

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) Bid rigging*
- (ii) Principal display panel*
- (iii) Collective trade mark*
- (iv) Relevant geographic market*
- (v) Legal metrology*
- (vi) Potential infringement of a patent*
- (vii) Principles of sustainable living. (3 marks each)*

Answer 1(i)

Bid rigging

The explanation appended to the Section 3 of the Competition Act, 2002 defines the term bid rigging to mean any agreement between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

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

Answer 1(ii)

Principal display panel

Principal display panel in relation to a package has been defined under Rule 2(h) of the Legal Metrology (Packaged Commodities) Rules, 2011 to mean the total surface area of the package where the information is required to be given. For this purpose, all the information could be grouped together and given at one place or the pre-printed information could be grouped together and given in one place and on line information grouped together in other place.

Rule 7 specifies the area, size, letter, etc. of the principal display panel in different cases. This rule specifies that in the case of a package having a capacity of five cubic centimeters or less, the principal display panel may be card or tape affixed firmly to the package or container or bearing the required information.

The height of any numeral in the declaration on the principal display package should not be less than that specified in Table I to this rule. The height of letters in the declaration should not be less than 1mm height. When blown, formed, moulded, embossed or perforated the height of letters should not be less than 2mm. However, the width of the letter or numeral should not be less than one third of its heights, except in the cases of numerals/ letters specified under the rules.

Answer 1(iii)**Collective trade mark**

As per Section 2(1) (g) of Trade Marks Act, 1999, Collective Marks means a trade mark distinguishing the goods or services of members of an association of persons not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others.

Sections 61 to 68 contain provisions relating to the registration of Collective trade marks. These sections provide for registration of a collective mark which belongs to a group or association of persons and the use thereof is reserved for members of the group or association of persons. Collective marks serve to distinguish characteristic features of the products or services offered by those enterprises. It may be owned by an association which may not use the collective mark but whose members may use the same. The association ensures compliance of certain quality standards by its members, who may use the collective mark if they comply with the prescribed requirements concerning its use. The primary function of a collective mark is to indicate a trade connection with the Association or Organisation.

Answer 1(iv)**Relevant Geographic Market**

As per Section 2(s) of the Competition Act, 2002 'Relevant Geographic Market' means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from conditions prevailing in neighbouring areas.

For determining the "relevant geographic market", the Competition Commission of India shall have due regard to all or any of the following factors, namely;—

- (a) regulatory trade barriers;
- (b) local specification requirements;
- (c) national procurement policies;
- (d) adequate distribution facilities;
- (e) transport costs;
- (f) language;
- (g) consumer preferences;
- (h) need for secure, regular supplies or rapid after-sales service.

Answer 1(v)**Legal Metrology**

Legal Metrology is the name by which the law relating to weights and measures is known in international parlance. Legal Metrology is very vital for scientific, technological and industrial progress of any country. The establishment of national standards of weights and measures and their proper enforcement aim at ensuring accuracy of measurements and measuring instruments and thus legal metrology strengthens the national economy in a broader sense besides being a potential instrument of consumer protection. The scope of legal metrology according to international practice extends to three broad fields of human activities, namely, commercial transactions, industrial measurements and measurements needed to ensure public health and human safety.

As per section 2(g) of Legal Metrology Act, 2009 “Legal Metrology” means that part of metrology which treats units of weight and measurement, methods of weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements.

Answer 1(vi)**Potential infringement of patent**

Patent infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder. Permission may usually be granted in the form of a license. The patent infringement may vary by jurisdiction, but it normally includes using or selling the patented invention. In several countries, a use is needed to be commercial to constitute patent infringement.

Action of Infringement

Whenever the rights of the patentee are violated, his rights are secured again by the Act through judicial intervention. The patentee has to institute a suit for infringement. The relief's which may be awarded in such a suit are:

1. Interlocutory/ interim injunction.
2. Damages or account of profits.
3. Permanent injunction.

As regards potential infringement, Section 19(1) of the Patents Act, 1970 provides that if in consequence of the investigations it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent, be inserted in the applicant's complete specification by way of notice to the public within such time as may be prescribed, unless

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

Answer 1(vii)**Principles of Sustainable Living**

The principles of sustainable living, focus on respect and care for the community of life, improving the quality of human life, conserving the earth's vitality and diversity, minimizing the depletion of non-renewable resources, keeping within the earth's carrying capacity, changing personal attitudes and practices, enabling communities to care for their own environments, providing a natural framework for integrating development and conservation. In addition to the above, more familiar sectors of environment and policy which requires attention are, energy, business, human settlements, fresh water, oceans and coastal areas etc.

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

Question 2

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

- (i) *Registration of an undertaking belonging to the First Schedule of the Industries (Development and Regulation) Act, 1951 is not necessary in certain cases.*
- (ii) *The provisions of the Competition Act, 2002 are not applicable to a government company.*
- (iii) *Money laundering can provide short-term benefits to the economy.*
- (iv) *Special Economic Zones are growth engines.*
- (v) *The limitation period for filing a complaint under the Consumer Protection Act, 1986 is two years from the date on which the cause of action arises without any exception.*
- (vi) *There is no difference between the preparation for committing an offence and an attempt to commit an offence under the Essential Commodities Act, 1955.* (3 marks each)

Answer 2(i)**True**

Registration of an undertaking will not be necessary if the undertaking (i) is a small scale industrial undertaking or (ii) is otherwise exempt from the licensing/registration provisions of the Industries (Development and Regulation) Act, 1951 or (iii) where the undertaking concerned is not satisfying the definition of the term 'factory' under the Act.

Answer 2(ii)**False**

The provisions of the Competition Act, 2002 are applicable to Government Company as it falls within the ambit of definition 'Enterprise' defined under section 2(h) of the Competition Act, 2002, which is as under:

'Enterprise' means a person or a department of the Government, who or which is, engaged in any activity, relating to production, control of goods or articles or provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities whether such unit or division or subsidiary is located at the same place where the enterprise is located or at different place(s).

However, it does not include any activity of the Central Government relating to sovereign functions of Government including all activities carried on by the Government Departments dealing with atomic energy, currency, defence and space.

Thus, Sovereign functions of Government are excluded from definition of enterprise but Government Departments performing non-sovereign functions for consideration are subject to compliance with the Competition Act, 2002.

Answer 2(iii)**False**

Money laundering is the processing of criminal proceeds to disguise its illegal origin. Economies with growing or developing financial centers, but inadequate controls are particularly vulnerable to money laundering, as against the established financial center countries, which implement comprehensive anti-money laundering regimes. The gaps in a national anti-money laundering system are exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective counter measures. As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organised crime.

In times of decelerating growth, an infusion of hard currency can bolster a country's foreign reserves, ease the hardship associated with budget tightening policies and moderate foreign indebtedness. While these are short-term benefits associated with an inflow of criminal monies, the long-term effects are negative. One difference between official borrowing and laundered funds is that the former can be controlled by Government, whereas the funds owned by criminals escape the Governments ability to control and regulate the economy.

Answer 2(iv)**True**

Special Economic Zones (SEZ) are growth engines that can boost manufacturing, augment exports of goods and services, generate employment opportunity, promotion of investment from domestic and foreign source, development of infrastructure facilities and it generate additional economic activity.

Answer 2(v)**False**

Section 24A of the Consumer Protections Act, 1986 provides that the District Forum, the State Commission, or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

However, where the complainant satisfies the Forum/Commission as the case may be, that he had sufficient cause for not filing the complaint within two years, such complaint may be entertained by it after recording the reasons for condoning the delay.

Answer 2(vi)**False**

Section 8 of the Essential Commodities Act, 1955 provides that any person who attempts to contravene or abets a contravention of any order made under Section 3 shall be deemed to have contravened that order.

However, an attempt to commit an offence is to be distinguished from a preparation to commit the offence. The former is punishable, but the latter is not.

In *Malkiat Singh and another v. State of Punjab* (AIR 1970 SC 710), the question to be considered was whether upon the facts found by the lower Courts any offence had been committed by the appellants. Under the Punjab Paddy (Export) Order, 1939 export of paddy from the State of Punjab was prohibited. The word 'export' was defined to mean to take' or cause to be taken out of any place within the State of Punjab, to any place outside the State. On suspicion, the truck driven by Malkiat Singh, and carrying the paddy in question, was stopped at a place which was 32 miles away from the Punjab border, well within the State of Punjab. It was, therefore, evident that there was no export of paddy within the meaning of the Order. It was, however, argued on behalf of the respondents that there was an attempt on the part of the appellant to commit the offence. Rejecting this contention, it was held that on the facts of the case there was no attempt on the part of the appellants to commit the offence of export. It was merely a preparation on the part of the appellant, and as a matter of law, a preparation for committing an offence is different from an attempt to commit it.

Question 3

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

- (i) *'Wholesale package' and 'retail package'.*
- (ii) *'Carry on business licence' and 'industrial licence'.*
- (iii) *'Invention' and 'patentable invention'.*
- (iv) *'Appellate tribunal' and 'court'.* (5 marks each)

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

- (i) *An appeal against the order passed by the Consumer Disputes*

Redressal Forum has to be preferred within _____ days from the date of the order to the State Commission.

- (ii) Prior approval of RBI is required for the release of foreign exchange for meeting the expenses of medical treatment exceeding US\$_____ or its equivalent.*
- (iii) Any person aggrieved by an order of confiscation of an essential commodity may prefer an appeal to the _____ within one month from the date of passing of the order.*
- (iv) Foreign direct investment (FDI) in trusts other than _____ is not permitted.*
- (v) Prior approval of RBI is required for availing of foreign exchange facility exceeding _____ for persons going to USA for employment.*

(1 mark each)

Answer 3(a)(i)

Distinction between Wholesale Package and Retail Package

Wholesale package means a package containing—

- (a) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to single consumer; or
- (b) a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity to the consumer in smaller quantities; or
- (c) packages containing or more than ten retail packages provided that the retail packages are labeled as required under the rules.

Retail package means the packages which are included for retail sale to the ultimate consumer for the purpose of consumption as the commodity contained therein and includes the imported packages. The ultimate consumer however does not include industrial or institutional consumer.

Institutional consumer means the institutional consumer like transportation, Airways, Railways, Hotels, Hospitals or any other service institutions who buy packaged commodities directly from the manufacturer for use by that institution and Industrial Consumer means the industrial consumer who buy packaged commodities directly from the manufacturer for use by that industry.

Answer 3(a)(ii)

Distinction between Carry on Business licence and Industrial licence

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

licence should be submitted in prescribed form to the SIA, Department of industrial Policy and Promotion, Ministry of Commerce and Industries.

An Industrial licence is a written permission from the Government to an industrial undertaking to manufacture specified articles, listed in the First Schedule to the Industries (Development and Regulation) Act, 1951 and includes particulars of industrial undertaking, its location, articles to be manufactured, the capacity on the basis of maximum utilisation of plant and machinery etc. The licence is subject to a validity period within which the licensed capacity of the undertaking should be established.

Answer 3(a)(iii)

Distinction between Invention and Patentable Invention

Section 2(j) of the Patents Act, 1970 defines invention as to mean a new product or process involving an inventive step and capable of Industrial application. The term 'inventive step' as to mean a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.

The essential requirements of a patentable invention are novelty, inventive step, utility and commercial viability. Apart from the minimum requirements for being patentable, there are some more limitations on inventions with respect to their patentability. As per the Patents Act, 1970, the subject matter of patent must be a process or a product. However, certain inventions are considered to be not patentable and are not considered to be inventions. There are also some other inventions which are excluded from patentability. Some are considered to be not inventions, mainly for the sake of protecting public interest.

Answer 3(a)(iv)

Distinction between Appellate Tribunal and Court

Appellate Tribunal is constituted under a special enactment. Special matter and questions are entrusted to the Appellate Tribunal for their decision. The procedures to be followed in the case of Appellate Tribunal are enshrined in the enactment itself whereas the Court will follow the procedures prescribed under the Civil Procedure Code.

Composition of Appellate Tribunal consists of both judicial and technical member, but in case of Court, members are judicial. Any person aggrieved by the order of Appellate Tribunal may appeal to High Court/Supreme Court as the case may be as specified under that special enactment Act.

Both the Courts and the Appellate Tribunals are constituted by the State and are vested with judicial as distinguished from purely administrative or executive functions. They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to the jurisdiction.

The basis and the fundamental feature which is common to both the Courts and the Appellate Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign state. Thus, there is no much difference logically between the Court and the Tribunal and both are meant to resolve the disputes.

Answer 3(b)

- (i) An appeal against the order passed by the Consumer Disputes Redressal Forum has to be preferred within **30** days from the date of the order to the State Commission.
- (ii) Prior approval of RBI is required for the release of foreign exchange for meeting the expenses of medical treatment exceeding US\$ **1,00,000** or its equivalent.
- (iii) Any person aggrieved by an order of confiscation of an essential commodity may prefer an appeal to the **State Government** within one month from the date of passing of the order.
- (iv) Foreign direct investment (FDI) in trusts other than **Venture Capital Fund** is not permitted.
- (v) Prior approval of RBI is required for availing of foreign exchange facility exceeding **US \$ 1,00,000** for persons going to USA for employment.

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) *Ram, a person resident in India, intends to invest ₹25,000 in foreign securities in a calendar year.*
 - (ii) *Infotech Ltd., an Indian company owning a micro/small enterprise, intends to issue shares against foreign direct investment.*
 - (iii) *Shyam, an Indian resident, wishes to acquire qualification shares for becoming a director of a company outside India and the consideration is US \$30,000.*
 - (iv) *Naresh, an Indian citizen, enters into an agreement for the lease of machinery to a foreign party and intends to ship the machinery abroad.*
 - (v) *Mohan, an Indian citizen resident outside India, intends to acquire immovable property in India.* (1 mark each)
- (b) *Ram Dhenu Ltd. and Diamond Engineers entered into a contract for the supply of electrical equipments. The contract contained an arbitration clause to refer the disputes to an arbitral tribunal. Ram Dhenu Ltd. made a complaint to the Consumer Disputes Redressal Forum for 'deficiency in service'. The opposite party opposed the complaint in view of the arbitration clause contained in the contract. Will it succeed ? Give reasons. (5 marks)*
- (c) *Mention the obligations of banking companies, financial institutions and intermediaries under the Prevention of Money Laundering Act, 2002.* (5 marks)

Answer 4(a)(i)

Investment in foreign Securities is a Capital Account Transaction specified in Schedule I of Foreign Exchange Management (Permissible Capital Account Transaction) Regulations, 2000.

Regulation 4 of Foreign Exchange Management (Permissible Capital Account Transaction) Regulations, 2000 provides that subject to the provisions of the Foreign Exchange Management Act, 1999 or the Rules or Regulations or directions or orders made or issued thereunder, a resident individual may, draw from an authorized person of foreign exchange not exceeding US\$ 2,00,000 per financial year with effect from September 26, 2007, for capital account transaction specified in Schedule I.

In the light of the above legal provisions, Ram, can invest Rs. 25, 000 in foreign securities in a calendar year.

Answer 4(a)(ii)

Indian companies including those which are micro and small enterprises can issue capital against foreign direct investment subject to compliance with Foreign Direct Investment Policy issued by the Government from time to time and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

In the light of the above legal provisions, Infotech Ltd. can issue shares against foreign direct investment.

Answer 4(a)(iii)

As per Regulation 24 of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000 a person resident in India being an individual may acquire foreign securities as qualification shares for becoming a director of a company outside India provided the number of shares so acquired shall be the minimum required to be held for holding the post of director and in any case shall not exceed 1% of the paid up capital of the company and the consideration for acquisition of such share does not exceed the ceiling as stipulated by Reserve Bank of India from time to time. Currently Reserve Bank of India stipulates that the said limit shall not exceed US\$ 20, 000. Otherwise prior approval of Reserve Bank of India is required.

In the light of the above legal provisions Shyam, can acquire qualification share for US \$ 30,000 with prior approval of Reserve Bank of India.

Answer 4(a)(iv)

Regulation 14 of the Foreign Exchange Management (Export of Goods and Services) Regulation, 2000 provides that no person is allowed, except with the prior permission of the Reserve Bank, to take or send out by land, sea or air any goods from India to any place outside India on lease or hire or under any arrangement or in any other manner other than sale or disposal of such goods.

In the light of the above legal provision, Naresh, can enter into agreement for the lease of machinery to a foreign party and ship the machinery abroad with prior approval of Reserve Bank of India.

Answer 4(a)(v)

As per Regulation 3 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, an Indian citizen resident outside India may acquire any immovable property in India other than agricultural or plantation property or farm house.

In the light of aforesaid legal provision, Mohan can acquire any immovable property in India other than agricultural or plantation property or farm house.

Answer 4(b)

The opposite party will not succeed.

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

Answer 4(c)

Prevention of Money Laundering Act, 2002 provides that every banking company, financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions legally connected to each other, and when such series of transactions take place within a month. These informations are required to be furnished to the Director within such time as may be prescribed. Banks and financial institutions are required to verify and maintain the records of the identity of all its clients, in such manner as may be prescribed. The records as mentioned above are required to be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company, financial institution or intermediary.

Question 5

- (a) Describe the powers of the National Green Tribunal constituted under the National Green Tribunal Act, 2010. (5 marks)
- (b) 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 and of those residing in the surrounding areas owes an absolute and non-delegatable duty to the community. Comment. (5 marks)
- (c) Briefly mention the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 relating to control of noise pollution. (5 marks)

Answer 5(a)

Section 19 National Green Tribunal Act, 2010 prescribes that, the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. The Tribunal has been empowered to regulate its own procedure and also not bound by the rules of evidence contained in the Indian Evidence Act, 1872.

National Green Tribunal, for the purpose of discharging its functions, has been entrusted with the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing summons for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order or dismissal of any representation for default or any order passed by it ex parte; and
- (i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;
- (j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;
- (k) any other matter which is required to be, or may be prescribed by the Central Government.

Section 19 (5) provides that all proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Section 15 of the National Green Tribunal Act, 2010 also empowers National Green Tribunal, by an order, to provide,—

- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
- (b) for restitution of property damaged;
- (c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

Answer 5(b)

The statement is true.

Supreme Court in *M.C. Mehta and Another v. Union of India and others* [(1987) 1 Comp. LJ 99 (SC)] ruled that an application for compensation in a pollution case can be maintained under Article 32 of the Constitution, for, such application is for the protection of the fundamental rights of the people and the Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights. On the question of liability of an enterprise engaged in hazardous activities, the Supreme Court laid down for the first time a far-reaching ruling, that an enterprise which is engaged in hazardous or inherently dangerous 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. The Court also ruled that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect.

Answer 5(c)

In order to control the noise pollution caused from various sources such as industrial activity, construction activity, generator sets, loud speakers, public address system, music systems, vehicular horns and other mechanical devices the Central Government has framed certain rules known as 'The Noise Pollution (Regulation and Control) Rules, 2000. The rules provide for the ambient air quality standard in respect of noise for different areas/zones. An area comprising 100 metres around hospitals, educational institutions and courts has been declared as the silence area/zone. The ambient air quality standards shall also be considered by the all development authorities, local bodies while taking any development activity. A loud speaker or a public address system shall not be used at night (between 10:00 p.m. to 6:00 a.m.) except in closed premises for communication. Whoever commits any offence of playing music or uses any sound amplifiers, beats a drum or blows a horn, etc. in a silence zone/area shall be liable to a penalty.

PART B

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

Question 6

Write notes on any four of the following :

- (i) 'Forfeiture of gratuity' under the Payment of Gratuity Act, 1972.
- (ii) 'Employment injury' under the Employees' State Insurance Act, 1948.
- (iii) 'Manufacturing process' under the Factories Act, 1948.
- (iv) 'Partial disablement' under the Workmen's Compensation Act, 1923.

- (v) *'General prohibition of strikes and lock-outs' under the Industrial Disputes Act, 1947.*
- (vi) *'Temporary application of model standing orders' under the Industrial Employment (Standing Orders) Act, 1946.* (5 marks each)

Answer 6(i)

Forfeiture of Gratuity

Forfeiture of gratuity has been dealt with in two parts under the Payment of Gratuity Act, 1972:

- (a) *Forfeiture to the extent of the damage*: Section 4(6)(a) provides that the gratuity of an employee whose services have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss so caused.
- (b) *Circumstances under which gratuity can be forfeited*: Section 4(6)(b) of the Act envisages the circumstances under which gratuity of an employee may be forfeited. It says gratuity payable to an employee may be wholly or partially forfeited if the services of an employee have been terminated for:
 - (i) his riotous and disorderly conduct or any other act of violence on his part, or
 - (ii) any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited. Where the services have not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee.

Answer 6(ii)

Employment Injury

Employment injury under Section 2(8) of the E.S.I. Act, 1948 means "a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India".

It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors. There should be a nexus between the circumstances of the accident and the employment. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. It is sufficient if it is proved, that the injury to the employee was caused by an accident arising out of and in the course of employment no matter when and where it occurred. There is not even a

geographical limitation. The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and employment (*Regional Director, E.S.I. Corpn. v. L. Ranga Rao*, 1982 I-L.L.J. 29).

Answer 6(iii)

Manufacturing Process

Manufacturing process under Section 2(k) of the Factories Act, 1948 means any process for

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water or sewage or any other substance; or
- (iii) generating, transforming, transmitting power; or
- (iv) composing types for printing, printing by letter-press, lithography, photogravure or other similar process, or book-binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage.

The definition is quite important and it has been the subject of judicial interpretation in large number of cases. The Madras High Court in the case of *In re. Seshadrinatha Sarma*, 1966 (2) LLJ 235, held that to constitute a manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable.

Division Bench of A.P. High Court held that to determine where certain premises is factory, it is necessary that it should carry on manufacturing process and it does not require that the process should end in a substance being manufactured [*Alkali Metals (P) Ltd. v. ESI Corpn.*, 1976 Lab.I.C.186].

Answer 6(iv)

Partial Disablement

Disablement means loss of capacity to work or to move. The Workmen's Compensation Act, 1923 (renamed as the Employees' Compensation Act, 1923) 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.

Answer 6(v)

General Prohibition of Strikes and Lock-outs

The Industrial Disputes Act, 1947 does not grant an unrestricted right of strike or lock-out. Under Section 10(3) and Section 10A(4A) of the Act, the Government is empowered to issue order for prohibiting continuance of strike or lock-out. The general provisions prohibiting strikes and lock-outs have been laid down in Sections 23 of the Industrial Disputes Act, 1947.

As per Section 23 of the Industrial Disputes Act, 1947 no workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:

- (a) during the pendency of conciliation proceedings before a Board and seven days the conclusion of such proceedings;
- (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
- (bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of Section 10A; or
- (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

The purpose of above provisions is to ensure peaceful atmosphere during the pendency of any proceedings before a Conciliation Officer, Labour Court, Tribunal or National Tribunal or Arbitrator under Section 10A.

Answer 6(vi)

Temporary Application of Model 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.

The matters prescribed in the Schedule to the Act are called Model Standing Orders. Section 12-A provides that for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the Standing Orders as finally certified under this Act come into operation in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment.

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 matters specified in the Schedule to the Act and any other matter that Government may prescribe by rules.

Question 7

- (a) Distinguish between any two of the following :
- (i) 'Arbitration' and 'conciliation' for the resolution of industrial disputes under the Industrial Disputes Act, 1947.
 - (ii) 'Lay-off' and 'lock-out' under the Industrial Disputes Act, 1947.
 - (iii) 'Principal employer' and 'contractor' under the Contract Labour (Regulation and Abolition) Act, 1970.
 - (iv) 'Committee method' and 'notification method' for the fixation of minimum wages under the Minimum Wages 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 Payment of Bonus Act, 1965 is applicable to every factory and to every other establishment where _____ are employed on any day during an accounting year.
 - (ii) All contributions paid under the Employees' State Insurance Act, 1948 and other moneys received on behalf of the ESI Corporation shall be paid into a fund called _____.
 - (iii) The employer shall arrange to pay the amount of gratuity within _____ days from the date of its becoming payable to the person to whom it is payable.
 - (iv) Under the Employees Deposit-linked Insurance Scheme, employers are required to pay contributions for the insurance fund at the rate of _____ of the total emoluments.
 - (v) The Contract Labour (Regulation and Abolition) Act, 1970 shall not apply to establishments in which work only of _____ is performed. (1 mark each)
- (c) Write the most appropriate answer from the given options in respect of the following:
- (i) An employee is not entitled to bonus if —
 - (a) He has worked for less than 6 months
 - (b) He is guilty of any misconduct
 - (c) He is in managerial cadre
 - (d) He is a part-time permanent employee.
 - (ii) The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is applicable to all factories and certain establishments employing—
 - (a) 20 or more persons

- (b) *50 or more persons*
- (c) *10 or more persons*
- (d) *Without any limit.*
- (iii) *Compensation under the Workmen's Compensation Act, 1923 becomes due —*
 - (a) *On the date of death/accident of the workman*
 - (b) *On the date of order of the Commissioner for workmen's compensation*
 - (c) *On the completion of one month from the date of accident*
 - (d) *On demand from the workman.*
- (iv) *The employment of contract labour can be prohibited —*
 - (a) *By an order of the labour court*
 - (b) *By notification of the Government*
 - (c) *When the number of workmen exceeds 50*
 - (d) *By the Central Advisory Board.*
- (v) *The interpretation of certified standing orders is within the jurisdiction of —*
 - (a) *Labour court*
 - (b) *Certifying officer*
 - (c) *Workmen*
 - (d) *Employer and workmen.*

(1 mark each)

Answer 7(a)(i)

Arbitration and Conciliation

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

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

Conciliation is the most important method for prevention and settlement of industrial disputes through third party intervention. It is an attempt to reconcile the views of the disputants and bring them to an agreement.

Conciliation may be described as “the practice by which the services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution. It is a process of rational and orderly discussion of differences between the parties to a dispute under the guidance of a conciliator”.

Conciliation officers & Boards of Conciliation: Under the Industrial Disputes Act, 1947 the appropriate Government is authorized to appoint Conciliation Officers as well as a Board of Conciliation for mediating in and promoting the settlement of industrial disputes [Section 4 & 5]. The main objective of appointing the Conciliation Officers, by the appropriate Government, is to create congenial atmosphere within the establishment where workers and employers can reconcile on their disputes through the mediation of the Conciliation Officers.

Answer 7(a)(ii)

Lay-off and Lock-out

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

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

Answer 7(a)(iii)

Principal Employer and Contractor

As per Section 2(1)(g) of the Contract Labour (Regulation and Abolition) Act, 1970 "principal employer" means

- (i) In relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.
- (ii) In a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named.
- (iii) In a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named.
- (iv) in any other establishment, any person responsible for the supervision and control of the establishment.

The Explanation appended to the section states that for the purpose of sub-clause (iii) of this clause, the expressions mine, owner and agent shall have the meanings

respectively assigned to them in clause (j) clause (l) and clause (c) of sub-section (l) of Section 2 of the Mines Act, 1952.

As per Section 2(1)(c) of the Act, “contractor” in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.

Answer 7(a)(iv)

Committee Method & Notification Method

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 ‘committee method’ or ‘notification method’.

Committee Method : Under this method, the appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. 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.

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 7(b)

- (i) The Payment of Bonus Act, 1965 is applicable to every factory and to every other establishment where **20 or more persons** are employed on any day during an accounting year.
- (ii) All contributions paid under the Employees' State Insurance Act, 1948 and other moneys received on behalf of the ESI Corporation shall be paid into a fund called **Employees' State Insurance Fund** .
- (iii) The employer shall arrange to pay the amount of gratuity within **30** days

from the date of its becoming payable to the person to whom it is payable.

- (iv) Under the Employees Deposit-linked Insurance Scheme, employers are required to pay contributions for the insurance fund at the rate of **1%** of the total emoluments.
- (v) The Contract Labour (Regulation and Abolition) Act, 1970 shall not apply to establishments in which work only of **an intermittent or casual nature** is performed.

Answer 7(c)(i)

- (b) He is guilty of any misconduct

Answer 7(c)(ii)

- (a) 20 or more persons

Answer 7(c)(iii)

- (a) On the date of death/accident of the workman

Answer 7(c)(iv)

- (b) By notification of the Government

Answer 7(c)(v)

- (a) Labour Court

Question 8

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

- (i) *Raghu, on retirement, has withdrawn the entire amount of his accumulation in the provident fund. Later on, he was re-appointed for a fixed tenure. The provident fund inspector claimed contribution in respect of the salary paid to Raghu. Is the demand made by the inspector tenable in law ?*
- (ii) *XYZ Ltd., employing more than 50 workmen in its factory, failed to register itself and pay contributions under the Employees' State Insurance Act, 1948. The inspector of the ESI Corporation issued a notice to the company and directed it to register and pay contributions towards its employees. On failure to comply with the terms of notice, ESI Corporation determined the contributions payable by the company and demanded payment with interest and penalty. The company disputed its liability and asked the ESI Corporation to approach the ESI Court for adjudication of the claim. Is the company justified ?*
- (iii) *Sooraj Hospital has a laundry in its premises to ensure a high degree of hygiene standard for washing the linen used in the hospital. The employees of the hospital work in the laundry and the laundry cannot*

be separated from the hospital. The inspector of factories issued a notice to Sooraj Hospital to register it as a factory. Is he justified ?

- (iv) *Harish, a mechanic, was alleged to have indulged in an act of misconduct. An inquiry was held into the charge against him as per the procedure laid down in the certified standing orders. The copy of the inquiry report was not furnished to him before imposing penalty on the ground that it was not provided under the certified standing orders. Is the plea of the management tenable in law ?*
- (v) *Lotus Info. Ltd. entered into a settlement with its workmen providing for payment of gratuity at the rate of one month's salary for every completed year of service. An employee retired on superannuation and claimed gratuity as per the settlement. The employer pleaded that he is under no obligation to pay gratuity more than the rate prescribed under the Payment of Gratuity Act, 1972. Is the employer's contention tenable in law ?*
- (vi) *A workman was dismissed from service on 15th February, 2009 after a departmental enquiry for an act of misconduct. No bonus was paid to him for the accounting year during which he was dismissed. Subsequently, he was reinstated by the court with full back wages. Will the workman be entitled to claim bonus alongwith full back wages?*
- (vii) *Amar was the owner of a ginning factory. Certain persons were engaged in putting the ginned cotton into what was called bojhas and they were engaged for that work not by the owner but by the merchants who owned cotton. The owner had not entered their names in the attendance register of the factory. Are the persons employed by the merchants covered under the category of 'workers' under the provisions of the Factories Act, 1948 ? (4 marks each)*

Answer 8(i)

The demand made by the Provident Fund Inspector is not in accordance with law. An employee, who has withdrawn the full amount of the accumulation in the provident fund, under Clause (a) or (b) of para 69(1) of the Provident Fund Scheme, is an excluded employee. As per the provisions of the para 69 of the Scheme, "a member may withdraw the full amount standing to his credit in the fund (i) on retirement from service after attaining the age of 55 years".

When an employee has withdrawn the full amount of accumulation of the provident fund, there is no question of any P.F. dues in respect of such an employee upon his re-appointment. This has been held by the *Bombay High Court in Bombay Printers Ltd. & Others v. Union of India & Others* (1992) (1) LLJ 8160.

Answer 8(ii)

The company is not justified. In *ESIC v. F. Fibre Bangalore Pvt. Ltd.*, [1997 (II) LLJ 739, SCC 625], it was held that Section 45A of the ESI Act, 1948 empowers the Employees State Insurance Corporation to determine the contribution payable by the

employer. Though Section 75 of the Act does not envisage as to who has to approach the Employees Insurance Court, by necessary implication when the employer denies the liability or applicability of the provisions of the Act, it is for the employer to approach the Employees Insurance Court and seek adjudication.

Answer 8(iii)

The Inspector of Factories is not justified in his action. The facts of the case are almost based on the case *Dr. P S S Sundar Rao v. Inspector of Factories, Vellore* – 1984 (II) LLJ 237 Madras.

In this case the Madras High Court held that the laundry is only a subsidiary, minor or incidental establishment of the hospital which is not a factory. One department of the hospital established for the efficient functioning of the hospital cannot therefore be disjoined from the main institution and termed to be a factory. The paramount or the primary character of the main institution alone has to be taken into consideration and when the main institution is not a factory, a department thereof cannot become so, even though a manufacturing process is carried on there.

The persons working in the laundry are not exclusively employed in the laundry. They are the employees of the hospital doing all kinds of work in connection with the hospital in the various departments of the hospital, who are by turns asked to do the work in the laundry. They are not therefore workers within the meaning of S. 2(1) of the Factories Act and hence the laundry in the Sooraj Hospital is not a factory as defined in the Act.

Answer 8(iv)

The stand of the management is not justified. It is not a valid defence to commit breach of principles of natural justice simply because such a provision does not find place in the standing orders. The sweep of natural justice is too wide and it can be read consistently with standing orders. Even if the standing orders do not so require, a copy must be supplied in obedience to the principles of natural justice. Failure to supply copy of the report will leave material infirmity in the proceedings. [*Shriram Yadav v. Rajasthan State Road Transport Corporation, Jaipur & Others* – 1996 (III) LLJ 1144 Raj.].

Answer 8(v)

The employers' contention is not tenable in Law. Section 4(5) of the Payment of Gratuity Act, 1972 provides that nothing contained in the section shall affect the right of an employee to receive better terms of gratuity under any award or settlement or contract. This provision can be invoked by the employee and not by employer, as per the order of the Kerala High Court in case of *Raveendranatha Prabhu v. Rajasthan*, [(1998) (I) LLJ 204].

Answer 8(vi)

The workman would be entitled to claim bonus along with full back wages. As the Labour Court has set aside the dismissal order and awarded reinstatement with full back wages, the worker is deemed to be in service during the period of his dismissal and is entitled to bonus.

An employee suspended but subsequently reinstated with full back wages can not be treated to be ineligible for bonus for the period of suspension. *Project Manager, Ahmedabad Project, ONGC v. Sham Kumar Sahegal* (1995) 1 LLJ 863]

The Supreme Court in *Gammon India Ltd. v. Niranjan Dass*, AIR 1984 SC 500, held that the Respondent would be entitled to all back wages including the benefit of revised wages or salary if during the period there is revision of pay-scales with yearly increment, revised dearness allowance or variable dearness allowance and all terminal benefits if he has reached the age of superannuation such as Provident Fund, Gratuity etc. Back wages should be calculated as if the respondent continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workmen in the same category were paid the same.

Answer 8(vii)

The persons employed by the merchants are covered in the category of workers under the provisions of the Factories Act, 1948 as the work performed is incidental to or connected with, the manufacturing process.[*Local Government v. Nauserwanji*, AIR 1933 Nag. 283.]
