

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) Privileges to a star export house
- (ii) Competition advocacy
- (iii) Term of patents
- (iv) The concept of sustainable development
- (v) Mens rea under the Essential Commodities Act, 1955
- (vi) International copyright. (3 marks each)

Answer 1(i)

Privileges to a Star Export House

A Star Export House is eligible for the following privileges:

- (i) Licence/certificate/permissions etc. and Customs clearances for both imports and exports on self-declaration basis;
- (ii) Fixation of Input-Output norms on priority within 60 days;
- (iii) Exemption from compulsory negotiation of documents through banks. The remittance, however, is required to be received through banking channels;
- (iv) 100% retention of foreign exchange in EEFC account;
- (v) Enhancement in normal repatriation period from 180 days to 360 days;
- (vi) Exemption from furnishing of Bank Guarantee in Schemes under the Foreign Trade Policy.
- (vii) Two star export houses and above have been permitted export warehouses as per the Guidelines specified by Department of Revenue.

Answer 1(ii)

Competition Advocacy

Under Section 49 of the Competition Act, 2002 the Central Government/State Government may seek the opinion of the Competition Commission of India on the possible effects of the policy on Competition or any other matter. In this context, Section 49 envisages that while formulating a policy on competition, the Government may make a reference to the Commission for its opinion on possible effect of such a policy on the competition or any other matter.

On receipt of such a reference, the Commission shall give its opinion on it to the Central Government /State Government within 60 days of making such reference and the latter may

formulate the policy as it deems fit. The role of the Commission is advisory and the opinion given by the Commission is not binding upon the Central Government / State Government in formulating such a policy. The Commission is also empowered to take suitable measures for the (a) promotion of Competition advocacy; (b) creating awareness about the competition; and (c) imparting training about Competition issues.

The creating awareness about benefits of competition and imparting training in competition issues is expected to generate conducive environment to promote and foster competition, which is sine-qua non for accelerating economic growth.

Answer 1(iii)

Term of Patents

Section 53 of the Patents Act, 1970 provides that the term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, shall be twenty years from the date of filing of application for the patent.

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

A patent shall cease to have effect on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period or within such extended period as may be prescribed. Further on cessation of the patent right due to non-payment of renewal fee or on expiry of the term of patent, the subject matter covered by the said patent shall not be entitled to any protection.

Answer 1(iv)

Concept of Sustainable Development

Universe is one of the rarest gift that the nature has given to the human being. It is essential for the people who live now to use the resources of earth sustainably and prudently so that they do not deny certain benefits to future generations. Modern states used the natural resources of the earth recklessly. This has resulted in a number of environmental issues like climate change, global warming etc.. We should, therefore integrate conservation and development, conservation to keep our actions within the earth's capacity and development to enable the people everywhere to enjoy long, healthy and fulfilling lives.

The concept of 'sustainable development was first highlighted at the United Nations Conference on the Human Environment held at Stockholm in June, 1972. Since then, various countries have enacted legislative measures for protection of the environment introducing strict penal measures for damages caused due to hazardous substances, etc.

Answer 1(v)

Mens rea under the Essential Commodities Act, 1955

In criminal law, mens rea – the Latin term for "guilty mind" – is usually one of the necessary elements of a crime. The standard common law test of criminal liability is usually expressed in the Latin phrase, actus non facit reum nisi mens sit rea, which means "the act does not make a person guilty unless the mind be also guilty".

With respect to the Essential Commodities Act, 1955, it was observed by the Supreme Court in *Nathulal v. State of Madhya Pradesh* (AIR 1966 S.C. 43) that mens rea or guilty mind is an ingredient of the offence punishable under Section 7 of the Act i.e., an intentional contravention of an order made under Section 3. In other words, if the dealer did believe bona fide that he could store the foodgrains for instance, without infringing any order under Section 3, there could be no contravention under Section 7.

In *Hariprasad Rao v. State* (AIR 1951 SC 264), it was observed that unless a Statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime, an accused cannot be found guilty of an offence against the criminal law unless he has got a guilty mind. Therefore, mens rea is an essential ingredient of an offence under Section 7 of the Act.

Answer 1(vi)

International Copyrights

The Copyright Act, 1957 applies only to works first published in India, irrespective of the nationality of the author. However Section 40 of the Act empowers the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country. The benefits granted to foreign works will not extend beyond what is available to the works in the home country and that too on a reciprocal basis i.e. the foreign country must grant similar protection to works entitled to copyright under the Act. The term of Copyright in India to the foreign work, will not exceed that conferred by the foreign country.

Government of India has passed the International Copyright Order, 1958. According to this order any work first published in any country which is a member of the Berne Convention or the Universal Copyright Convention will be accorded the same treatment as if it was first published in India.

Question 2

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

- (i) The Consumer Protection Act, 1986 only reinforces the doctrine of caveat emptor.*
- (ii) In all legal proceedings relating to trade mark registered under the Trade Marks Act, 1999, the original registration and all subsequent assignments and transmissions thereof shall be prima facie evidence of its validity.*
- (iii) Cartel includes an association of producers, sellers or distributors who, by agreement among themselves, limit, control or attempt to control the production, distribution, sale or price of or trade in goods or provision of services.*
- (iv) Trade practice includes a single or isolated action of any person in relation to any trade.*
- (v) While calculating the value of plant and machinery for the purposes of small scale/ancillary industrial undertaking, the following shall be included —*
 - (a) the cost of installation of plant and machinery;*
 - (b) the cost of research and development equipment and pollution control equipments;*
 - (c) the cost of fire fighting equipments; and*

- (d) *the charges paid for technical know-how for erection of plant and machinery.*
- (vi) *Special Economic Zone (SEZ) is deemed to be a foreign territory for the purposes of trade operations, duties and tariffs. (3 marks each)*

Answer 2(i)

Incorrect. The doctrine of 'Caveat Emptor' or 'let the buyer beware' which came into existence in the middle ages has been replaced by the principle of 'consumer sovereignty'. The Consumer Protection Act aims at protection of consumers and to provide for remedies which are simpler, more accessible, quicker and less expensive. It would not be wrong to say that Act is more inclined towards the principle of 'consumer sovereignty.'

Answer 2(ii)

Correct; Section 31 of the Trade Marks Act, 1999 stipulates that in all legal proceedings relating to trade mark registered under the Act, the original registration and all subsequent assignments and transmission thereof shall be prima facie evidence of its validity.

Answer 2(iii)

Correct; 'Cartel' as defined under section 2(c) of the Competition Act, 2002 includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods.

Answer 2(iv)

Correct; As per Section 2(u) of the MRTP Act, 1969, 'Trade Practice' means any practice relating to the carrying on of any trade and includes – (i) anything done by any person which controls or affects the price charged by or the method of trading of any trader or any class of trader (ii) a single or isolated action of any person in relation to any trade.

However, it has also been held that to be a 'practice' a particular conduct must be repetitive in nature; if it has happened in one particular case for which there is some explanation, it cannot be said to be practice. (In Re: *Auto Agents and Bajaj Auto Ltd. RTP Enq. No. 129/1986 order dated 10.12.1990*)

Answer 2(v)

Incorrect; in calculating the value of plant and machinery for the purposes of small scale/ancillary industrial undertaking the cost of installation of plant and machinery; the cost of research and development equipment and pollution control equipment; cost of fire fighting equipments and charges paid for technical know-how for erection of plant and machinery are excluded.

Answer 2(vi)

Correct; Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.

Question 3

- (a) *Distinguish between any two of the following :*
- (i) *'Intellectual property' and 'industrial property'.*

(ii) 'Contract of service' and 'contract for service'.

(iii) 'Patent' and 'patent of addition'. (5 marks each)

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

(i) Foreign contribution means donation, delivery or transfer made by any foreign source of any article, if the market value in India, of such article, on the date of such gift, delivery or transfer, exceeds Rs._____.

(ii) Environmental clearance is not required from the Central Government, if investment is less than _____ for any item reserved for the small scale sector.

(iii) The amount representing the full export value of goods or software exported is required to be realised and repatriated to India within _____ month(s) from the date of export.

(iv) The term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 shall be _____ year(s) from the date of filing of application for the patent.

(v) Literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus _____ year(s) beyond the death of the author. (1 mark each)

Answer 3(a)(i)

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.

Industrial Property

The expression 'Industrial Property' is sometimes misunderstood as relating to movable or immovable property used for industrial production. However, 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.

The term 'Industrial Property' may not appear entirely logical in the sense that the inventions are only concerned with the industry. In other words, the inventions are exploited in industrial plants while the trademarks, service marks, trade names and service names are concerned with both the commerce as well as industry. Notwithstanding the lack of logic, this term has acquired a meaning which clearly covers inventions as well as other marks. The Paris Convention also recognized industrial property to cover patent, trademark, service

mark, trade names, utility models, industrial designs, indication of source and appellations of origin and the repression of unfair competition.

Answer 3(a)(ii)

Contract of Service and Contract for Service: The Supreme Court in the case of *Indian Merchants Association v. V P Santha*, (CA No. 688 of 1993 decided on 13th November 1995) observed that a contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance.

Answer to Question No. 3(a)(iii)

<i>Particulars</i>	<i>Patents</i>	<i>Patent of addition</i>
Meaning	Patent is a monopoly grant and it enables the inventor to control the output and within the limits set by demand, the price of the patented products.	Any improvement in or modification of an invention described or disclosed in the complete specification, namely the main invention and the applicant also applies for a patent for that invention or is the patentee in respect thereof.
Date of filing of the application	Anytime	Same or later than the date of filing of the application in respect of the main invention.
Term	Twenty years	For a term equal to that of the patent for the main invention or so much thereof as has not expired.
Novelty of the invention	Compulsory for grant of patent	Regard shall be had also to the complete specification in which the main invention is described.

Answer 3(b)

- (i)Rs. 1000/-
- (ii)Rs. 10 million
- (iii)12 months
- (iv)Twenty
- (v)Sixty

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) An Indian company engaged in financial sector is interested in making investment in banking business abroad.*
- (ii) An Indian resident wants to purchase foreign securities by making remittances from his resident foreign currency (RFC) account.*
- (iii) A Bangladeshi millionaire is interested to invest in India subject to FDI policy of the Government of India.*
- (iv) An Indian public limited company wants to issue bonus shares to an existing non-resident shareholder.*
- (v) An Indian citizen resident outside India is interested in acquiring a house in Chennai and a farm house on the outskirts of Delhi. (1 mark each)*
- (b) Critically examine the application of the rule of strict liability while fixing the liability for environmental pollution. (5 marks)*
- (c) Jolly Ltd. maintained a guest house for the use of its managing director and other executives. It entered into an agreement with a firm for the installation of central air-conditioning system. The system installed did not function, developed snags and there was leakage of water from ducting system. The company filed a complaint claiming compensation for deficiency in service under the Consumer Protection Act, 1986. Will it succeed? Give reasons with reference to case law, if any. (5 marks)*

Answer 4(a)(i)

Indian parties are prohibited from making investment in a foreign entity engaged in banking business and real estate.

Answer 4(a)(ii)

In terms of Regulation 4 of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000 general permission has been granted to residents for purchase/acquisition of securities out of funds held in RFC account maintained in accordance with the FEM (Foreign Currency Accounts) Regulations 2000.

Answer 4(a)(iii)

Foreign Investment in India is governed by the FDI policy announced by the Government of India and the provisions of the Foreign Exchange Management Act (FEMA) 1999. Reserve Bank has issued Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 in this regard which has been amended from time to time. As per the regulations a citizen of Bangladesh is prohibited to invest in India.

Answer 4(a)(iv)

FEMA provisions allow Indian companies to freely issue bonus shares to existing non-resident share-holders, subject to adherence to sectoral cap, if any. However, such issue of bonus shares has to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (ICDR) Regulations 2009 (in case of listed companies) etc.

Answer 4(a)(v)

The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in

India) Regulations, 2000, issued by the RBI provide that an Indian citizen resident outside India may acquire any immovable property in India other than agricultural/plantation/ farm house. Therefore in the present case, he may acquire a house in Chennai but is not permitted to acquire a farm house at outskirts of Delhi.

Answer 4(b)

The 1861 ruling of the English Court in *Rylands v. Fletcher* provides that the person who for his own purpose brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep so at his peril and if he fails to do so, is prima facie liable for the damage. The liability under this rule is strict and it is no defence that the thing escaped without that persons wilful act, default or neglect or that he had no knowledge of its existence.

On the question of liability of an enterprise engaged in hazardous activities, the Supreme Court in the case of *M.C. Mehta and Another v. Union of India and others* [(1987) 1 Comp. LJ 99 (SC)] laid down for the first time a far-reaching ruling, that an enterprise which is engaged in hazardous or inherently dangerous activity and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the surrounding area owes an absolute and non-delegatable duty to the community to ensure that no harm results to any one on account of an hazardous or inherently dangerous nature of the activity which it has undertaken. The Court further reiterated that the rule in *Rylands v. Fletcher* [(1861-73) All.E.R. 146 HL] of strict liability would apply in India but without any exceptions whatsoever recognised in England.

In this way the Supreme Court has moved a step ahead to apply the principle of strict liability without any exceptions which may be known as principle of absolute liability.

Answer 4(c)

The facts of the case are similar to that of *J.K. Puri Engineers v. Mohan Breweries & Distilleries Ltd.* [First Appeal No. 32 of 1993 decided on 15.2.1996 (NCDRC)]. In this case the National Commission observed that the guest house was intended only for the residence of the directors, including the Managing Director and other executives of the company during their visits to the city. The system was installed only to provide comfort of these persons, may be in connection with their official and business activity. It was not used for a commercial purpose. It had no close or direct nexus with the commercial activity carried on by the company.

The Commission further held that even where the goods are purchased for commercial purpose, if there is a warranty, as in this case, for its maintenance, the purchaser becomes a consumer in respect of the services rendered or to be rendered by the manufacturer or supplier during the warranty period.

Jolly Ltd. would therefore, be a consumer and would be entitled to be compensated for the deficiency in service from the service provider.

Question 5

(a) Mention five important grounds for opposition to the grant of patents.

(5 marks)

(b) Critically examine how environmental pollution violates human rights.

(5 marks)

(c) Evaluate the efficacy of the Essential Commodities Act, 1955 in controlling the production, supply and distribution of essential commodities in the country. (5 marks)

Answer 5(a)

Section 25 of the Patents Act, 1970 deals with opposition to grant of patent and provides that the grant of patent may be opposed on the following grounds:

(a) that the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from the opponent or from a person under or through whom he claims;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim —

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document :

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation — For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(i) that in the case of convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mention the source of geographical origin of biological material used for the invention;

(k)that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.

Answer 5(b)

Life, livelihoods, culture and society, are fundamental aspects of human existence – hence their maintenance and enhancement is a fundamental human right. Destruction of environment and thereby of the natural resources, is therefore, a violation or leads to the violation of human rights – directly by undermining the above aspects of human existence, or indirectly by leading to other violations of human rights, for example through social disruption, conflicts and even war. Conversely, human rights violations of other kinds can lead to environmental destruction, for instance, displacement by social strife/war can cause environmental damage in areas of relocation; or breakdown in sustainable common property management. The manifestations of such violations present themselves through a loss of access to clean air and water; loss of access to productive land; loss of energy sources and biomass; loss of food and health security; social and economic marginalization and physical displacement.

Even after prolonged experiments the scientist could not establish, that human can survive in any other planet except earth. In the past, we had a great tradition of environment conservation which taught us to respect nature and to take cognizance of the fact that all forms of life-human, animal and plant are closely interlinked and that disturbance in one gives rise to an imbalance in others. This principle is included in the Directive Principles in the Constitution of India.

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

Answer 5(c)

The Government has powers under the Essential Commodities Act, 1955 to declare a commodity as an essential commodity to ensure its availability to people at fair price. The Act allows the Government to control the production, supply, and distribution of these commodities for maintaining or increasing supplies and securing their equitable distribution. Essentially, the Act aims to ensure easy availability of important commodities to consumers and check exploitation by traders.

The Act is implemented by the state governments and union territories, leaving the Central government to merely monitor the action taken by states in implementing the provisions of the Act. State and UT administrations use the powers of the Act to impose stock or turnover limits for various commodities and penalise those who hold them in excess of the limit. Stock limits have been imposed in several states for pulses, edible oil, edible oilseeds, rice, paddy and sugar.

Over a period of more than five decades the state governments and Union Territories administration have successfully invoked the Act for ensuring availability of essential commodities to the people.

PART—B

(Answer **ANY TWO** questions from this part.)

Question 6

Write notes on **any four** of the following :

- (i) Principles governing domestic enquiry.
- (ii) Purposes for which ESI fund may be expended under the Employees' State Insurance Act, 1948.
- (iii) Procedure to be followed for the certification of standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (iv) 'Excluded employee' under the Employees' Provident Fund Scheme, 1952.
- (v) Prohibition of employment of contract labour under the Contract Labour (Regulation and Abolition) Act, 1970.
- (vi) Theory of notional extension of employment under the Workmen's Compensation Act, 1923. (5 marks each)

Answer 6(i)

Principles governing Domestic Enquiry

- (a) The enquiry should be conducted by an unbiased person.
- (b) He should conduct the enquiry honestly.
- (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) Holding of preliminary enquiry is not mandatory.
- (f) Proper procedure should be followed in conducting enquiry.
- (g) The enquiry officer should briefly give reasons for reaching his conclusion.

Answer 6(ii)

Purposes for which the Fund may be expended

Section 28 of the E.S.I. Act provides that Fund shall be expended only for the following purposes:

- (i) payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;
- (ii) payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- (iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of

giving effect to the provisions of this Act;

(iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;

(v) payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

(vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;

(vii) defraying the cost (including all expenses) of Employees Insurance Courts set up under this Act;

(viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;

(ix) payment of sums under any decree, order or award, of any court or tribunal against the Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the Corporation;

(x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

(xi) defraying expenditure within the limits prescribed, on measure for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

(xii) such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.

Answer 6(iii)

Procedure for Certification of 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.

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

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

Answer 6(iv)

The term “excluded employee” has been defined in para 2(f) of the Employees’ Provident Fund Scheme, 1952 as follows:

‘Excluded employee’ means:

- (i) an employee who, having been a member of the Fund, withdraw the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph 69;
- (ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds five thousand rupees per month.

Explanation: “Pay” includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concession admissible thereon.

(iii) An apprentice.

Explanation: An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

Answer 6(v)

The ‘appropriate government’ under section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 is authorized after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work.

Section 10 (2) of the Act lays down sufficient guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment.

The guidelines are mandatory in nature and are:-

- Conditions of work and benefits provided to the contract labour.
- Whether the work is of Perennial nature.
- Whether the work is incidental or necessary for the work of an establishment.
- Whether the work is sufficient to employ a considerable number of whole-time workmen.
- Whether the work is being done ordinarily through regular workman in that establishment or a similar establishment.

Answer 6(vi)

Theory of notional extension of employment

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when he was doing his master’s job.

It is well settled that the concept of “duty” is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment (*Weaver v. Tradegar Iron and Coal Co. Ltd.*, (1940) 3 All, ER 15).

It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation (*Naima Bibi v. Lodhne Colliery* (1920) Ltd., 1977 Lab. I.C. NOC 14). If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment (*TNCS Corporation v. Poonamalai*, 1994 II LLN 950).

Question 7

(a) Distinguish between any two of the following :

(i) 'Legal strike' and 'justified strike'.

(ii) 'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.

(iii) 'Premises' and 'precincts' under the Factories Act, 1948. (5 marks each)

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

(i) The membership of provident fund scheme is compulsory for employees drawing a pay not exceeding Rs. _____ per month.

(ii) _____ means termination of the service of an employee otherwise than on superannuation.

(iii) Wages are to be paid within _____ working days from the date of termination of the employee whatever be the reason of termination.

(iv) Superannuation in relation to an employee, who is a member of the pension scheme, means the attainment of the age of _____ years.

(v) Under the Workmen's Compensation Act, 1923, the employer shall not be liable when the injury does not result in disablement for a period exceeding _____ days. (1 mark each)

(c) Choose the most appropriate answer from the given options in respect of the following :

(i) An application for the recovery of bonus from an employer shall be made within —

(a) Six months from the date on which the money became due

(b) One year from the date on which the money became due

(c) 60 Days from the date on which the money became due

(d) 90 Days from the date on which the money became due.

(ii) The occupier of a factory is required to send a written notice to the Chief Inspector of Factories at least —

(a) 7 Days before he begins to occupy or use the premises as a factory

(b) 15 Days before he begins to occupy or use the premises as a factory

(c) 21 Days before he begins to occupy or use the premises as a factory

(d) 10 Days before he begins to occupy or use the premises as a factory.

(iii) The State Government may make rules regarding the provisions and maintenance of a canteen for the use of workers wherein more than —

(a) 250 Workers are ordinarily employed

- (b) 500 Workers are ordinarily employed
- (c) 300 Workers are ordinarily employed
- (d) 100 Workers are ordinarily employed.

(iv) The minimum amount of compensation in case of permanent total disablement is

—

- (a) Rs. 1,00,000
- (b) Rs. 90,000
- (c) Rs. 80,000
- (d) Rs. 70,000.

(v) The Contract Labour (Regulation and Abolition) Act, 1970 applies to every establishment or contractor wherein workmen employed on any day of the preceding 12 months shall be —

- (a) 100 Workmen or more
- (b) 20 Workmen or more
- (c) 50 Workmen or more
- (d) 10 Workmen or more.

(1 mark each)

Answer 7(a)

(i) Legal strike and justified strike

A strike is legal if it does not violate any provision of the statute. In the case of *Indian General Navigation and Rly. Co. Ltd. v. Their Workmen*, (1960) 1 L.L.J. 13, the Supreme Court held that the law has made a distinction between a strike which is illegal and one which is not, but it has not made distinction between an illegal strike which may be said to be justifiable and one which is not justifiable.

Whether a particular strike is justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. If workmen go on strike without contravening statutory requirements, in support of their demands, the strike will be justified

The justifiability of strike has no direct relation to the question of its legality and illegality. The justification of strike as held by the Punjab & Haryana High Court in the case of *Matchwell Electricals of India v. Chief Commissioner*, (1962) 2 LLJ 289, is entirely unrelated to its legality or illegality. The justification of strikes has to be viewed from the stand point of fairness and reasonableness of demands made by workmen and not merely from stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled.

The Supreme Court in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha*, AIR 1980 SC 1896 held that justifiability of a strike is purely a question of fact. Therefore, if the strike was resorted to by the workers in support of their reasonable, fair and bona fide demands in peaceful manner, then the strike will be justified. Where it was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be unjustified.

(ii) Immediate employer & principal employer

According to Section 2(13A) of the E.S.I. Act, 1948 “immediate employer” means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under

the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on, in or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

“Principal Employer” as per Section 2(17) means the following:

- (i) in a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;
- (ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department.
- (iii) in any other establishment, any person responsible for the supervision and control of the establishment.

(iii) Premises and precincts

The word “premises” is a generic term meaning open land or land with building or building alone. The term ‘precincts’ is usually understood as a space enclosed by walls. Expression ‘premises’ including precincts does not necessarily mean that the premises must always have precincts. It merely shows that there may be some premises with precincts and some premises without precincts. The word ‘including’ is not a term restricting the meaning of the word ‘premises’, but is a term which enlarges its scope. All the length of railway line would be phase wise factories (*LAB IC 1999 SC 407*). Company engaged in construction of railway line is factory. (*LAB IC 1999 SC 407*).

The Supreme Court in *Ardeshir H. Bhiwandiwalla v. State of Bombay*, AIR 1962 S.C. 29, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word ‘premises’.

Answer 7(b)

- (i) Rs.6500
- (ii) Retrenchment
- (iii) Two
- (iv) 58 years
- (v) 3 days

Answer 7(c)

- (i)(b) One Year
- (ii)(b) 15 days
- (iii)(a) 250 workers
- (iv)(b) Rs.90,000
- (v)(b) 20 workmen or more

Question 8

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

(i) A driver of bus belonging to the employer was involved in an accident which resulted in the impairment of free movement of his left hand disabling him from driving vehicles. He was, however, capable of performing other work. He claimed compensation contending that the said accident had resulted in permanent disablement of driving vehicles. Will he succeed?

(ii) The workers were engaged by beedi manufacturer for rolling beedies at home subject to the rejection of defective beedies by manufacturer. The workers claimed that they should be treated as 'workers' under the provisions of the Factories Act, 1948. Will they succeed?

(iii) An out-worker prepared goods at his residence and later on supplied these goods to the employer. Will he be treated as an employee under the Minimum Wages Act, 1948?

(iv) Mauji ram was absent from duty without leave. the employer took the plea that it had resulted in the breach of continuous service for the purposes of gratuity under the Payment of Gratuity Act, 1972. Is the plea of the employer legal and enforceable?

(v) A company was running into losses and was unable to pay the minimum rates of wages to its workers. The workers pleaded that the employer must pay them the minimum rates of wages. The employer (company) intends to go to the court challenging the constitutional validity of the Minimum Wages Act, 1948. Will the company succeed?

(vi) An employee was on his way to the factory. He met with an accident one kilometre away from the place of his employment. He pleaded that the injury was caused by accident "arising out of and in the course of employment" and claimed employment injury benefits under the Employees' State Insurance Act, 1948. Will the employee succeed?

(vii) Some contract labour was engaged by an organisation. There was subsequently prohibition of employment of contract labour in that category as a consequence of the notification issued by the Central Government. The employer did not absorb the contract labour and employ them on regular basis. The workmen challenged the action of the organisation. Will they succeed? (4 marks each)

Answer 8

(i) The driver will not succeed. In *Divisional Manager KSRTC v. Bhimaiah*, 1977 II L.L.J. 521, it has been held that where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury is to be determined not on the basis of the work he was doing at the time of accident.

(ii) The workers will not succeed. In *Shankar Balaji Waje v. State of Maharashtra*, AIR 1963 Bom. 236, the question arose whether bidi roller is a worker or not. The management simply says that the labourer is to produce bidies rolled in a certain form. How the labourer

carried out the work is his own concern and is not controlled by the management, which is concerned only with getting bidies rolled in a particular style with certain contents.

The Supreme Court held that the bidi roller is not a worker. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Where the employer did retain direction and control over the workers both in manner of the nature of the work as 'also its details they will be held as workers.

(iii) Yes as per the decision in case of *Loknath Nathu Lal v. State of Madhya Pradesh* A.I.R. 1960 M.P. 181. In this case, an out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee in respect of the provisions of the Minimum Wages Act, 1948.

(iv) The plea of the employer is not legally enforceable. Mere absence from duty without leave can not be said to result in breach of continuity of service in respect of the provisions of the payment of Gratuity Act, 1972. [*Kothari Industrial Corporation v. Appellate Authority*, 1998 Lab IC, 1149 (AP)]

(v) The company will not succeed. The principles governing fixation of minimum wages are based on ethical considerations and not on any economic ground. The minimum wage has no reference either to the value of the work done by the worker or to the capacity of the industry to pay.

Minimum wages must be paid in any event. Broadly speaking, the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. The minimum wage is independent of kind of industry and applies to all, big or small alike. It sets the lowest limit below which wages cannot be allowed to sink in all humanity [*Kamani Metals & Alloys Ltd. v. The Workmen*, A.I.R. (1967) S.C. 1175].

"There is one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a base minimum wage. It is quite likely that in underdeveloped countires where unemployment prevails on a very large scale, unorganized labour may be available on starvation wages, but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare State. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms."

(vi) The employee will not succeed. In the case of *Regional Director ESI v. Francis de Costa*, 1997 LLJ I 34 SC, the Court held that where an employee who is on his way to factory meets with an accident, one K.M. from the place of employment, the injury cannot be said to be caused by accident arising out of and in the course of his employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory.

(vii) The workmen will not succeed. In *Steel Authority of India v. National Union of Water Front Workers and others*, AIR 2001 SC 3527, the Supreme held that neither Section 10 of the Act nor any other provision in the Act whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by the Appropriate Government under Section 10(1) prohibiting employment of contract labour in

any process or operation or other work in any establishment. Consequently, the principal employer cannot be required to order absorption of contract labour working in the concerned establishment.
