establishment. But unless there is clear evidence to show that there is inter-connection between the Units and there is common supervisory financial and managerial control, it is not possible to agree that the different branches or departments are part and parcel of the present establishment or it is an adjunct of the main parent establishment

Answer 8(vi)

The employer is liable to pay compensation. 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.

Answer 8(vii)

The settlement will be treated as invalid. It is a mandatory requirement under Section 12 of the Industrial Disputes Act, 1947 envisaging duties of conciliation officers.

Section 12(3) of the of the Industrial Disputes Act, 1947 states if a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

It is also provided under Rule 58(3) of the Industrial Disputes (Central) Rules, 1957 that:

Where a settlement is arrived at in the course of conciliation preceding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

Rule 58(4) provided Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned.
