

SUGGESTED ANSWERS

EXECUTIVE PROGRAMME

INDUSTRIAL, LABOUR AND GENERAL LAWS (EP-IL&GL/2013)



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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INDUSTRIAL LABOUR AND GENERAL LAWS
TEST PAPER 1/2013

Time allowed : 3 hours

Max. marks : 100

Part A (70 Marks)

*[Answer Question No.1 which is COMPULSORY and
ANY THREE of the rest from this part]*

Question No. 1

With reference to the relevant legal enactments, write short notes on the following:

- (i) Provisions relating to 'hazardous processes' under the Factories Act, 1948.*
- (ii) Concept of 'continuous service' under the Payment of Gratuity Act, 1972.*
- (iii) Employees' Insurance Court constituted under the Employees' State Insurance Act, 1948.*
- (iv) Procedure for fixing and revising minimum wages under the Minimum Wages Act, 1948.*
- (v) Unfair labour practices on the part of workmen and trade unions of workmen under the Industrial Disputes Act, 1947. (5 marks each)*

Answer Question No. 1(i)

Hazardous process

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

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

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

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

Chapter IV-A of Factories Act, 1948 containing Section 41A to Section 41 H deals with Provisions Relating to Hazardous Processes.

— Section 41A deals with Constitution of Site Appraisal Committees

- Section 41B deals with Compulsory disclosure of information by the occupier
- Section 41C deals with Specific responsibility of the occupier in relation to hazardous processes
- Section 41D deals with Power of Central Government to appoint Inquiry Committee
- Section 41E deals with Emergency standards
- Section 41F deals with Permissible limits of exposure of chemical and toxic substances
- Section 41G deals with Workers' participation in safety management
- Section 41H deals with Right of workers to warn about imminent danger.

Answer Question No.1 (ii)**Concept of continuous service**

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

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

- (1) An employee shall be said to be in continuous service for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of
 - (a) sickness,
 - (b) accident,
 - (c) leave,
 - (d) absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment),
 - (e) layoff,
 - (f) strike or
 - (g) a lock-out or
 - (h) cessation of work not due to any fault of the employee it makes no difference whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;
- (2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service for any period of one year or six months, he shall be deemed to be in continuous service under the employer:
 - (a) for the said period of 1 year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:
 - (i) 190 days, in the case of an employee employed below the ground in a

mine or in an establishment which works for less than six days in a week; and

(ii) 240 days, in any other case;

(b) for determining the continuous service for the said period of six months for the payment of gratuity, the number of days the employee should have actually worked should be half the number of days actually worked which constitute continuous service for a period of 1 year, i.e., 95 days and 120 days respectively.

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

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946; or under the Industrial Disputes Act, 1947; or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

(3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of 1 year or 6 months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75 per cent, of the number of days on which the establishment was in operation during such period

Answer Question No.1(iii)

Employees' Insurance Court (E.I. Court)

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

Matters to be decided by E.I. Court

(i) *Adjudication of disputes:* The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.

- (ii) *Adjudication of claims*: The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

Proceedings in both the above cases can be initiated by filing application in the prescribed form by the employee or his dependent or employer or the corporation depending who has cause of action. No Civil Court has power to decide the matters falling within the purview/ jurisdiction of E.I. Court.

Answer Question No. 1(iv)

Procedure for fixing and revising minimum wages

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

First Method

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advise of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

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

Second Method

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

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

Answer Question No. 1(v)**Unfair Labour practices on the part of workmen and trade unions of workmen**

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

Unfair Labour practices on the part of workmen and trade unions of workmen

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

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

Question No. 2

(a) *Distinguish between the following :*

- (i) *'Award' and 'Settlement' under the Industrial Disputes Act, 1947.*
- (ii) *'Partial Disablement' and 'Total Disablement' under the Employees' Compensation Act, 1923.*
- (iii) *'Draft Standing Orders' and 'Certified Standing Orders' under the Industrial Employment (Standing Orders) Act, 1946. (5 marks each)*

Answer Question No. 2(i)**'Award' and 'Settlement'**

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

The term Award was analysed in the case of *Cox & Kings (Agents) Ltd. v. Their Workmen, AIR 1977 S.C. 1666* as follows: The definition of "award" is in two parts. The first part covers a determination, final or interim, of any industrial dispute. The second part takes in a determination of any question relating to an industrial dispute. However, basic thing to both the parts is the existence of an industrial dispute, actual or apprehended. The 'determination contemplated is of the industrial dispute or a question relating thereto on merits.

The word 'determination' implies that the Labour Court or the Tribunal should adjudicate the dispute upon relevant materials and exercise its own judgement. The definition of 'award' also includes the 'interim award', but it should be distinguished from 'interim relief' granted by Tribunal under Section 10(4).

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

An analysis of Section 2(p) would show that it envisages two categories of settlements (i) a settlement arrived at in the course of conciliation proceedings, and (ii) a written agreement between employer arrived at otherwise in the course of conciliation proceedings. For the validity of the second category of settlement, it is essential that parties thereto should have subscribed to it in the prescribed manner and a copy thereof sent to authorised officer and the conciliation officer (*Tata Chemicals Ltd. v. Workmen, 1978 Lab. I.C. 637*). Moreover, settlement contemplates only written settlement, and no oral agreement can be pleaded to vary or modify or supercede a written settlement (AIR 1997 SC 954).

A settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which came into play where an industrial dispute is under adjudication. If the settlement has been arrived at by a vast majority of workmen with their eyes open and was also accepted by them in its totality, it must be presumed to be fair and just and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it (*Tata Engineering and Locomotive Co. Ltd. v. Workmen, 1981-II Labour Law Journal 429 SC*)

Answer Question No. 2(ii)**'Partial Disablement' and 'Total Disablement'**

Disablement means loss of capacity to work or to move. 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.

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

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

Answer Question No. 2(iii)

'Draft Standing Orders' and 'Certified Standing Orders'

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

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

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

Question No. 3

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

- (i) *Mahesh retired on attaining the age of superannuation. After retirement, it was noticed that he had misappropriated travelling allowance drawn by him. The employer decided to deduct the misappropriated amount from the gratuity payable to him. Is the action of the employer legally tenable?*

- (ii) *ABC Ltd. declared minimum bonus in an accounting year as there was no allocable surplus. However, the workmen claimed that the management was liable to pay higher amount of bonus in view of the terms of settlement entered into between the workmen and the management. Is the plea of the workmen tenable in law?*
- (iii) *Mohan has been working in a foundry for the last 20 years. Recently, it was found that he was suffering from diabetes. Based on that, the management terminated his services. Does the action of the management tantamount to retrenchment?* (5 marks each)

Answer Question No. 3(i)

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

Answer Question No. 3(ii)

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

Section 31-A deals with special provision with respect to payment of bonus linked with production or productivity. It states that notwithstanding anything contained in the Act,-

- (i) where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of bonus (Amendment) Act, 1976, or
- (ii) where the employees enter into any agreement or settlement with their employer after such commencement, for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be:

However, any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right and such employees shall not be entitled to be paid such bonus in excess of twenty per cent of the salary or wages earned by them during the relevant accounting year.

Section 34 deals with effect of laws and agreements inconsistent with the Act. It provides that subject to the provisions of section 31A, the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

Answer Question No. 3(iii)

It amounts to retrenchment. It has been held in the case of *Harvilas Kushwah v. Sports Authority of India & Others*, 1996(1) LLJ 450 that merely because a person is

suffering from diabetics, it cannot be said that he is unfit. A bald statement that the person is medically unfit is not enough to put an end to the service tenure on the ground of continued ill-health. There is no evidence too show that the ill-health of the employee was continuous. The termination service amounts to retrenchment.

Question No. 4

- (a) *Discuss the provisions of the EPF Act, 1952 relating to protection of amount standing to the credit of any member in the fund against attachment. (8 marks)*
- (b) *List out the hazardous occupations, where employment of children is prohibited under Child Labour (Prohibition & Regulation) Act, 1986. (7 marks)*

Answer Question No. 4(a)

Section 10 of the EPF Act, 1952 provides statutory protection to the amount of contribution to Provident Fund from attachment to any Court decree. Section 10(1) provides that the amount standing to the credit of any member in the Fund or any exempted employee in a Provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.

Further, it is provided under Section 10(2) of the Act that any amount standing to the credit of a member in the Fund or of an exempted employee in a Provident Fund at the time of his death and payable to his nominee under the Scheme or the rules of the Provident Fund shall, subject to any deduction authorised by the said scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. There is a statutory vesting of the fund on dependents after the death of the subscriber which on such vesting becomes absolute property of dependent and cannot be held to have inherited by dependent.

The above provision shall apply in relation to the Employees' Pension Scheme or any other amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the fund

Answer Question No. 4(b)

Section 3 provides that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on .

Occupations set forth in Part A of the Schedule are as follows:

- Transport of passengers, goods or mails by railways;
- Cinder picking, clearing of an ash pit or building operation in the railway premises;
- Work in a catering establishment at a railway station, involving the movement

of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train;

- Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
- A port authority within the limits of any port;
- Work relating to selling of crackers and fireworks in shops with temporary licenses;
- Abattoirs/Slaughter House;
- Automobile workshops and garages;
- Foundries;
- Handling of toxic or inflammable substances or explosives;
- Handloom and power loom industry;
- Mines (underground and under water) and collieries;
- Plastic units and fiberglass workshops;
- Domestic workers or servant;
- Dhabas, restaurants, hotels, motels, tea shops, resorts, spas or other recreational centers;
- Diving;
- Circus;
- Caring of elephant.

Question No. 5

- (a) *What are the Schedule Act specified under the Labour Laws (Exemption from Furnishing Returns and Maintenance of Register by Certain Establishments) Act, 1988. (8 marks)*
- (b) *Discuss the provisions regarding registration of Trade Union and cancellation of registration of Trade Union. (7 marks)*

Answer Question No. 5(a)

As per section 2(d) of the Labour Laws (Exemption from Furnishing Returns and Maintenance of Register by Certain Establishments) Act, 1988 "Scheduled Act" means an Act specified in the first Schedule and includes the rules made there under. Act specified in the first Schedule are as follows:

- The Payment of Wages Act, 1936
- The Weekly Holidays, Act, 1942
- The Minimum Wages Act, 1948
- The Factories Act, 1948
- The Plantation Labour Act, 1951
- The Working Journalist and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

- The Contract Labour (Regulation and Abolition) Act, 1970
- The Sales Promotion Employees (Conditions of Service) Act, 1976
- The Equal Remuneration Act, 1976.

Answer Question No. 5(b)**Registration of Trade Union**

Section 8 of the Trade Union Act, 1926 provides that the Registrar, on being satisfied that the Trade Union has complied with all the requirements of the Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under the Act.

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

Cancellation of Registration of Trade Union

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar on the following grounds –

- on the application of the Trade Union to be verified in such manner as may be prescribed;
- if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing for any matter provision for which is required by section 6;
- if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members.

Part B (30 Marks)

[Answer ANY TWO questions from this part.]

Question No. 6

Write notes on the following:

- (i) *Circumstantial evidence*
- (ii) *The rule of strict liability as laid down in Rylands vs. Fletcher*
- (iii) *Summons.* (5 marks each)

Answer Question No. 6(i)**Circumstantial evidence**

In English law the expression direct evidence is used to signify evidence relating to

the 'fact in issue' (*factum probandum*) whereas the terms circumstantial evidence, presumptive evidence and indirect evidence are used to signify evidence which relates only to "relevant fact" (*facta probandum*). However, under Section 60 of the Evidence Act, the expression "direct evidence" has altogether a different meaning and it is not intended to exclude circumstantial evidence of things which could be seen, heard or felt.

Thus, evidence whether direct or circumstantial under English law is "direct" evidence under Section 60. Before acting on circumstances put forward are satisfactorily proved and whether the proved circumstances are sufficient to bring the guilt to the accused the Court should not view in isolation the circumstantial evidence but it must take an overall view of the matter.

Answer Question No. 6(ii)

Rule of Strict Liability

The rule of strict liability in *Rylands v. Fletcher (1868) L.R. 3 H.L. 330* is that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants.

The facts of this case were as follows: B, a mill owner employed independent contractors, who were apparently competent to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir which the contractors failed to observe because they were filled with earth. The contractors therefore, did not block them. When the reservoir was filled, the water from it burst through the old shafts and flooded the plaintiff's coal mines on the adjoining land. It was found as a fact that B did not know of the shafts and had not been negligent, though the independent contractors had been, B was held liable. Blackburn, J., observed;

"We think that the true rule of law is that the person, who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and if, he does not do so is, prima facie answerable for all the damage which is the natural consequence of its escape."

Answer Question No. 6(iii)

The general processes to compel appearance are:

- (1) Summons
- (2) Warrants

Summons

A summon is issued either for appearance or for producing a document or thing which may be issued to an accused person or witness. Every summons issued by the Court shall be in writing, in duplicate, signed by the Presiding Officer of such Court or by such officer as is authorised by the High Court and shall bear the seal of the Court (Section 61 of CrPC). The summons should be clear and specific in its terms as to the title of the Court, the place at which, the day and time of the day when, the attendance of the person summoned is required.

Service of summons

The summons shall be served by a police officer or by an officer of the Court or other public servant (Section 62). In case the service cannot be effected by the exercise of due diligence, the serving officer can perform substituted service by affixing one of the duplicates of the summons to some conspicuous part of the house or homestead in which person summoned ordinarily resides, and thereupon the Court, after making such enquiries as it thinks fit may either declare that the summons has been duly served or order fresh service, as it considers proper (Section 65 of CrPC).

The service of summons on corporate bodies, and societies

The service of summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the Chief Officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

The word "corporation" in this Section means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860. Thus, the societies may not be formally incorporated, yet they fall within the purview of this section. (Section 63 of CrPC)

When personal service of summons cannot be effected under Section 62, the extended service under Section 64 can be secured by leaving one of the duplicates with some adult male member of his family residing with him who may also be asked to sign the receipt for that. A servant is not a member of the family within the meaning of Section 64.

In the case of a Government Servant, the duplicate copy of the summons shall be sent to the head of the office by the Court and such head shall thereupon cause the summons to be served in the manner provided by Section 62 and shall return it to the Court under his signature with the endorsement required by Section 62. Such signature shall be evidence of due service. (Section 66 of CrPC)

Question No. 7

- (a) *Article 32 of the Constitution of India empowers the Supreme Court to enforce the fundamental rights guaranteed under Part III of the Constitution of India. Explain with the help of decided case law how the provisions of Article 32 of the Constitution of India have helped in the enforcement of fundamental rights.* (8 marks)
- (b) *Discuss the ordinance making powers of the President of India and of the Governor of a State as provided in the Constitution of India.* (7 marks)

Answer Question No. 7(a)

It is a cardinal principle of jurisprudence that where there is a right there is a remedy (*ubi jus ibi remedium*) and if rights are given without there being a remedy for their enforcement, they are of no use. While remedies are available in the Constitution and under the ordinary laws, Article 32 makes it a fundamental right that a person whose fundamental right is violated has the right to move the Supreme Court by appropriate

proceedings for the enforcement of this fundamental right. It is remedial and not substantive in nature. It is really a far reaching provision in the sense that a person need not first exhaust the other remedies and then go to the Supreme Court. On the other hand, he can directly raise the matter before highest Court of the land and the Supreme Court is empowered to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari, whichever may be appropriate for the enforcement of the right, the violation of which has been alleged.

The right conferred under Article 32, being a fundamental right, cannot be abrogated, abridged, or taken away by an act of the Legislator, unless the Constitution itself is amended. The powers of the Court under Article 32 are not circumscribed by any territorial limitation. It extends not merely over every authority within the territory of India but also those functioning outside, provided such authorities are under the control of the Government of India.

Where a fundamental right is also available against the private persons such as the right under Articles 17, 23 and 24, the Supreme Court can always be approached for appropriate remedy against the violation of such rights by private individuals. (*Peoples' Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473). A petitioners challenge under Article 32 extends not only to the validity of a law but also to an executive order issued under the authority of the law.

The right guaranteed by Article 32 shall not be suspended except as provided in the Constitution. Constitution does not contemplate such suspension except by way of President's order under Article 359 when a proclamation of Emergency is in force.

Again in Article 31C the words appearing at the end of the main paragraph, namely and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy were declared to be void in Kesavananda's case decided by Supreme Court.

Answer Question No. 7(b)

Ordinance-making powers of the President of India

Under the Constitution the most important legislative power conferred on the President is to promulgate Ordinances. Article 123 of the Constitution provides that the President shall have the power to legislate by Ordinances at any time when it is not possible to have a parliamentary enactment on the subject, immediately. This is a special feature of the Constitution of India.

The ambit of this Ordinance-making power of the President is co-extensive with the legislative powers of Parliament, that is to say it may relate to any subject in respect of which parliament has the right to legislate and is subject to the same constitutional limitations as legislation by Parliament.

This independent power of the executive to legislate by Ordinance has the following peculiarities:

- (i) this power is to be exercised by the President on the advice of his Council of Ministers.
- (ii) the Ordinance must be laid before Parliament when it re-assembles, and shall

automatically cease to have effect at the expiration of 6 weeks from the date of re-assembly or before resolutions have been passed disapproving the Ordinance.

- (iii) the Ordinance-making power will be available to the President only when both the Houses of Parliament have been prorogued or is otherwise not in session, so that it is not possible to have a law enacted by Parliament. However, Ordinance can be made even if only one House is in Session, when law cannot be made by that House in session alone. The President's Ordinance making power under the Constitution is not a co-ordinate or parallel power of legislation along with Legislature.

Ordinance-making powers of the Governor of a State

The Governor's power to make Ordinances has been stipulated under Article 213 of the Constitution of India having the force of an Act of the State legislature. It is similar to the Ordinance making power of the President of India. The Governor can make Ordinances only when the State legislature or either of the Two Houses is not in session. He must be satisfied that the circumstances exist where he must take immediate action by issuing the Ordinance with the aid and advise of the Council of Ministers. But under the following circumstances he cannot promulgate any Ordinance without prior instructions from the President:

- (i) Where the previous sanction of the President is required for such Bill
- (ii) Where Bill is reserved for the consideration of the President
- (iii) Where an Act of the State legislature containing the same provisions would under this Constitution have been invalid unless having been reserved for the consideration of the President, it had received the assent of the President.

The Ordinance must be laid before the State legislature (when it re-assembles) and shall automatically cease to have effect at the expiration of six weeks from the date of the re-assembly unless disapproved earlier by that legislature.

Question No. 8

- (a) *"Rule of ejusdem generis is merely a rule of construction to aid the courts to find out the true intention of the legislature."* Explain. (8 marks)
- (b) Define *res judicata* and state the conditions of its application ? (7 marks)

Answer Question No. 8(a)

Rule of *ejusdem generis*

The expression, '*ejusdem generis*' means 'of the same kind'. Normally, general words should be given their natural meaning like all other words unless the context requires otherwise. But when a general word follows specific words of a distinct category, the general word may be given a restricted meaning of the same category. The general expression takes its meaning from the preceding particular expressions because the legislature by using the particular words of a distinct genus has shown its intention to that effect. If the preceding specific words do not belong to a distinct genus, this rule is not applicable.

It is merely a rule of construction to aid the Courts to find out the true intention of the Legislature (*Jage Ram v. State of Haryana, AIR 1971 SC1033*). To apply the rule, the following conditions must exist:

- (1) The statute contains an enumeration by specific words,
- (2) The members of the enumeration constitute a class,
- (3) The class is not exhausted by the enumeration,
- (4) A general term follows the enumeration,
- (5) There is a distinct genus which comprises more than one species, and
- (6) There is no clearly manifested intent that the general term be given a broader meaning than the doctrine requires. (*Thakura Singh v. Revenue Minister, AIR 1965 J & K 102*)

The *rule of ejusdem generis* must be applied with great caution because, it implies a departure from the natural meaning of words, in order to give them a meaning or supposed intention of the legislature. The rule must be controlled by the fundamental rule that statutes must be construed so as to carry out the object sought to be accomplished. The rule requires that specific words are all of one genus, in which case, the general words may be presumed to be restricted to that genus.

Whether the *rule of ejusdem generis* should be applied or not to a particular provision depends upon the purpose and object of the provision, which is intended to be achieved.

Answer Question No. 8(b)

Doctrine of *Res-judicata*

Section 11 of the Civil Procedure Code, 1908 deals with the doctrine of *res-judicata* that is bar or restraint on repetition of litigation of the same issues. General principle is that no one shall be twice vexed for the same cause. For the applicability of the principle of *res-judicata* embodied in Section 11, the following requirements are necessary:

- (i) The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit.
 - (ii) The former suit has been decided — former suit means which is decided earlier.
 - (iii) The said issue has been heard and finally decided.
 - (iv) Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above.
 - (v) The Court which determined the earlier suit must be competent to try the latter suit.
 - (vi) Any matter which might or ought to have been made a ground of defence or attack in such a former suit shall be deemed to have been a matter directly in issue in such suit.
 - (vii) Relief claimed in the plaint but not expressly granted shall be deemed to have been refused.
 - (viii) In representation suit any issue has been decided then *res-judicata* shall apply to them.
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TEST PAPER 2/2013

Time allowed : 3 hours

Max. marks : 100

Part A (70 Marks)

[Answer Question No.1 which is COMPULSORY and ANY THREE of the rest from this part]

Question No. 1

With reference to the relevant legal enactments, write short notes on the following:

- (a) Matters to be provided in standing orders under the Industrial Employment (Standing Orders) Act, 1946.*
- (b) General duties of an 'occupier' under the Factories Act, 1948.*
- (c) Obligation of Employers under the Apprentices Act, 1961.*
- (d) Object and scope of the Minimum Wages Act, 1948.*
- (e) Legality of strike under the Industrial Disputes Act, 1947. (5 marks each)*

Answer to Question No. 1(a)

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 there from.
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 to Question No. 1(b)

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. 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 to Question No. 1(c)

Obligations of employers

Every employer shall have the following obligations in relation to an apprentice, namely:—

- to provide the apprentice with the training in his trade in accordance with the provisions of the Act and the rules made thereunder;
- if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;
- to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices;
- to carry out his obligations under the contract of apprenticeship;
- every employer required to maintained records of the progress of training of each apprentice undergoing apprenticeship training in his establishment;
- employer shall pay to every apprentice during the period of apprenticeship training such stipend at a rate specified in the contract of apprenticeship.

Answer to Question No. 1(d)

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 to Question No. 1(e)**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.

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".

Question No. 2

- (a) *Discuss the Rights and obligations of the employer under the Payment of Gratuity Act, 1972.* (7 marks)
- (b) *Distinguish between 'Courts of inquiry' and 'labour courts' under the Industrial Disputes Act, 1947.* (8 marks)

Answer Question No. 2(a)**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) provides that 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:

However, 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.

Answer to Question No. 2(b)

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.

Question No. 3

- (a) *Explain the object and scope of the Industrial Disputes Act, 1947. (7 marks)*
- (b) *State briefly the provisions under the Factories Act, 1948 regarding working hours and weekly holidays. (8 marks)*

Answer to Question No. 3(a)

Object and Scope of the Industrial Disputes Act, 1947

This Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees.

Though the Supreme Court in number of cases has stated the objects of the Industrial Disputes Act, nevertheless the principal objectives of the Act have been laid down by the Supreme Court in the case of *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate*, AIR 1958 S.C. 353, as follows:

- (i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.
- (ii) Investigation and settlement of industrial disputes between employers and employees, employers and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade unions or an association of employers or a federation of associations of employers.
- (iii) Prevention of illegal strikes and lock-outs.
- (iv) Relief to workmen in the matter of lay-off and retrenchment.
- (v) Promotion of collective bargaining.

Subsequently the Supreme Court in *Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728 held that the Act was designed to provide a self contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice.

Further the Apex Court held that this being the object of the Act, the court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage.

Answer to Question No. 3(b)

Working hours and weekly holidays

Section 51 and 52 of the Factories Act, 1948 lays down the provisions regarding working hours and weekly holidays.

Weekly hours : According to Section 51 of the Factories Act, 1948 no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week. Section 54 provides that subject to the above rule no adult worker, whether male or female shall be required or allowed to work in a factory for more than 9 hours in any day. But in order to facilitate the change of shift this limit may be exceeded. This can, however, be done with the previous approval of the Chief Inspector of Factories.

As per Section 55 the periods of work of adult workers in a factory each day shall be so fixed that no period exceed 5 hours. Further, no worker shall work continuously for more than 5 hours before he has an interval for rest of at least half an hour.

The State Government or the Chief Inspector may, by written order and for the reasons specified therein, exempt any factory, from the compliance of above provisions. But in that case also the total number of hours worked without rest interval does not exceed six.

Weekly holidays : Section 52 provides that there shall be holiday for the whole day in every week and such weekly holiday shall be on the first day of the week. However, such holiday may be substituted for any one of the three days immediately before or after the first day of the week provided the manger of the factory has:

- (i) delivered a notice at the office of the Inspector; and
- (ii) displayed a notice in the factory to this effect.

The effect of all this is that subject to above stated conditions (i) and (ii), there shall be a holiday during ten days. In other words no adult worker shall work for more than ten days consecutively without a holiday for the whole day.

Notices of substitution may be cancelled by an appropriate notice but not later than the day of weekly holiday or the substituted holiday whichever is earlier.

Question No. 4

- (a) *What are the provisions relating to welfare and health of contract labour under the Contract Labour (Regulation and Abolition) Act, 1970 ?* (8 marks)
- (b) *Discuss about deductions from the wages of an employee under Payment of Wages Act, 1936.* (7 marks)

Answer to Question No. 4(a)**Welfare and Health of Contract Labour**

The contractors are required to take certain specific measures for the welfare and health of contract labour. This, of course, arises in those employments in which the system of contract labour has not been abolished. The relevant provisions are as follows:

- (i) *Canteens* : As per Section 16, the appropriate Government has powers to make rules requiring that in every establishment to which the Act applies and wherein contract labour numbering 100 or more is ordinarily employed by a contractor and the employment of the contract labour is likely to continue for such period as may be prescribed, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour. The rules may provide for the date by which the canteen shall be provided, the number of canteens and the standards in respect of construction, accommodation, furniture and other equipment of the canteens, the food stuffs which may be served therein and the charges which may be made therefor.
- (ii) *Rest rooms* : Section 17(1) makes the following provisions. In every place where contract labour is required to halt at night in connection with the work of an establishment to which the Act applies and in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest rooms or such of the suitable alternative accommodation within such time as may be prescribed. Section 17(2) says that the rest room or alternative accommodation to be provided under Sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.
- (iii) *Other facilities* : It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which the Act applies, to provide and maintain:
 - (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;
 - (b) a sufficient number of latrines and urinals of the prescribed types conveniently situated and accessible to the contract labour; and
 - (c) washing facilities. (Section 18)

First Aid facilities : The contractor is required to provide and maintain a first aid box equipped with the prescribed contents at every place, where contract labour is employed by him. The first aid box should be readily accessible during working hours. (Section 19)

Liability of the principal employer in certain cases : If the prescribed amenities (canteens, rest rooms and other facilities, first aid box) are not provided by the contractor within the prescribed time, then such amenities shall be provided by the principal employer within such time as may be specified. According to Section 20(2),

all expenses incurred by the principal employer in providing the amenity may be recovered by him from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. (Section 20)

Answer to Question No. 4(b)

Section 7 of the Payment of Wages Act, 1936 deals with deductions which may be made from wages of an employee. Sub-section (2) of section 7 provides that deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and may be of the following kinds only namely:

- (a) fines;
- (b) deductions for absence from duty;
- (c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default;
- (d) deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by appropriate Government by notification in the Official Gazette;
- (e) deductions for such amenities services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may by general or special order authorise.

It may be noted that the word "services" in this clause does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance) and the interest due in respect thereof or for adjustment of over-payments of wages;
- (ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the appropriate Government and the interest due in respect thereof;
- (fff) deductions for recovery of loans granted for house-building or other purposes approved by appropriate Government and the interest due in respect thereof;
- (g) deductions of income-tax payable by the employed person;
- (h) deductions required to be made by order of a court or other authority competent to make such order;
- (i) deductions for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act 1952 applies or any recognised provident funds as defined in section 58A of the Indian Income Tax Act 1922 or any provident fund approved in this behalf by the appropriate Government during the continuance of such approval;
- (j) deductions for payments to co-operative societies approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office; and

- (k) deductions made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation Act of India established under the Life Insurance Corporation 1956 or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of any such government;
- (kk) deductions made with the written authorisation of the employed person for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act 1926 for the welfare of the employed persons or the members of their families or both and approved by the appropriate Government or any officer specified by it in this behalf during the continuance of such approval;
- (kkk) deductions made with the written authorisation of the employed person for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act 1926;
 - (l) deductions for payment of insurance premia on Fidelity Guarantee Bonds;
- (m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- (n) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice to bill to collect or to account for the appropriate charges due to that administration whether in respect of fares freight demurrage wharfage and crantage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;
- (o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;
- (p) deductions made with the written authorisation of the employed person for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may by notification in the Official Gazette specify;
- (q) deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

As per sub-section (3) of Section 7 notwithstanding anything contained in this Act the total amount of deductions which may be made under sub-section (2) in any wage-period from the wages of any employed person shall not exceed - (i) in cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) of sub-section (2) seventy-five per cent of such wages and (ii) in any other case fifty per cent of such wages.

Where the total deductions authorised under sub-section (2) exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.

Question No. 5

- (a) *Discuss briefly about Employees' State Insurance Fund under the Employees' State Insurance Act, 1948.* (7 marks)

(b) Discuss briefly about Maternity Benefit Act, 1961.

(8 marks)

Answer to Question No. 5(a)

Employees' State Insurance Fund

Creation of Fund

Section 26 of the Employees' State Insurance Fund under the Employees' State Insurance Act, 1948 provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. The Corporation may accept grants, gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not, for all, or any of the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government. Such account shall be operated on by such officers who are authorised by the Standing Committee with the approval of the Corporation.

Purposes for which the Fund may be expended

Section 28 provides that Fund shall be expended only for the following purposes:

- (i) payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;
- (ii) payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- (iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act;
- (iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;
- (v) payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- (vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;
- (vii) defraying the cost (including all expenses) of Employees Insurance Courts set up under this Act;

- (viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- (ix) payment of sums under any decree, order or award, of any court or tribunal against the Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the Corporation;
- (x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- (xi) defraying expenditure within the limits prescribed, on measure for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- (xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

Answer to Question No. 5(b)

Article 39(e) &(f) of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 42 of the Constitution of India states that the State shall make provision for securing just and humane conditions of work and for maternity relief.

Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Maternity Benefit Act, 1961 is applicable to mines, factories, circus industry, plantations, shops and establishments employing ten or more persons. It can be extended to other establishments by the State Governments.

Under the Maternity Benefit Act, 1961, women employees are entitled to maternity benefit at the rate of average daily wage for the period of their actual absence up to 12 weeks due to the delivery. In cases of illness arising due to pregnancy, etc., they are entitled to additional leave with wages for a period of one month. They are also entitled to six weeks maternity benefit in case of miscarriage. The Maternity Benefit Act, 1961 provides that every woman entitled to maternity benefit shall receive from her employer medical bonus. The Maternity Benefit Act, 1961 also makes certain other provisions such as nursing break to safeguard the interest of pregnant women workers.

Every employer shall prepare and maintain such registers, records and muster-rolls and in prescribed manner. The Maternity Benefit Act, 1961 also provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with imprisonment and with fine.

Part B (30 Marks)

[Answer ANY TWO questions from this part]

Question No. 6

- (a) What do you understand by the expression 'State' under Part-III of the Constitution of India? Explain with the help of decided case law. (8 marks)
- (b) Write in brief the importance of the writ of habeas corpus. (7 marks)

Answer to Question No. 6(a)**The expression 'State' under the Constitution of India**

Under Article 12 of the Constitution of India the expression "State" includes—

- (a) The Government and Parliament of India;
- (b) The Government and the Legislature of each of the States; and
- (c) All local or other authorities:
- (i) Within the territory of India; or
 - (ii) Under the control of the Government of India.

The expression 'local authorities' refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trusts, Port Trusts and Mining Settlement Boards. The Supreme Court has held that 'other authorities' will include all authorities created by the Constitution or statute on whom powers are conferred by law and it is not necessary that the authority should engage in performing government functions (*Electricity Board, Rajasthan v. Mohanlal*, AIR 1967 SC 1957). The Calcutta High Court has held that the electricity authorities being State within the meaning of Article 12, their action can be judicially reviewed by this Court under Article 226 of the Constitution of India. (In re: *Angur Bala Parui*, AIR 1999 Cal. 102). It has also been held that a university is an authority (*University of Madras v. Shanta Bai*, AIR 1954 Mad. 67). The Gujarat High Court has held that the President is "State" when making an order under Article 359 of the Constitution (*Haroobhai v. State of Gujarat*, AIR 1967, Guj. 229). The words "under the control of the Government of India" bring, into the definition of State, not only every authority within the territory of India, but also those functioning outside, provided such authorities are under the control of the Government of India. In *Bidi Supply Co. v. Union of India*, AIR 1956 SC 479, State was interpreted to include its Income-tax department.

The Supreme Court in *Sukhdev Singh v. Bhagatram*, AIR 1975 SC 1331 and in *R.D. Shetty v. International Airports Authority*, AIR 1979 SC 1628, has pointed out that corporations acting as instrumentality or agency of government would become State as they are subjected to the same limitations in the field of constitutional or administrative law as the government itself.

In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111, a seven Judge Bench of the Supreme Court by a majority of 5:2 held that CSIR is an instrumentality of "the State" falling within the scope of Article 12. The multiple test which is to be applied to ascertain the character of a body as falling within Article 12 or

outside is to ascertain the nature of financial, functional and administrative control of the State over it and whether it is dominated by the State Government and the control can be said to be so deep and pervasive so as to satisfy the court "of brooding presence of the Government" on the activities of the body concerned.

In *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649, the Supreme Court held that the Board of Control for cricket in India (BCCI) was not State for purposes of Article 12 because it was not shown to be financially, functionally or administratively dominated by or under the control of the Government and control exercised by the Government was not pervasive but merely regulatory in nature.

Judiciary although an organ of State like the executive and the legislature, is not specifically mentioned in Article 12. However, the position is that where the Court performs judicial functions, e.g. determination of scope of fundamental rights vis-a-vis legislature or executive action, it will not occasion the infringement of fundamental rights and therefore it will not come under 'State' in such situation [*A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602]. While in exercise of non-judicial functions e.g. in exercise of rule-making powers, where a Court makes rules which contravene the fundamental rights of citizens, the same could be challenged treating the Court as 'State'.

Answer Question No. 6(b)

The writ of Habeas Corpus

The writ of habeas corpus is a remedy available to a person who is confined without legal justification. The words "habeas corpus" literally mean "to have a body". This writ is used to secure release of a person who has been detained unlawfully or without legal justification. The great value of this writ is that it enables an immediate determination of a persons' right to freedom. This writ is issued to the authority who has the aggrieved person in his custody.

Under Article 32 of the Constitution, the Supreme Court can issue writ of *habeas corpus* against a person/authority who has detained a person without legal justification. Likewise the High Court under Article 226 of the Constitution can issue writ of habeas corpus in similar circumstances provided that the person or authority against whom the writ is sought is within the territorial jurisdiction of that High Court on the date of filing the writ petition.

Question No. 7

- (a) Discuss about Penalties which can be imposed on public information officer under section 20 of the Right to Information Act, 2005. (7 marks)
- (b) Write notes on Primary and Secondary evidence. (8 marks)

Answer Question No. 7(a)

Penalty on Public Information Officer

Section 20 of the Right to Information Act, 2005 imposes stringent penalty on a Public Information Officer (PIO) for failing to provide information. Every PIO will be liable for fine of ₹250 per day, up to a maximum of ₹25,000/-, for -

- (i) not accepting an application;

- (ii) delaying information release without reasonable cause;
- (iii) malafidely denying information;
- (iv) knowingly giving incomplete, incorrect, misleading information;
- (v) destroying information that has been requested; and
- (vi) obstructing furnishing of information in any manner.

The Information Commission (IC) at the Centre and at the State levels will have the power to impose this penalty. They can also recommend disciplinary action for violation of the law against the PIO for persistently failing to provide information without any reasonable cause within the specified period.

Answer to Question No. 7(b)

Primary and Secondary Evidence of documents

Primary evidence : "Primary evidence" means the document itself produced for the inspection of the Court (Section 62, Indian Evidence Act, 1872). Where document is executed in several parts, each part is primary evidence. When a number of documents are all made by uniform process as printing photography, each is primary evidence of the content of the rest.

Secondary evidence : Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 63 of the Indian Evidence Act defines the kind of secondary evidence permitted by the Act. According to Section 63, "secondary evidence" means and includes.

- (1) certified copies given under the provisions hereafter contained;
- (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

Secondary evidence may be given:

- (i) when the original is in the possession of the person against whom it is to be proved.
- (ii) when the existence of the original has been admitted by the person against whom it is to be proved;
- (iii) when original has been destroyed or lost;
- (iv) when the original is not easily movable;
- (v) when a certified copy of original is permitted by Act;
- (vi) when the originals consist of numerous accounts.

Question No. 8

- (a) *Discuss the rule of harmonious construction in the interpretation of statutes.*
(8 marks)
- (b) *The law of limitation bars the remedy in a court of law when the period of limitation has expired. However, there are certain exclusions in the computation of the period of limitation. Explain.*
(7 marks)

Answer Question No. 8(a)**Rule of Harmonious Construction**

Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This is what is known as the “*rule of harmonious construction*”.

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid “a head on clash” between two sections of the same statute. The courts should construe provisions which appear to conflict in such a manner that they harmonise” (*Raj Krishna v. Pinod Kanungo, A.I.R. 1954 S.C. 202 at 203*).

The Supreme Court applied this rule in resolving a conflict between Articles 25(2) (b) and 26(b) of the Constitution and it was held that the right of every religious denomination or any section thereof to manage its own affairs in matters of religion [Article 26(b)] is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus [Article 25(2)(b)]. (*Venkataramana Devaru v. State of Mysore, A.I.R. 1958 S.C. 255*)

Answer to Question No. 8(b)

The Law of Limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process. Thus if a claim is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal.

Section 3 of the Limitation Act, 1963 provides that any suit, appeal or application if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defence or not. The provisions of Section 3 are mandatory. The Court can suo motu take note of question of limitation.

The Limitation Act makes specific provisions for exclusion of certain time in some cases for computation of the prescribed periods of limitation. These provisions are as follows:

1. Exclusion of time in legal proceedings (Section 12). The rules relating to exclusion of time in legal proceeding are as follows:

Computation of period of limitation for a suit, appeal or application : In case of

any suit, appeal or application, the period of limitation is to be computed exclusive of the day on which the time begins to run.

Computation of period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgement : The day on which the judgement complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded [Section 12(2)].

Computation of period for an application made for leave to appeal from a decree or order : The time requisite for obtaining a copy of the judgement shall also be excluded [Section 12(3)].

Computation of Limitation period for an application to set aside an award : The time required for obtaining a copy of the award shall be excluded [Section 12(4)].

2. Exclusion of time during which leave to sue or appeal as a pauper is applied for (Section 13).
3. Exclusion of time bona fide taken in a court without jurisdiction. (Section 14)

The following conditions must co-exist for the applicability of this Section:

- that the plaintiff or the applicant was prosecuting another civil proceedings against the defendant with due diligence;
- that the previous suit or application related to the same matter in issue;
- that the plaintiff or the applicant prosecuted in good-faith in that court; and
- that the court was unable to entertain a suit or application on account of defect of jurisdiction or other like cause.

4. *Exclusion of time in certain other cases* : The Limitation Act, 1963 make provisions for exclusion of time in certain cases other than those contained in Sections 12 to 14. These provisions have been laid down under Section 15, 16 and 17 of the Limitation Act.
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TEST PAPER 3/2013

Time allowed : 3 hours

Max. marks : 100

Part A (70 Marks)

[Answer Question No.1 which is COMPULSORY and ANY THREE of the rest from this part]

Question No. 1

With reference to the relevant legal enactments, write short notes on the following :

- (i) Manufacturing process.
- (ii) Lay-off compensation.
- (iii) Total disablement.
- (iv) Employment Injury under ESI Act, 1948.
- (v) Compulsory notification of vacancies to Employment Exchange. (5 marks each)

Answer to Question No.1(i)

Manufacturing Process

As per section 2(k) of the Factories Act, 1948, 'manufacturing process' 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 in 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]. In another case it was observed that manufacturing process merely refers to particular business carried on and does not necessarily refer to the production of some article. The works of laundry and carpet beating were held to involve manufacturing process. A process employed for purpose of pumping water is manufacturing process. Each of the words in the definition has got independent meaning which itself constitutes manufacturing process.

Answer to Question No. 1(ii)

Lay-Off Compensation

Under Section 2(kkk) of the Industrial Disputes Act, 1947 "lay-off" means failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:

- (a) shortage of coal, power or raw materials, or
- (b) accumulation of stocks, or
- (c) break-down of machinery, or
- (d) natural calamity, or
- (e) for any other connected reason.

If the employees are laid off in pursuance to the provisions of the Section 2(kkk) of the Industrial Disputes Act, 1947, they are entitled to lay-off compensation in accordance with the provisions of Section 25C of the Industrial Disputes Act, 1947. The right of a workman to lay-off compensation is designed to relieve the hardship caused by unemployment due to no fault of the workman. It is based on grounds of humane public policy.

The requisites regarding payment of compensation to a workman, who is laid-off, are contained in Section 25-C which inter-alia provides:

Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent (50%) of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off.

If during any period of 12 months a workman is laid-off for more than 45 days, no such compensation shall be payable to the workman during any period 12 months after the expiry of the first 45 days if there is an agreement to that effect between the workman and the employer.

Where a workman is laid-off for a period of more than 45 days during a period of 12 months, the employer can lawfully retrench him in accordance with the provisions

contained in Section 25-F at any time after the expiry of the first 45 days of lay-off. When the employer does so, any compensation paid to the workman for having been laid-off during the proceeding 12 months may be set-off against the compensation payable for retrenchment.

Answer to Question No. 1(iii)

Total disablement

Disablement means loss of capacity to work or to move. 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.

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

Answer to Question No. 1(iv)

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. The place or time of accident should not be totally unrelated to the employment (*Regional Director, E.S.I. Corpn. v. L. Ranga Rao*, 1982 I-L.L.J. 29).

Answer to Question No. 1(v)

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 provides for compulsory notification of vacancies and submission of employment returns

by the employers to the employment exchanges. Thus, the main activities of the employment exchanges are registration, placement of job seekers, career counseling, and vocational guidance and collection of employment market information.

Section 4 of the Act provides that the employer in every establishment in public sector in that State and the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall notify the vacancy to such employment exchanges as may be prescribed. However, there is no obligation upon any employer to recruit any person through the employment exchange to fill any vacancy.

Section 5 of the Act stipulates that the employer in every establishment in public sector in that State or area shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment, to such employment exchanges as may be prescribed.

Question No. 2

- (a) *Discuss about Employees' Deposit – Linked Insurance Scheme. (7 marks)*
- (b) *Can the compensation payable under the Employees Compensation Act, 1923 be assigned, attached or changed? (8 marks)*

Answer to Question No. 2(a)

Employees' Deposit-Linked Insurance Scheme

Section 6B of EPF Act, 1952 empowering the Central Government to frame a Scheme to be called the Employees' Deposit-Linked Insurance Scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which the Act applies. The Central Government has accordingly framed the Employees' Deposits-Linked Insurance Scheme, 1976. It came into force on the 1st August, 1976.

1. *Application of the Scheme*: The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies. All the employees who are members of the Provident Funds in both the exempted and the un exempted establishments are covered under the scheme.
2. *Contributions to the Insurance Fund*: The employees are not required to contribute to the Insurance Fund. The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.
3. *Administrative expenses*: The employers of all covered establishments are required to pay charges to the Insurance Fund, at the rate of 0.01% of the pay of the employee-members for meeting the administrative charges, subject to a minimum of Rs. 2/- per month.
4. *Nomination*: The nomination made by a member under the Employee Provident Fund Scheme 1952 or in the exempted provident fund is treated as nomination under this scheme. Provisions of Section 5 have overriding effect and will override

the personal laws of the subscriber in the matters of nominations (LLJ I 1996 All. 236).

5. *Payment of assurance benefit:* In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations. In case the average balance exceeds Rs. 50,000, the amount payable shall be Rs. 50,000 plus 40% of the amount of such excess subject to a ceiling of Rs. one lakh
6. *Exemption from the Scheme:* Factories/establishments, which have an Insurance Scheme conferring more benefits than those provided under the statutory Scheme, may be granted exemption, subject to certain conditions, if majority of the employees are in favour of such exemption.

Answer to Question No. 2(b)

Compensation payable under the Employees' Compensation Act, 1923 cannot be assigned, attached or charged.

It has been expressly stated under Section 9 of the Employee's Compensation Act, 1923 that no lump sum or half-monthly payment payable under this Act can be assigned, or charged or attached or passed to any person other than the employee by operation of law nor can any claim be set-off against the same.

Section 9 of the Employee's Compensation Act, 1923 is mainly intended to give protection to a employee who has been granted lump sum or half monthly payment, from being deprived of the benefit of compensation. The object of this provision is to save employee from money lenders and other creditors.

Question No. 3

- (a) *Discuss the provisions of Minimum Wages Act, regarding (a) wages to be paid to a worker who works for less than normal working day ; (b) wages to be paid to an employee who does two or more of work to each of which a different minimum rate of wages is applicable. (8 marks)*
- (b) *What are the conditions for the eligibility of bonus ? When is an employee disqualified from receiving bonus ? (7 marks)*

Answer to Question No. 3(a)

- (a) *Wages of worker who works for less than normal working day*

As per Section 15 of the Minimum Wages Act, 1948 if an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:

However, he shall not receive wages for full normal working day—

- (i) where his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work; and

(ii) in such other cases and circumstances as may be prescribed.

(b) *Wages for two or more classes of work*

According to Section 16 of the Act, where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

Answer to Question No. 3(b)

Eligibility for bonus

As per Section 8 of the Payment of Bonus Act, 1965, every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. 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]

Disqualification for bonus

Section 9 of the Act provides that an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises or the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment.

This provision is based on the recommendations of the Bonus Commission which observed "after all bonus can only be shared by those workers who promote the stability and well-being of the industry and not by those who positively display disruptive tendencies. Bonus certainly carries with it obligation of good behaviour".

If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place [*Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court*, (1996) 2 LLJ 606].

Question No. 4

- (a) "Accident alone does not entitle a workman to claim compensation, it must arise out of and in the course of employment". Comment. (8 marks)
- (b) What establishments are required to be registered under the Contract Labour (Regulation and Abolition) Act, 1970 ? (7 marks)

Answer to Question No. 4(a)

To make the employer liable, for compensation under Section 3 of Employees' Compensation Act, 1923 it is necessary that the injury is caused to an employee by an accident and such accident must arise out of and in the course of employment.

Arising out of employment

The expression arising out of employment suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause. Thus, where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment [*Laxmibai Atma Ram v. Bombay Port Trust*, AIR 1954 Bom. 180]. Generally if a workman is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.

In the case of *Mackenzie v. M. Issak*, it was observed that the words arising out of employment means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment.

Arising in the course of employment

The expression in the course of employment suggests the period of employment and the place of work. In other words, the workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

The expression employment is wider than the actual work or duty which the workman has to do. It is enough if at the time of the accident the workman was in actual employment although he may not be actually turning out the work. Even when the workman is resting, or having food, or taking his tea or coffee, proceeding from the place of employment to his residence, and accident occurs, the accident is regarded as arising out of and in the course of employment.

For the expression accident arising out of and in the course of employment the basic and indispensable ingredient is unexpectedness. The second ingredient is that the injury must be traceable within reasonable limits, to a definite time, place or occasion or cause. The Act should be broadly and liberally constructed in order to effectuate the real intention and purpose of the Act.

Answer to Question No. 4(b)

Registration of certain establishments : Every establishment covered by the Act, if it wants to engage twenty or more persons through a contractor has to get itself registered. Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 provides that every principal employer of an establishment to which the Act applies shall make an application to the registering officer in the prescribed manner for registration of the establishment within the prescribed time limit. A registration fee varying from Rs. 20 to Rs. 500 which is related to the number of workmen employed as contract labour, is payable. If the application is complete in all respects the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration in the prescribed form.

Revocation of Registration in certain cases

As per Section 8 of the Act, the registration can be revoked in the following circumstances.

- (1) If the registering officer is satisfied, either on a reference made to him in his behalf or otherwise, that the registration has been obtained by mis- representation or suppression of any material fact, or
- (2) That the registration has become useless and become ineffective for any other reason and, therefore, requires to be revoked.

In both the cases the registering officer shall give an opportunity to the principal employer of the establishment to be heard. He will also obtain previous approval of the appropriate Government in case the registration is to be revoked.

Effect of Non-Registration

Section 9 provides that no principal employer of an establishment to which the Act applies can employ contract labour, if

- he has not obtained the certification of registration; or
- a certificate has been revoked after being issued.

Question No. 5

- (a) *Distinguish between the (ii) 'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948. (8 marks)*
- (b) *Discuss the salient features of the Payment of Wages Act, 1966. (7 marks)*

Answer to Question No.5(a)**Principal employer & immediate employer**

“Principal Employer” as per Section 2(17) of the E.S.I Act, 1948 means the following:

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

According to Section 2(13) of the E.S.I. Act, 1948 “immediate employer” means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on, in or incidental to the purpose of any

such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

The principal employer required to pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution. A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

Every principal and immediate employer shall submit to the ESI Corporation or to such officer of the ESI Corporation as it may direct such returns in prescribed form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in this behalf. Every principal and immediate employer shall maintain registers or records in respect of his factory or establishment as may be required in this behalf.

Answer to Question No. 5(b)

Salient features of the Payment of Wages Act, 1936

- The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against unauthorized deductions and/or unjustified delay caused in paying wages to them.
- It applies to the persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly, through a sub-contractor.
- The Central Government is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the State Governments are responsible for it in factories and other industrial establishments.
- The person responsible for payment of wages shall fix the wage period upto which wage payment is to be made. No wage-period shall exceed one month.
- All wages shall be paid in current legal tender, that is, in current coin or currency notes or both. However, the employer may, after obtaining written authorisation of workers, pay wages either by cheque or by crediting the wages in their bank accounts.
- All payment of wages shall be made on a working day. In railways, factories or industrial establishments employing less than 1000 persons, wages must be paid before the expiry of the seventh day after the last date of the wage period. In all other cases, wages must be paid before the expiry of the tenth day after the last day of the wage period. However, the wages of a worker whose services have been terminated shall be paid on the next day after such termination.

- Although the wages of an employed person shall be paid to him without deductions of any kind, the Act allows deductions from the wages of an employee on the account of fines; absence from duty; damage to or loss of goods expressly entrusted to the employee; housing accommodation and amenities provided by the employer; etc.
- Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in prescribed form. Every register and record required to be maintained shall be preserved for a period of three years after the date of the last entry made therein.

Question No. 6

- (a) *Discuss important provisions of the Equal Remuneration Act, 1976. (8 marks)*
- (b) *Discuss the legal frame work stipulated under the Child Labour (Prohibition and Regulation) Act, 1986. (7 marks)*

Answer to Question No. 6(a)

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination and also prevents discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment. The provisions of the Act have been extended to all categories of employment. The Act extends to whole of India.

Section 3 of the Act provides that the Act to have overriding effect. Section 4 of the Act provides that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature and employer shall not reduce the rate of remuneration of any worker.

As per section 5, employer while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, shall not make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

Section 7 of the Act empower the appropriate Government appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding complaints with regard to the contravention of any provision of the Act; claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature; and define the local limits within which each such authority shall exercise its jurisdiction.

As per section 8, it is the duty of every employer, to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

If any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/ she shall be punishable with fine or with imprisonment or with both.

Answer to Question No. 6(b)

As per Article 24 of the Constitution of India , no child below the age of 14 years is to be employed in any factory, mine or any hazardous employment. Further, Article 39 of the Constitution requires the States to direct its policy towards ensuring that the tender age of children is not abused and that they are not forced by economic necessity to enter avocations unsuited to their age or strength.

The Child Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children below the age of fourteen years in factories, mines and hazardous employments and to regulate their conditions of work in certain other employments. It extends to whole of India.

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on . However, prohibition of employment of children is not applicable to any workshop wherein any process is carried on by the occupier with the aid of his family, or to any school established by, or receiving assistance or recognition from Government.

A child shall not permit to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments. Every child employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Every occupier in relation to an establishment who employs, or permits to work, any child shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice. Every occupier in respect of children employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment.

Contravention of the provisions of Section 3 of the Act shall be punishable with imprisonment for a term which shall not be less than, three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

Part B (30 Marks)

[Answer ANY TWO questions from this part]

Question No. 7

- (a) Explain the terms 'Investigation', 'Inquiry' and 'Trial' in a criminal case under the Code of Criminal Procedure, 1973. (8 marks)

(b) Explain in brief the Summary Procedure.

(7 marks)

Answer to Question No. 7(a)

Inquiry, Investigation and Trial under the Code of Criminal Procedure, 1973

Inquiry : It means every inquiry other than a trial, conducted under this Code by a Magistrate or Court. [Section 2(g)]

- the inquiry is different from a trial in criminal matters;
- inquiry is wider than trial;
- it stops when trial begins.

Investigation: It includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. [Section 2(h)]

Trial: Trial starts when formal charge has been framed against the accused and proceedings ended with either conviction or acquittal by a competent Court.

The three terms – ‘investigation’, ‘inquiry’ and ‘trial’ denote three different stages of a criminal case. The first stage is reached when a police officer either on his own or under orders of a Magistrate investigates into a case (Section 202). If he finds that no offence has been committed, he submits his report to the Magistrate who drops the proceedings. But if he is of different opinion, he sends that case to a Magistrate and then begins the second stage – a trial or an inquiry. The Magistrate may deal with the case himself and either convict the accused or discharge or acquit him. In serious offences the trial is before the Session’s Court, which may either discharge or convict or acquit the accused.

Answer to Question No.7(b)

Summary Procedure

A procedure by way of summary suit applies to suits upon bill of exchange, hundies or promissory notes, when the plaintiff desires to proceed under the provisions of Order 37 of the CPC. Order 37 of the CPC provides for a summary procedure in respect of certain suits. The object is to prevent unreasonable obstruction by a defendant.

The rules for summary procedure are applicable to the following Courts:

- (1) High Courts, City Civil Courts and Small Courts;
- (2) Other Courts: In such Courts the High Courts may restrict the operation of Order 37 by issuing a notification in the Official Gazette.

The debt or liquidated demand in money payable by the defendant should arise on a written contract or on an enactment or on a guarantee.

Institution of summary suits

Such suit may be instituted by presenting a plaint containing the following essentials:

- (1) a specific averment to the effect that the suit is filed under this order;

- (2) that no relief which does not fall within the ambit of this rule has been claimed;
- (3) the inscription immediately below the number of the suit in the title of the suit that the suit is being established under Order 37 of the CPC.

Leave to defend

Order 37 Rule 3 prescribe the mode of service of summons etc. and leave to defend. The defendant is not entitled to defend the suit unless he enters an appearance within 10 days from the service of summons. Such leave to defend may be granted unconditional or upon such term as the Court or the Judge may think fit. However, such leave shall not be granted where:

- (1) the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence or that the defences are frivolous or veracious; and
- (2) the part of the amount claimed by the plaintiff and admitted by the defendant to be due from him is deposited by him in the Court.

On the hearing of such summon for judgement, the plaintiff shall be entitled to judgement provided the defendant has not applied for leave to defend or if such application has been made and is refused or where the defendant is permitted to defend but he fails to give the required security within the prescribed time or to carry out such other precautions as may have been directed by the Court.

After decree, the Court may, under special circumstances set-aside the decree and if necessary stay or set aside execution, and may give leave to the defendant to appear and to defend the suit. (Rule 4 Order 37)

The summary suit must be brought within one year from the date on which the debt becomes due and payable, whereas the period of limitation for suits for ordinary cases under negotiable instrument is three years.

Question No. 8

- (a) *Enumerate the fundamental duties imposed on citizens of India under the Constitution.* (7 marks)
- (b) *The principle of estoppel under the Indian Evidence Act, 1872.* (8 marks)

Answer to Question No. 8(a)

Article 51A of the Constitution of India imposing the fundamental duties on every citizen of India. These Fundamental Duties are:

- (a) to abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;

- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
- (k) to provide opportunities for education to one's child or, as the case may be, ward between the age of six and fourteen years.

Since the duties are imposed upon the citizens and not upon the States, legislation is necessary for their implementation. Fundamental duties can't be enforced by writs (*Surya Narain v. Union of India*, AIR 1982 Raj 1). The Supreme Court in *AIIMS Students' Union v. AIIMS* (2002) SCC 428 has reiterated that though the fundamental duties are not enforceable by the courts, they provide a valuable guide and aid to the interpretation of Constitutional and legal issues.

Answer to Question No. 8(b)

The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing (Section 115 of the Indian Evidence Act, 1872). However, there is no estoppel against the Statute. Where the Statute prescribes a particular way of doing something, it has to be done in that manner only.

Principle of Estoppel

Estoppel is based on the maxim '*allegans contraria non est audiendus*' i.e. a person alleging contrary facts should not be heard. The principles of estoppel covers one kind of facts. It says that man cannot approbate and reprobate, or that a man cannot blow hot and cold, or that a man shall not say one thing at one time and later on say a different thing.

The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it (*Sorat Chunder v. Gopal Chunder*).

Estoppel is a rule of evidence and does not give rise to a cause of action. Estoppel

by record results from the judgement of a competent Court (Section 40, 41). It was laid down by the *Privy Council in Mohori Bibee v. Dharmodas Ghosh*, (1930) 30 Cal. 530 PC, that the rule of estoppel does not apply where the statement is made to a person who knows the real facts represented and is not accordingly misled by it. The principle is that in such a case the conduct of the person seeking to invoke rule of estoppel is in no sense the effect of the representation made to him. The main determining element is not the effect of his representation or conduct as having induced another to act on the faith of such representation or conduct.

In *Biju Patnaik University of Tech. Orissa v. Sairam College*, AIR 2010 (NOC) 691 (Orissa), one private university permitted to conduct special examination of students prosecuting studies under one time approval policy. After inspection, 67 students were permitted to appear in the examination and their results declared. However, university declined to issue degree certificates to the students on the ground that they had to appear for further examination for another condensed course as per syllabus of university. It was held that once students appeared in an examination and their results declared, the university is estopped from taking decision withholding degree certificate after declaration of results.

There are different kinds of estoppel by conduct or estoppel in pais. They are: (a) estoppel by attestation (b) estoppel by contract (c) constructive estoppel (d) estoppel by election (e) equitable estoppel (f) estoppel by negligence, and (g) estoppel by silence.

Question No. 9

- (a) *Discuss Persons against whom specific performance cannot be enforced.*
(7 marks)
- (b) *Define the terms 'Public authority' and 'Information' and 'Right to information' under the Right to Information Act, 2005.*
(8 marks)

Answer to Question No. 9(a)

Specific performance means the carrying out in specie of the subject matter of an agreement. Specific performance has been defined by various jurists. According to Fry the specific performance of a contract is its actual execution according to its stipulations and terms, and is contrasted with damages or compensation for the non-execution of the contract. According to Maitland, in granting a decree for specific performance, the court in effect says to the defendant that he must do the very thing he promised to do on pain of going to prison for contempt of the court.

Halsbury explains "specific performance" as an equitable relief given by the court in cases of breach of contract, in the form of judgement that the defendant perform the contract according to its terms and stipulation.

As per Section 16 of the Specific Relief Act, 1963 specific performance of a contract cannot be enforced in favour of a person—

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who (i) has become incapable of performing, or (ii) violates any essential term of, the contract that on his part remains to be performed, or (iii) acts in fraud of

the contract, or (iv) wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

The Explanation appended to the Section provides that where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; further, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

Answer to Question No.9(b)

Public authority

As per Section 2(h) of the Right to Information Act, 2005 “Public authority” means any authority or body or institution of self government established or constituted –

- (i) By or under the Constitution;
- (ii) By any other law made by Parliament;
- (iii) By and other law made by State Legislature;
- (iv) By notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed (ii) non-Governmental organization substantially financed directly or indirectly by funds provided by the appropriate Government.

Information

Under Section 2(f) of the Right to Information Act, 2005 “Information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Right to information

As per Section 2(j) of the Right to Information Act, 2005 “Right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –

- (i) taking notes, extracts, or certified copies of documents or records;
 - (ii) inspection of work, documents, records;
 - (iii) taking certified samples of material;
 - (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;
-