

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) Functions of the National Board for micro, small and medium enterprises under the Micro, Small and Medium Enterprises Development Act, 2006*
- (ii) Functions of Export Promotion Council*
- (iii) Anti-competitive agreements*
- (iv) Applicability of the concept of mens rea under the Essential Commodities Act, 1955*
- (v) Patent agent*
- (vi) 'Defect' in goods under the Consumer Protection Act, 1986*
- (vii) Sustainable development. (3 marks each)*

Answer 1(i)

Functions of the National Board for MSME

Section 5 of MSME Act, 2006 empowers the National Board subject to the general directions of the Central Government to, perform all or any of the following functions, namely:

- Examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises and the impact thereof on such enterprises;
- Make recommendations on matters referred to above or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises; and
- Advise the Central Government on the use of the Fund or Funds constituted under Section 12.

Answer 1(ii)

Function of the Export Promotion Council

The functions of the Export Promotion Council are as under:

- To provide commercially useful information and assistance to members in developing and increasing exports;

- To offer professional advice to members in areas such as technology upgradation, quality and design improvement, standards and specifications, product development, innovation etc.
- To organise visits of delegations of its members abroad to explore overseas market opportunities;
- To organise participation in trade fairs, exhibitions and buyer-seller meets in India and abroad;
- To promote interaction between the exporting community and the Government both at the Central and State levels; and
- To build a database on the exports and imports of the members.

Answer 1(iii)

Anti Competitive Agreements

Section 3(1) of the Competition Act, 2002 provides that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition.

Section 3(2) further declares that any anti competitive agreement within the meaning of sub-section 3(1) shall be void. Under the law, the whole agreement is construed as 'void' if it contains anti-competitive clauses having appreciable adverse effect on competition.

Section 3(3) provides that following kinds of agreements entered into between enterprises or association of enterprises or persons or association of persons or person or enterprise or practice carried on, or decision taken by any association of enterprises or association of persons, including "cartels", engaged in identical or similar goods or services which –

- (a) directly or indirectly determines purchase or sale prices;
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; and
- (d) directly or indirectly results in bid rigging or collusive bidding;

shall be presumed to have an appreciable adverse effect on the competition and onus to prove otherwise lies on the defendant.

Section 3(4) provides that any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including —

- (a) tie-in agreement;

- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance;

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Answer 1(iv)

Applicability of the concept of *Mens rea*

Mens rea is an essential ingredient of any criminal offence. *Mens rea* by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the Statute would otherwise be defeated. The nature of mens rea that would be implied in a Statute creating an offence depends on the object of the Act and the provisions thereof.

In *Nathulal v. State of Madhya Pradesh* (AIR 1966 S.C. 43) it was held by the Supreme Court that mens rea or guilty mind is an ingredient of the offence punishable under Section 7 of the Essential Commodities Act, 1955 i.e., an intentional contravention of an order made under Section 3, is an essential ingredient of an offence under Section 7.

Answer 1(v)

Patent agent

Sections 125-132 of the Patents Act, 1970 deal with the Patent Agent. The work relating to drafting of specifications, making of application for a patent, subsequent correspondence with the Patent office on the objections raised, representing the applicant's case at the hearings, filing opposition and defending application against opposition is entrusted to a qualified Patent Agent.

Answer 1(vi)

Defect in goods

As per Section 2(1) (f) of Consumer Protection Act, 1986 defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

It is clear from the above definition that non-fulfilment of any of the standards or requirements laid down under any law for the time being in force or as claimed by the trader in relation to any goods fall under the ambit of defect.

Answer 1(vii)

Sustainable Development

Universe is one of the rarest gift that the nature has given to the human being. Even after prolonged experiments the scientist could not establish, that human can survive in

any other planet except earth. Therefore humanity must live within the carrying capacity of the earth. 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 have used the natural resources of the earth recklessly. This will result that the Earth will not be able to support everyone unless there is less waste and extravagance. We should, therefore have, a new approach to future, that is, to secure a widespread and deeply held commitment for sustainable living. We have to 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.

Question 2

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

- (i) *The consumer forums can entertain a complaint arising out of the contract which provides for arbitration of disputes.*
- (ii) *No action for the infringement of copyright can be brought unless the copyright is registered.*
- (iii) *Indian companies are free to issue rights/bonus shares to non-resident shareholders.*
- (iv) *There is no difference between 'person resident in India' and 'person resident of India'.*
- (v) *A person can accept foreign contribution by way of a gift irrespective of its value.*
- (vi) *The Standards of Weights and Measures Act, 1976 provides for the compounding of offences.* (3 marks each)

Answer 2(i)

True

In *N.K. Modi v. Fair Air Engineers Pvt. Ltd.* (decided on 13.11.1992), the National Commission held 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 2(ii)

False

The mechanism of registration of copyright has been contemplated under Section 44 of the Copyright Act, 1957. It is evident from the provisions of the aforesaid section that registration of the work under the Copyright Act is not compulsory and is not a condition precedent for maintaining a suit for damages, if somebody infringes the copyright. Sections 44 and 45 of the Copyright Act are only enabling provisions and do

not affect the common law right to sue for infringement of copyright. An action for infringement can be brought even if the registration has not been done. The only effect of registration is that it is the prima facie evidence of the particulars entered in the register.

Answer 2(iii)

True

Foreign Exchange Management Act, 1999 allows Indian companies to freely issue Right / Bonus shares to existing non-resident share-holders, subject to adherence to sectoral cap, if any. However, such issue of bonus/rights shares have to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (ICDR) Regulations (in case of listed companies) etc.

Answer 2(iv)

True

Person Resident in India has been defined under Section 2(v) of the Foreign Exchange Management Act, 1999 to mean -

- (i) a person residing in India for more than 182 days during the course of the preceding financial year. However, two categories of persons are excluded from the purview of definition.

The first category includes any person who has gone out of India or who stays outside India for or on taking up employment outside India, or for carrying on outside India a business or vocation. The definition also includes person who stays outside India for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

The second category of persons which have been excluded from the definition of person resident in India include:

A person who has come to stay or stays in India, in either case otherwise than—

- (a) for or taking up employment in India; or
- (b) for carrying on in India a business or vocation in India; or
- (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
- (ii) any person or body corporate registered or incorporated in India
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India.
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

As the term “Person resident of India” has not been defined under the Foreign Exchange Management Act, 1999, it may be assumed that there is no difference between “Person resident in India” and “Person resident of India”

Answer 2(v)**True**

Section 8 of the Foreign Contribution (Regulation) Act, 1976 contains exemptions to the prohibition on the acceptance of foreign contribution by any person specified in Section 4. Accordingly, Section 8 allows the acceptance of foreign contribution by the persons specified in Section 4, subject however to Section 10 and where such contribution is accepted by him by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the regulations made by the Central Government with regard to the acceptance or retention of such gift or presentation.

Answer 2(vi)**True**

As per Section 73 of the Standard Weight and Measure Act, 1976 any offences punishable under Sections 50, 55, 56, 57, 58, 59, 60, 63, 64, 65, 66 or 67, may be compounded by the Director or authorised officer on payment of such sum as may be specified. However, such sum shall not in any case exceed the maximum amount of fine which may be imposed under the Act for the offence so compounded. Any second or subsequent offence committed after expiry of three years from the date on which the offence was compounded, shall be deemed to be a first offence.

Question 3

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

- (i) 'Competition' and 'cartel'.
- (ii) 'Registered proprietor of a trade mark' and 'registered user of a trade mark'.
- (iii) 'Competition Commission' and 'Competition Appellate Tribunal'.
- (iv) '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) The transfer or issue of foreign security is a _____ transaction.
- (ii) A person who has acquired or purchased foreign exchange for a specified purpose is unable to use the same and is required to surrender it within _____ days from the date of its acquisition or purchase.
- (iii) The term of every patent granted under the Patents Act, 1970 shall be _____ years from the date of filing of application for the patent.
- (iv) The literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus _____ years beyond.
- (v) The National Consumer Disputes Redressal Commission shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds ' _____ '.

(1 mark each)

Answer 3(a)(i)

Competition is a situation in a market in which firms or sellers independently strive for the buyers' patronage in order to achieve a particular business objective, for example, profits, sales or market share.

Competition can also be defined as a process of economic rivalry between market players to attract customers. These market players can be multinational or domestic companies, wholesalers, retailers, or even the neighborhood shopkeeper. However, in the interest of consumers, and the economy as a whole, it is necessary to promote an environment that facilitates fair competitive outcomes in the market, curb anti-competitive behaviour and discourage market players from adopting unfair measures.

On the other hand cartel is an anti-competitive practice, which has been defined under Section 2 (c) of Competition Act, 2002 to include 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 or provision of services.

Answer 3(a)(ii)

As per Section 2(1) (v) of the Trade Marks Act, 1999 "registered proprietor" in relation to a trade mark, means the person for the time being entered in the register as proprietor of the trade mark.

Section 18 of the Act provides that any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.

As per Section 37 of the Act the person for the time being entered in the register as proprietor of a trade mark shall, subject to the provisions of the Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

As per Section 2(1) (x) of the Trade Marks Act, 1999 "registered user" means a person who is for the time being registered as such under section 49.

Section 48 of the Trade Marks Act, 1999 provides that subject to the provisions of section 49, a person other than the registered proprietor of a trade mark may be registered as a registered user thereof in respect of any or all of the goods or services in respect of which the trade mark is registered.

Answer 3(a)(iii)

Section 7 of the Competition Act, 2002 empowers the Central Government to establish, by Notification, a Commission to be called "Competition Commission of India". The Commission is a body corporate having perpetual succession and a common seal. The Commission has power to acquire, hold movable or immovable property and to enter into contract in its name and by the said name, sue or be sued. The Commission consists of a Chairperson and not less than two and not more than six other Members

Section 53A empowers the Central Government to establish, by notification, an Appellate Tribunal to be known as Competition Appellate Tribunal –

- (a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Act;
- (b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section(2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.

The Appellate Tribunal shall consist of a Chairperson and not more than two other members to be appointed by the Central Government.

Answer 3(a)(iv)

As per Section 2(1) (m) of Patents Act, 1970 patent means a patent for any invention granted under the Act. Generally speaking, 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. Underlying economic and commercial justification for the patent is that it acts as a stimulus to investment in the Industrial innovation.

As per Section 2(1) (q) of Patents Act, 1970 patent of addition means a patent granted in accordance with the section 54. Section 54 of Patents Act, 1970 provides that where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification, namely the main invention and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

Answer 3(b)

- (i) The transfer or issue of foreign security is a **Capital Account** transaction.
- (ii) A person who has acquired or purchased foreign exchange for a specified purpose is unable to use the same and is required to surrender it within **180** days from the date of its acquisition or purchase.
- (iii) The term of every patent granted under the Patents Act, 1970 shall be **20** years from the date of filing of application for the patent.
- (iv) The literary, dramatic, musical or artistic works enjoy copyright protection for the life time of the author plus **60** years beyond.
- (v) The National Consumer Disputes Redressal Commission shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds ₹ **1 Crore** .

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) *Karan, a person resident in India, borrows US \$20,000 from his friend resident outside India.*
 - (ii) *Rakesh, a person resident in India, is interested in extending an invitation to George, a person resident outside India, to stay as his guest while on a visit to India.*
 - (iii) *A person, resident outside India, is interested to repatriate outside India the sale proceeds of an immovable property held in India.*
 - (iv) *A person, resident in India, wants to acquire immovable property outside India by way of gift from a person who is resident outside India.*
 - (v) *A foreign investor is interested to invest in an Indian company which is a small scale industrial unit.* (1 mark each)
- (b) *Mohan made a deposit of ₹1.50 lakh with the Housing Board for a house proposed to be built by it. There was a stipulation that the house would be completed within 2 years. The house could not be completed and possession was not handed over as promised. The Housing Board pleaded that construction was not upto the mark and expected level because of the use of low cost technology. Expressing regret, the Housing Board suggested that it was prepared to refund the deposit amount adding that there was no provision to pay any interest charges. Mohan is not satisfied with the explanation and intends to approach the Consumer Disputes Redressal Forum for claim of refund amount, interest and compensation, if any. Will Mohan succeed ? Refer to decided case law, if any.* (5 marks)
- (c) *Mention the provisions of the Trade Marks Act, 1999 relating to assignment and transmission of registered trade marks.* (5 marks)

Answer 4

- (i) Karan can borrow US \$20,000 from his friend resident outside India subject to the compliance of provisions of Foreign Exchange Management Act, 1999 and Foreign Exchange Management (Capital Account Transaction) Regulations, 2000.
- (ii) In pursuance of the provisions of section 3 of the Foreign Exchange Management Act, 1999 and RBI Notification No..FEMA/16/RB-2000 dated 3rd May, 2000 the Reserve Bank of India allows a person resident in India, to make any payment in rupees towards meeting expenses on account of boarding, lodging and service related thereto or travel to and from and within India of a person resident outside India who is on a visit to India.

In terms of above provision, Rakesh can extend invitation to Gorge to stay as his guest while on visit to India.
- (iii) In terms of Section 6(5) of Foreign Exchange Management Act, 1999 and Regulation 6 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 a person, resident outside India,

can repatriate outside India the sale proceeds of an immovable property held in India..

- (iv) As per Regulation 5 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000 a person resident in India may acquire immovable property outside India by way of gift from a person referred to in Section 6(4) of Foreign Exchange Management Act, 1999 or Regulation 4 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000.

Section 6(4) of Foreign Exchange Management Act, 1999 provides that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Regulation 4 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000 provides that nothing contained in these regulations shall apply to the property- held by a person resident in India who is a national of foreign state; acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.

- (v) A foreign investor may be allowed to invest in an Indian company which is a small scale industrial unit subject to Foreign Direct Investment Policy issued by the Government from time to time and also compliance with the sectoral caps, entry routes and other relevant sectoral regulations.

Answer 4(b)

Yes, Mohan will succeed. The present case is similar to the case of *S.P. Dhavaskar v. Housing Commissioner, Karnataka Housing Board & Vice Versa* (First Appeal No. 203 of 1993 decided on 27.9.1995 (NCDRC). In this case the National Commission observed that the Housing Board had been grossly negligent in rendering service and ordered for returning deposit amount with interest to the depositor.

Answer 4(c)

Section 37 of the Trade Marks Act, 1999 entitles the registered proprietor of a trademark to assign the trade mark and to give effectual receipts for any consideration for such assignment. Section 38 deals with the assignability and transmissibility of a registered trade mark with or without goodwill of the business either in respect of all goods or services or part thereof. Section 39 provides that unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.

Section 40 contains restriction on assignments or transmissions of trade mark where multiple exclusive rights would be created in more than one person in relation to same goods or services; same description of goods or services; goods or services or description of goods or services which are associated with each other, which would be likely to deceive or cause confusion.

Section 42 stipulates conditions for assignment of a trade mark without goodwill of business. Section 43 deals with the assignability and transmissibility of certification trade marks and provides that the assignment of certification trade mark can only be done only with the consent of the Registrar. Section 44 states that associated trade marks shall be assignable and transmissible only as a whole but they will be treated as separate trade marks for all other purposes. Section 45 deals with the procedure for registration of assignment and transmission and provides that where the validity of an assignment is in dispute between the parties, the Registrar may refuse to register the assignment or transmission unless the rights of parties are determined by the competent court.

Question 5

- (a) *“Environmental pollution is the price a country has to pay for economic development.” Comment.* (5 marks)
- (b) *Write a note on the efficacy of existing regulatory framework providing for environmental protection in the country.* (5 marks)
- (c) *“Despite the deleterious impact of money laundering on development, it has, of late, assumed alarming proportions and its growth has been cancerous.” Discuss.* (5 marks)

Answer 5(a)

The environmental pollution are not confined to side effects of industrialisation but reflect the inadequacy of resources to provide infrastructural facilities to prevent industrial pollution. The National Environment Policy recognizes environmental protection as an integral part of the development process and mainstreams environmental concerns in all developmental activities. As industrial growth is essential to fulfill the increasing human needs, a change in lifestyle, particularly going back to the age of pre-industrial revolution is inconceivable. Therefore, the need to monitor the environmental pollution caused by discharge of polluting substances from the industries become significant. Conservation of environmental resources is necessary to secure livelihoods and well being of all. Industrialization has a direct bearing on environmental pollution leading to climatic change, depletion of ozon layer and increased proportion of carbon dioxide in the atmosphere. While industrial development almost inevitably for economic growth, the possibilities of adverse effects on the environment also increased if these adverse effects are not properly contained or reduced to minimum.

Answer 5(b)

Indian Penal Code, 1860 contains penal provisions for corrupting or fouling the water or spring or reservoir so as to make it less fit for the purpose for which it is ordinarily used as well as for vitiating the atmosphere so as to make it noxious to the health of any person etc. A number of other Central and State laws covering boilers, dangerous drugs, radiation, forests, etc. were enacted during the middle of the 20th century, however the legislative and administrative measures directed specifically at protection of the environment were introduced in the 1970s and 1980s. The Water (Prevention and Control of Pollution) Act was enacted in 1974 and the Air (Prevention and Control of Pollution) Act was passed by the Union of India in 1981, essentially to give effect to the decisions

taken at the International Conference on Human Environment at Stockholm in 1972 declaring mans fundamental right to live in a pollution-free atmosphere and his responsibility to protect and improve the environment.

In 1986, the Government enacted the Environment Protection Act to provide for the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property. The Public Liability Insurance Act, 1991 was enacted for the purpose of providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance. Parliament also enacted Bio-Diversity Act, 2002 for the preservation of Bio-Diversity and National Green Tribunal Act, 2010 for speedy disposal of environmental cases.

Answer 5(c)

The globalization process, driven by advancements in communications and information technology, have made the international financial system more interactive, integrated, interrelated, and interconnected. This dynamics has unleashed the floodgates of opportunities for criminals to expand, widen and deepen their reach, become more sophisticated in their operations, and intensify their level and pace of financial transactions. Equipped with the power of technology, disregard for human life and values, and indiscreet ruthlessness, these criminals are able to corrupt the societies with little regard for national boundaries, state sovereignty and levels of economic development. Because of the opportunities and needs created by the global dimension of business, crimes such as fraud, counterfeiting, corruption and embezzlement have provided opportunities to shift from individual or family ambit to more organized and competitive global structures.

Indeed, underground criminal organizations operate like multinational companies, establishing affiliates, maintaining strategic alliances, investing legitimately in foreign countries, and extending their capacities and range across regions.

The negative effects of money laundering on economic development are difficult to quantify, yet it is clear that such activity damages the financial-sector institutions that are critical to economic growth, reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption, which slow economic growth, and can distort the economy's external sector, international trade and capital flows to the detriment of long-term economic development.

The effective enforcement of Anti-money-laundering legislations and regulatory framework can work as a shield for the deleterious impact of money laundering on development and its cancerous growth.

PART B

(Answer ANY TWO questions from this part.)

Question 6

Write notes on any four of the following :

- (i) Matters to be provided in standing orders under the Industrial Employment (Standing Orders) Act, 1946.*
- (ii) General duties of an 'occupier' under the Factories Act, 1948.*

- (iii) *Classes of employees not covered under the Payment of Bonus Act, 1965.*
- (iv) *Object and scope of the Minimum Wages Act, 1948.*
- (v) *Legality of strike under the Industrial Disputes Act, 1947.*
- (vi) *Rights and obligations of the employer under the Payment of Gratuity Act, 1972.* (5 marks each)

Answer 6(i)**Matters to be provided in the Standing Orders**

The Industrial Employment (Standing Orders) Act, 1946 requires the employers in Industrial Establishment to define the conditions of employment of the workmen and also make the same known to them. The purpose is to have:

- (i) Uniformity in service conditions
- (ii) Conditions cannot be changed
- (iii) Maintain industrial peace
- (iv) New entrants can accept the job, knowing their conditions

Standing Orders means the Rules relating to the service conditions and related matters set-put in the Schedule to the above Act. Following matters have to be provided in the Standing Orders under the Schedule to the Act:

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.

Answer 6(ii)**General Duties of the Occupier**

The general duties of the Occupier in so far, as is reasonably practicable & relates to health, safety and welfare of workers have been spelled out under Section 7A of the Factories Act, 1948 which has been inserted by the Factories (Amendment) Act, 1987. Section 7A of the Factories Act, 1948 provides :

- (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
- (2) Without prejudice to the generality of the provisions of Sub-section (1) the matters to which such duty extends shall include:
 - (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
 - (b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
 - (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
 - (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
- (3) Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

Answer 6(iii)**Classes of employees not covered under the Payment of Bonus Act, 1965**

The Payment of Bonus Act, 1965 does not apply to certain classes of employees. This has been provided under Section 32 of the Payment of Bonus Act, 1965 Act which says that the Act shall not apply to the following classes of employees:

- (i) employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
- (ii) seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
- (iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;

- (iv) employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;
- (v) employees employed by
 - (a) the Indian Red Cross Society or any other institution of a like nature including its branches;
 - (b) universities and other educational institutions;
 - (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;
- (vi)(deleted)
- (vii) employees employed by the Reserve Bank of India;
- (viii) employees employed by
 - (a) the Industrial Finance Corporation of India;
 - (b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;
 - (c) the Deposit Insurance Corporation;
 - (d) the National Bank for Agriculture and Rural Development;
 - (e) the Unit Trust of India;
 - (f) the Industrial Development Bank of India;
 - (fa) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
 - (fb) the National Housing Bank;
 - (g) any other financial Institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor;
- (ix) employees employed by inland water transport establishments operating on routes passing through any other country.

Answer 6(iv)

Object and Scope of the Minimum Wages Act, 1948

The Minimum Wages Act was passed in 1948 and it came into force on 15th March, 1948. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India has been explained by the Supreme Court in *Unichoyi v. State of Kerala* (A.I.R. 1962 SC 12), as follows:

“What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”.

According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as ‘Scheduled Employments’. The Act extends to whole of India.

Answer 6(v)

Legality of Strike under Industrial Disputes Act, 1947

The legality of strike is determined with reference to the legal provisions enumerated in the Act and the purpose for which the strike was declared is not relevant in directing the legality. Section 10(3), 10A(4A), 22 and 23 of the Act deals with strike. Sections 22 and 23 impose restrictions on the commencement of strike while Sections 10(3) and 10A(4A) prohibit its continuance.

A strike is legal if it does not violate any provision of the statute. 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.

As regards the wages to the workers strike period are concerned, the Supreme Court in *Charakulam Tea Estate v. Their Workmen*, AIR 1969 SC 998 held that in case of strike which is legal and justified, the workmen will be entitled to full wages for the strike period. Similar view was taken by the Supreme Court in *Crompton Greaves Ltd.* case 1978 Lab 1C 1379 (SC).

A division bench of the Supreme Court in the case of *Bank of India v. TS Kelawala*, (1990) 2 Lab 1C 39 held that the workers are not entitled to wages for the strike period. The Court observed that “the legality of strike does not always exempt the employees from the deduction of their salaries for the period of strike”. The Court, further observed, “whether the strike is legal or illegal, the workers are liable to lose wages does not either make the strike illegal as a weapon or deprive the workers of it”.

Answer 6(vi)

Rights and Obligations of the Employer under the Payment of Gratuity Act, 1972

Employer’s duty to determine and pay gratuity

Section 7(2) of the Payment of Gratuity Act, 1972 lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not,

determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.

Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10 per cent per annum:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

Dispute as to the amount of gratuity or admissibility of the claim

If the claim for gratuity is not found admissible, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir, as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.

If the disputes relates as to the amount of gratuity payable, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him. According to Section 7(4)(e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made

- (i) to the applicant where he is the employee; or
- (ii) where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

Question 7

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

- (i) *'Sickness benefit' and 'medical benefit' under the Employees' State Insurance Act, 1948.*
- (ii) *'Courts of inquiry' and 'labour courts' under the Industrial Disputes Act, 1947.*
- (iii) *'Model standing orders' and 'certified standing orders' under the Industrial Employment (Standing Orders) Act, 1946.*
- (iv) *'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) *Any contract whereby a workman relinquishes any right of compensation from the employer shall be _____ .*

- (ii) *It shall be the duty of the _____ to pay wages to the contract labour.*
- (iii) *The function of a certifying officer or the appellate authority is to adjudicate upon the _____ of the standing orders.*
- (iv) *An adolescent worker shall be allowed to work only for _____ hours in a week.*
- (v) *The Contract Labour (Regulation and Abolition) Act, 1970 applies to every establishment or contractor wherein _____ or more workmen are or were employed on any day of the preceding 12 months as contract labour. (1 mark each)*
- (c) *Write the most appropriate answer from the given options in respect of the following :*
 - (i) *The government may review the minimum rates of wages so fixed and revise the same if necessary at such intervals, not exceeding —*
 - (a) *3 Years*
 - (b) *5 Years*
 - (c) *2 Years*
 - (d) *1 Year.*
 - (ii) *Every factory or establishment to which the Employees' State Insurance Act, 1948 applies has to be registered within —*
 - (a) *15 Days*
 - (b) *30 Days*
 - (c) *45 Days*
 - (d) *60 Days.*
 - (iii) *As per the Contract Labour (Regulation and Abolition) Act, 1970 and the central rules, in case the work is completed before the expiry of the wage period, final payment shall be made within —*
 - (a) *24 Hours of the last working day*
 - (b) *48 Hours of the last working day*
 - (c) *7 Days of the last working day*
 - (d) *3 Days of the last working day.*
 - (iv) *The term 'wages' under the Employees' State Insurance Act, 1948 does not include —*
 - (a) *Incentives*
 - (b) *Over-time wages*
 - (c) *Travelling allowance*
 - (d) *Any other additional remuneration.*
 - (v) *Under the Workmen's Compensation Act, 1923, the Commissioner for Workmen's Compensation shall not entertain any claim unless it is preferred before him on the occurrence of the accident, within —*
 - (a) *1 Week*
 - (b) *6 Months*

(c) 1 Year

(d) 2 Years.

(1 mark each)

Answer 7(a)(i)

Sickness Benefit and Medical Benefit

Under Section 46 of the ESI Act, 1948 provides for various benefits to insured persons and their dependents on prescribed scale

Sickness benefit : Sickness benefit is periodical payment to any insured person in case his sickness is certified by a duly appointed medical practitioner or by any person having such qualifications and experience as the ESI Corporation may specify in this behalf. The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government

Medical benefit : Medical benefit is given to an insured person or a member of his family (in case such medical benefit is extended to his family) whose condition requires medical treatment and attendance. Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

A person is entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations.

An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of medical or disablement, etc.

Answer 7(a)(ii)

Courts of Inquiry and Labour Courts

Court of Inquiry : As per Section 6 of the Industrial Disputes Act, 1947 the appropriate Government may as occasion arises, by notification in the Official Gazette constitute a Court of Inquiry into any matter appearing to be connected with or relevant to an industrial dispute.

A Court of Inquiry may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.

It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry.

Labour Courts : Under Section 7 of the Industrial Disputes Act, 1947 the appropriate Government is empowered to constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the Act.

A Labour Court consists of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Labour Court unless—

- (a) he is, or has been, a judge of a High Court: or
- (b) he has, for a period not less than three years, been a district Judge or an Additional District Judge; or
- (c) he has held any judicial office in India for not less than seven years; or
- (d) he has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.

When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to (i) hold its proceedings expeditiously, and (ii) submit its award to the appropriate Government soon after the conclusion of the proceedings.

Answer 7(a)(iii)

Model Standing Orders and Certified Standing Orders

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

Within 6 months from the date on which the Act becomes applicable to an industrial establishment the employer is required to frame draft 'standing orders' and submit them to the Certifying Officer for certification. The draft should cover all the matters specified in the Schedule to the Act and any other matter that Government may prescribe by rules. The Certifying Officer after following the procedure laid down for certification of standing orders under the Act will certify the standing orders.

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.

Answer 7(a)(iv)

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).

Answer 7(b)

- (i) Any contract whereby a workman relinquishes any right of compensation from the employer shall be **null and void**.

- (ii) It shall be the duty of the **contractor** to pay wages to the contract labour.
- (iii) The function of a certifying officer or the appellate authority is to adjudicate upon the **fairness or reasonableness** of the standing orders.
- (iv) An adolescent worker shall be allowed to work only for **48** hours in a week.
- (v) The Contract Labour (Regulation and Abolition) Act, 1970 applies to every establishment or contractor wherein **twenty** or more workmen are or were employed on any day of the preceding 12 months as contract labour. (1 mark each)

Answer 7(c)

- (i) (b) 5 years
- (ii) (a) 15 days
- (iii) (b) 48 hours of the last working day
- (iv) (c) Travelling Allowance
- (v) (d) 2 years

Question 8

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

- (i) *Roler Coaster Ltd. is engaged in the manufacture of electronic goods. The company has been paying puja bonus to its workers during Diwali festival since the beginning of its operations. Subsequently, the Payment of Bonus Act, 1965 became applicable to the company. The management wants to discontinue puja bonus on the ground that the company is paying bonus as per the Payment of Bonus Act, 1965. Is the management justified ?*
- (ii) *Dinesh absented himself from duty without applying for leave and left the job. When he claimed gratuity, the company refused to pay gratuity quoting his absence from duty without proper leave resulted in break in service. Will he get gratuity ?*
- (iii) *Hotel Amravati is managed by a firm employing more than 100 employees and covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Some of its partners started a new restaurant in the premises registering the restaurant as a new unit as per the applicable State enactment. The restaurant employed 15 employees and the management of restaurant took a stand that the restaurant is a different establishment and is not covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Will it succeed ?*
- (iv) *Promod Electronics is a small scale industry (SSI) employing 15 workmen. Due to a fall in demand for its products, the management decided to lay-off its workmen. The workmen contended that they cannot be laid-off as there is no provision to lay-off in the terms and conditions of appointment. Examine the legality of the action of the management.*
- (v) *A government enterprise issues raw materials to the weavers registered*

under it to manufacture handloom cloth as per the specifications given. The weavers take raw material and manufacture cloth in the looms installed by them. The government enterprise procures the finished goods from the weavers. State whether weavers are the workers of the government enterprise under the provisions of the Factories Act, 1948.

- (vi) *Gemini Ltd. has an industrial unit employing 500 workmen but has not got the standing orders certified under the Industrial Employment (Standing Orders) Act, 1946. The management initiated proceedings against one of its workmen for misconduct. The management is of the view that as there are no certified standing orders applicable to the factory establishment, it is under no obligation to follow any procedure except the principles of natural justice. State whether the view held by the management is legally valid.*
- (vii) *The members of a trade union who are not workmen of the employer raised a dispute and sought redressal from the authorities. Will they succeed in their dispute ?* (4 marks each)

Answer 8(i)

The action of the management is not justified. In *Hukamchand Jute Mills Limited v. Second Industrial Tribunal, West Bengal*, AIR1979 SC 876 the Supreme Court held that the claim for customary bonus is not affected by the Payment of Bonus Act. The contention that all agreements inconsistent with the provisions of the Payment of Bonus Act become inoperative has no substance vis-à-vis customary bonus. The provisions of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually statutory bonus and customary bonus operate in two fields and do not clash with each other.

Answer 8(ii)

Dinesh will get gratuity. 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)]

Answer 8(iii)

Where an establishment to which this Act applied was divided among the partners, the Act would continue to apply to the part of each ex-partner even if the number of persons employed in each part is less than twenty (1986 2 LLJ 137).

Answer 8(iv)

The action of the management is not in accordance with law. It has been held that the right to lay-off cannot be claimed as an inherent right of the employer. This right must be specifically provided for either by the contract of employment or by the statute (*Workmen of Dewan Tea Estate v. Their Management*).

As per the Supreme Court in *Workmen v. Firestone Tyre and Rubber Co.*, 1976 3 SCC 819, 'lay-off' is an obligation on the part of the employer, i.e., in case of temporary stoppage of work, not to discharge the workmen but to lay-off the workmen till the situation improves. Power to lay-off must be found out from the terms of contract of service or the standing orders governing the establishment

Answer 8(v)

The concept of “employment” involves three ingredients, viz. employer, employee, and contract of employment. The ‘employer’ is one who employs, i.e., one who engages the services of other persons. The ‘employee’ is one who works for another for hire. In *Chintaman Rao v. State of M.P.* AIR 1958 S.C. 388, the Supreme Court held that the employment is the contract of service between employer and employee whereunder the employee agrees to serve the employer subject to his control and supervision. The prima facie test for determination of the relationship between the employer and employee is the existence of the right of the employer to supervise and control the work done by the employee not only in the matter of directing what work the employee is to do but also the manner in which he shall do his work.

Therefore, ‘supervision and control’ is the natural outcome when a person is employed by another person. In the light of the above legal position, the weavers cannot be termed as the workers of the government enterprise.

Answer 8(vi)

The stand of the management is not legally tenable. In case where there are no Certified Standing Orders applicable to an industrial establishment, the prescribed Model Standing Orders shall be deemed to be adopted and applicable.

Answer 8(vii)

The members of a union who are not workmen of the employer against whom the dispute is sought to be raised, cannot by their support convert an individual dispute into an industrial dispute. In other words, persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. (*Workmen v. Cotton Greaves & Co. Ltd.*, 1971 2 SCC 658).
