

**C S Executive Programme
Economic and Labour Laws
Solutions of June 2013
Part A**

Answer 1 (i)

Please refer to answer of 2002-Dec.[I] (iv) under short notes of chapter 3 c - consumer protection -Law and practice on page No. 5.96.

Answer 1 (ii)

Please refer to answer of 2012- Dec (1) (i) under short notes of chapter 3 B - Competition Act, 2002, on page no. 5.77.

Answer 1 (iii)

As per the principle of “no fault liability” wrong doer will be held liable for the consequences of his acts even though there is no negligence on his part or even if there is no intention on his part for the consequence.

- Principle of “no fault liability” is mentioned under section 3 of the Public Liability Insurance Act, 1991.
- It imposes on the owner liability to give relief in case of death or injury to any person or damage to any property, resulting from an accident occurring while handling any hazardous substance.
- For the purpose of section 3 injury includes.
 - permanent total disability
 - permanent partial disability
 - sickness resulting out of an accident.

Answer 1 (iv)

- A trade mark acting as a sign that is capable of distinguishing the goods or services of one trading entity from another, at the very least it has to be inherently distinctive mark.
- In the case of Imperial Tobacco Co. of India v. The Registrar of trade marks, AIR 1977 Calcutta 413 the Calcutta High Court held that the essential conditions of a trade mark in relation to goods proposed to be registered is (i) distinctive or (2) if not distinctive, or capable of distinguishing the goods as aforesaid, there may be some inherent qualities or distinguishing characteristics in the mark itself which may mark it so distinctive or capable of such distinguishing the goods of the applicant from others.

Answer 1 (v)

Person of Indian origin

As per Foreign Direct Investment Policy, person of Indian origin (P I O), means a citizen of any country other than Bangladesh or Pakistan, if

- (1) he at any time held Indian passport.
- (2) he or either of his parents or any of his grand parents was a citizen of India by

- virtue of the constitution of India or the citizenship Act, 1955: or
- (3) the person is a spouse of an Indian citizen or a person referred to in sub clause (i) or (ii).

Answer 1 (vi)

Competition advocacy.

Please refer answer to 2010 - June [1] (ii) under Short Notes of chapter 3B - Competition Act, 2002.

Answer 1 (vii)

Control of noise pollution.

Please refer answer to 2003 - Dec (6) (b) under Descriptive Questions of chapter 6 - Pollution Control and Environmental Protection.

Answer 2 (i) False

- There is a positive relationship between competition and innovation, productivity and economic growth.
- One theory stated that competition is conducive to innovation.
- Intensified product market competition could force managers to speed up the adoption of new technologies.
- Intensive product market competition with incumbent firms engaged in step by step innovative activities could enhance each firm incentive to acquire or increase its technological lead over its rivals.
- The benefits of competitive forces are for economic growth and consumers welfare.
- Competition enhances allocative efficiency, productive efficiency and dynamic efficiency.

Answer (2) (ii) True

- Regulation 5 of Foreign Exchange Management (Transfer on issue of any Foreign security) Regulation 2004 deals with Prohibition on Direct Investment outside India.
- It states that
 - no person resident in India shall make any direct investment outside India, and
 - no Indian party shall make any direct investment in a foreign entity engaged in real estate business or banking business.

Answer 2 (iii) False

- As per Foreign Trade policy if an Importer - Exporter (I E C) number holder does not wish to operate the allotted I E C number, the same may be surrendered by informing the issuing authority.
- On receipt of such intimation, the issuing authority immediately cancels the same and electronically transmit it to Director General Foreign Trade for onward transmission to the customs and Regional Authorities.

Answer (2) (iv) False.

- Foreign Direct Investment (FDI) is a capital account transaction and thus any violation of FDI regulations are covered by the penal provisions of the Foreign

Exchange Management Act, 1999 (FEMA).

- If a person violates /contravenes any FDI Regulations, by way of breach /non - adherence /non compliance /contravention of any rule, regulation, etc or contravenes any conditions subject to which an authorization is issued by Government of India /FIBP /Reserve Bank of India, he shall upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contraventions continues.

Answer (2) (v) True.

- Under the Copyright Act, 1957 moral rights are available to the author even after the economic rights are assigned .
- Under Section 57 of the Act an author of the copyright work can restrain or claim damages in respect of any distortion mutilation of the work or any other action in relation to the said work which would be prejudicial to his honour or reputation.
- These rights can be exercised even after the assignment of copyright.
- They can be enforced by an action for breach of contract or confidence, a suit for defamation, or passing off as the case may be.

Answer (2) (vi) False

- Patent protection is territorial right and therefore it is effective only within the territory of India.
- However filing of an application in India enables the applicant to file a corresponding application for same invention in convention countries, within or before the expiry of twelve month from the filing date in India.
- Therefore separate patents should be obtained in each country where the applicant requires protection of his invention in those countries.
- There is no patent valid Worldwide.

Answer (3) (a) (i)

'Contract of service' and 'Contract for service'.

Please refer to 2010 - June (3) (a) (ii)

Under Distinguish Between of Chapter - 3C Consumer Protection - Law and Practice.

Answer(3) (a) (ii)

Depository Receipt: Depository Receipt (DR) means a negotiable security issued outside India by a Depository bank, on behalf of an Indian Company, which represents

the local Rupee denominated equity shares of the company held as deposit by a custodian bank in India.

- DRs listed and traded in the US markets are known as American Depositary Receipts (ADRs) and those listed and traded anywhere / elsewhere are known as Global Depositary Receipts (GDRs).

Foreign Currency Convertible Bonds.

- These are the bonds issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency.
- FCCBs are subscribed by non- resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole or in part.

Answer (3) (a) (iii)

please refer to 2008 - Dec (3) (a) (i) under Distinguish Between of Chapter - 3 B Competition Act, 2002.

Answer (3) (a) (iv)

Please refer to 2010 - Dec (3) (a) under Distinguish Between of Chapter - 7 Management of Intellectual Property Rights.

Answer [4] (a) (i)

Foreign companies are permitted to repurchase the shares issued to residents in India under any ESOP Scheme provided that,

- (1) the shares were issued in accordance with the Rules / Regulations framed under Foreign Management Act, 1999.
- (2) the shares are being repurchased in terms of initial offer document and
- (3) an annual return is submitted through the authorised dealer bank giving details of remittances / beneficiaries etc.

Thus Zenith Limited can purchase its shares from its employees, provided it complies with the above requirement.

Answer(4) (a) (ii)

- As per regulation 5A of the foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000, Foreign Embassy / Diplomat / Consulate General, may purchase or sell immovable property (other than agricultural land / plantation property / farm house) in India provided that -
 - (1) Clearance from the Government of India, Ministry of External Affairs is obtained for such purchase) sale, and
 - (2) The consideration for acquisition of immovable property in India is paid out of the funds remitted from abroad through the normal banking channels.

So, a Malaysian diplomat can enter into an agreement with a real estate company in India to purchase non-agricultural land near New Delhi to establish a laboratory.

Answer (4) (a) (iii)

- Yes, ABC Limited can retain the share subscription amount in foreign currency

account with prior approval of the Reserve Bank.

- According to the provision, Indian companies which are eligible to issue shares to persons resident outside India under the FDI Scheme will be allowed to retain the share subscription amount in a foreign currency account for bonafide business purpose only with the prior approval of the Reserve Bank.

Answer (4) (a) (iv)

- Regulation 3 of Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulation 2000 prescribes retention by a person resident in India of foreign currency notes, bank notes and foreign currency travelers' cheque not exceeding US\$ 2000 or its equivalent in aggregate.
- Thus, Dr. Sukant can not retain foreign currency notes of US \$ 5,000.

Answer (4) (a) (v)

According to the provisions of Foreign Exchange Management (Permissible Capital Account Transaction) Regulation, 2000, Jay a person resident in India, can take a life insurance policy from a foreign insurance company with a yearly premium of US\$ 25,000.

Answer (4) (b)

- Provisions of Foreign Contribution (Regulation) Act, 2010 prohibits acceptance of foreign hospitality by certain persons except with the prior permission of Central Government.
- Accordingly no member of legislature, office bearer of a political party, Judge, government servant or employee of a corporation shall while visiting any country or territory outside India accepts without the prior permission of the Central Government, any foreign hospitality.
- However it shall not be necessary to obtain any such prior permission for an emergent medical aid needed on account of sudden illness contracted during the visit outside India.
- The person receiving such medical aid is required to give, within one month from the date of receipt of such hospitality, an intimation to the Central Government as to the receipt of such hospitality and the source from which and the manner in which such hospitality was received by him.
- Thus Ashok did not violate the Foreign Contribution (Regulation) Act, 2010.

Answer (4) (c)

Please refer to 2007 - June (4) (c) under 'Descriptive Questions' of chapter 3 B Competition Act, 2002.

Answer (5) (a) (i)

Reciting a poem of Rabindranath Tagore by Prof. Ajay will not amount to infringement under Section 52 of the copyright Act, 1957, if Prof. Ajay does not claim that poem as his own.

Answer (5) (a) (ii)

ABC publishers published a compilation of speeches of Atal Bihari Vajpaee, former Prime Minister, delivered in public without permission is amount to infringement under the Copyright Act, 1957.

Answer (5) (a) (iii)

Publishing a masterpiece painting of Ganesh Pyne by a newspaper while carrying a story on his death is not amount to infringement under copyright Act, as it only represent the work of deceased.

Answer (5) (a) (iv)

A maximum of three copies of book can be taken by a librarian for library if a book is not available in India. In the above case a librarian makes 10 copies of the book for the use of the public library which is on infringement of Copyright Act.

Answer (5) (a) (v)

A magazine reproduced an article on a topic by Kuldeep Nayar is amount to infringement under the Copyright Act, 1957, if the prior permission has not been taken.

Answer (5) (b)

- The fact of the present case is similar to the case of Kishore Lal V chairman, Employee State.
- In this case, Supreme Court held that the appellant is a consumers within the ambit of Section 2 (i) (d) of the consumer Protection Act 1986 and the service rendered by the medical practitioners of hospitals /nursing homes run by the ESI Corporation cannot be regarded as a service rendered free of charge.
- The person availing such service under an insurance scheme of medical care, where under the charges for consultation, diagnosis and medical treatment are borne by the insurer, such services would fall within the ambit of 'service' as defined in section 2 (i) (o) of the Consumer Protection Act.
- Therefore the contention of consumer forum is incorrect.

Answer (5) (c)

- According to provisions contained in Section 18 of the legal Metrology Act,2009,no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose for sale any pre- packaged commodity unless such package is in such standard quantities or number and bears thereon such declaration and particulars in such manner as may be prescribed. Including the net quantity or number of commodity contained in the package in such form and prescribed manner.
- Thus, the advertisement given by Healthy Food is not appropriate and sufficient as per the legal Metrology Act 2009 as it neither contain the net quantity nor the number of commodity contained in the package.

PART B

Answer (6) (i)

- The provisions relating to working hours of adult workers, both male and female are provided under Section 51 to 66.
- Apart from that, additional provisions are contained in section 66 of the Act.
- No exemption will be granted to female worker, from the provisions of Section 54 relating to daily hours of work.
- Women worker shall not be employed between the hours of 6 a.m and 7 p.m. However, the State Government may by a notification in the official Gazette, vary these limits to the extent that no women shall be employed between the hours of 10 p.m and 5 a.m.
- There shall be no change of shifts except after a weekly holiday or any other holiday.
- State Government is empowered to make rules granting exemptions from the above stated restriction in respect of women working in fish - curing or fish canning factories.

Answer (6) (ii)

Please refer to 2010 - Dec [6] (iv) under Short Notes of Chapter - 13 Employee's State Insurance Act, 1948.

Answer (6) (iii)

Please refer to 1998 - Dec [7] (a) under Descriptive Questions of Chapter -15 Contract Labour Act, 1970.

Answer (6) (iv)

Please refer to 2003 - June [7] (a) (i) under Descriptive Questions of Chapter -17 Industrial Employment (standing order) Act, 1946.

Answer (6) (v)

Please refer to 2001- June (5) (b) under Descriptive Questions of Chapter 16 Industrial Disputes Act, 1947.

Answer (7) (a) (i)

Please refer to 2009 - Dec (7) (a) under Distinguish Between of chapter 14 Workmen's Compensation Act, 1923.

Answer (7) (a) (ii)**Permanent Total Disablement -**

- It means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

- Provided that permanent total disablement shall be deemed to result from every injury specified in part - I of the second schedule to the Act or from any combination of injuries specified in Part- II thereof, where the aggregate percentage of loss of earning capacity, as specified in the said part - II against those injuries, amount to one hundred percent or more.

Permanent Partial Disablement

- It means such disablement of a permanent nature, as reduced the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.
- Provided that every injury specified in Part II of the second schedule to the Act shall be deemed to result in permanent partial disablement.

Answer (7) (a) (iii)

Please refer to 2009 - June (7) (a)(iii) under Distinguish Between of Chapter - 18 Factories Act, 1948.

Answer (7) (b)

- (1) Employers' and workmen's Dispute Act, 1860.
- (2) Provident fund or Gratuity.
- (3) 10
- (4) 50 %, 90
- (5) temporary disablement.

Answer (7) (c)

- (i) (c) 8 months
- (ii) (a) 10
- (iii) (b) 10%
- (iv) (c) within 30 days of being served the notice.
- (v) (d) Go slow.

Answer (8) (i)

Withdrawal from the Provident Fund can be taken subject to conditions laid down in the Employees Provident Fund for:

- purchasing a dwelling house or flat, or
- for construction of a dwelling house including acquisition of a suitable site for the purpose, or
- for completing / continuing the construction of a dwelling house, already commenced by the member or the spouse, and
- an additional advance for additions / alteration or substantial improvement necessary to the dwelling house.

Thus, Amit, husband of Sangeeta can withdraw money from provident fund being administered under Employees Provident Funds and Miscellaneous Provisions Act, 1952 for the Constitution of house.

Answer (8) (ii)

- The ESI corporation can recover employer's contribution even after lapse of five years.
- The Supreme Court in the case of ESIC V CC Santha Kumar has held that the limitation period of 5 years specified under Section 77 of the ESI Act to bring an action before the Employees Insurance Court is not applicable in case of determination of the contribution payable under section 45 A of the ESI Act, 1948.
- Therefore, the contention of the employer that the ESI Corporation cannot recover the dues pertaining to the period prior to five years, is not tenable in law.

Answer (8) (iii)

- Section 10 of the Industrial Employment (Standing orders) Act prohibits an employer to modify the standing orders once they are certified under the Act except on agreement between the employer and the workmen or a trade union or other representative body of the workmen.
- Such modification will not be affected until the expiry of 6 months from the date on which the standing orders were last modified or certified as the case may be.

Answer (8) (iv)

- In the decided case of "J. K. cotton spinning and Weaving Mills Co. Ltd.," the supreme Court held that "malis" looking after the garden attached to the bungalow provided by the company to its officers and directors, are engaged in operations incidentally connected with the main industry carried on by the employer.
- Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industry operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly connected with the main work or operation of the industry.
- Thus, yes malis are employees and employed under the Industrial Dispute Act, 1947.

Answer (8) (v)

- According to the provisions contained in Industrial Dispute Act, 1947, no employer or workman or a Trade union, whether registered or not, shall commit any unfair labour practice.

- To advise or actively support or investigate any strike deemed to be illegal under the Act is a unfair labour practice on the part of workmen and trade unions of workmen.
- Thus, President and General Secretary of a registered trade union will not succeed.

Answer (8) (vi)

Yes, processes of moisturing, stripping, breaking up, adaption, packaging of sun used

tobacco leaves amount to manufacturing processes under the Factories Act, 1948.

- The same was held in the case of V. P. Gopal Rao. V Public prosecutor.

Answer (8) (vii)

Yes, the termination on the ground of weak eyesight which was below the standard requirement will amount to being due to continued ill - health under the Industrial Dispute Act, 1947. as held in case of Anand Behari V. RSRTC.