

Roll No. ....

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 5

**NOTE :** Answer **ALL** Questions.

**1. Case Study :**

The case is relating to Compensation under Section 3 of Employees' Compensation Act. In the matter the appeal was filed by the employer against the judgement of the Workmen Compensation Commissioner. The material facts which have given rise to this appeal is briefly stated as mentioned below.

The deceased was employed as a driver on a truck of the appellant which used to carry petrol tank. The deceased reported to the appellant that the tank was leaking upon which the appellant got the tank partly filled with water at night and ordered the deceased to check it on the next morning. On the next morning i.e., on 10th January, 2016, the deceased entered the tank to see from where it leaked and lighted a match stick as a result of which it caught fire and the deceased received burns due to which he succumbed subsequently.

The evidence produced on behalf of respondent was that the match box supplied to the deceased by the appellant. But this fact was denied by the appellant in his deposition and in the opinion of the learned Commissioner it was doubtful that the appellant had given the match box to the deceased though no reasons are given for the aforesaid conclusion.

Learned Counsel for the appellant contends :

- (i) That in the present case the accident did not arise out of and in the course of the deceased's employment and it occurred due to the 'added peril' that is the lighting of match stick within the petrol tank by him.

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- (ii) That the Commissioner ought to have held the Insurance Company i.e., respondent insurance is also liable for compensation.
- (iii) That after remarriage respondent widow was not entitled to claim compensation because she no longer remained a dependent.

In order to appreciate the argument, it would be useful to reproduce the relevant parts of Section 3 of the Employees' Compensation Act, 1923. If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation.

Provided that the employer shall not be so liable :

- (a) In respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;
- (b) In respect of any injury not resulting in death, caused by an accident which is directly attributable to :
  - (i) The employee having been at the time thereof under the influence of drink or drugs or
  - (ii) The willful disobedience of the employee to an order expressly given or to rule expressly framed, for the purpose of securing the safety of employee, or
  - (iii) The willful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

On the basis of the above facts, answer the following :

- (A) Whether the accident of employee is in course of employment ?  
(8 marks)
- (B) Whether the employer can take plea of 'added peril' in his defense ?  
(8 marks)

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(C) Is the employer liable to pay compensation ?

(8 marks)

(D) Whether dependents will succeed in recovering compensation from the employer ?

(8 marks)

(E) Whether a widow become debarred from claiming compensation ? On account of her remarriage ?

(8 marks)

2. (a) The employees employed in an Airline Industry gave notice of strike stating that they would go on strike dated 1st December, 2018. In fact, they struck the work before the said date. Is the strike illegal ? Discuss.

(b) Discuss the Judicial activism in reference to The Contract Labour (Regulation and Abolition) Act, 1970. Also explain the jurisdiction of Industrial Tribunals to abolish Contract Labour.

(6 marks each)

3. (a) What Penalties are imposed for appointment of Child & Adolescent Labour in The Child & Adolescent Labour (Prohibition & Regulation) Act, 1986.

(b) An employee who is 'laid-off' by his employer at Dadar, Mumbai refuses to accept an alternative employment, offered in another establishment situated of Sion in Mumbai, belonging to the some employer. Is the employee entitled to claim 'Lay-off' Compensation ?

(6 marks each)

4. (a) “Audit under labour laws is new concept, which is necessitated, in direct consequence of its non-compliance in large scale”. Explain this statement and list out the areas to be checked/verified the Auditor under Factories Act, 1948 of an Industrial Organization.
- (b) “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 26 weeks due to the delivery”. In this connection, is it necessary for a working woman to give notice to its employer for maternity benefit ?
- (6 marks each)*
5. (a) The concept of Social Justice is so innate and demonstrated in the Industrial Laws of our country”. Explain the statement.
- (b) “The Primary Objective of International Labour Organization (ILO) is to deal with issues related to Labour, namely, maintaining International Labour Standards, ensuring social protection and providing work opportunities to all”.  
Based on the above statement, explain the important tasks of the “International Parliament of Labour”.
- (c) “One of the important measures to be taken by Factories for Health, Safety and Welfare of the workers is ‘Ventilation and Temperature’ in the work environment”. Explain the statutory provisions in this regard under Factories Act, 1948.
- (d) “Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW) was enacted to regulate the employment and conditions of service and to provide for safety, health and welfare measures for crores of building and other construction workers in the country”. One of the welfare measure to the workers by the builders is “Accommodation”. Explain the statutory provisions in this regard as per the Act.

*(3 marks each)*

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6. The Code on Wages, 2019 amalgamate, simplify and rationalize the relevant provisions of the following four Central Labour enactments relating to wages, namely :
- (i) The Payment Wages Act, 1936
  - (ii) The Minimum Wages Act, 1948
  - (iii) The Payment of Bonus Act, 1965; and
  - (iv) The Equal Remuneration Act, 1976.

Based on the above enactment of the Code, answer the following questions :

- (a) How is the wages fixed for an employee working overtime ?
- (b) What are the conditions for fixing the minimum wages ?
- (c) When deduction can be made from wages ?
- (d) What is not included in wages ?

*(3 marks each)*

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