

Solved Scanner
Economic And Labour Laws
CS Executive Programme Paper - 5
Solution for December - 2011

Q 1.

(i) **Bid rigging**

- The term bid rigging is used in relation to Competition Act, 2002
- In bid rigging, bidders of the bid makes an arrangement in such a way that they keep the bid amount at a pre determined level by means of manipulation the process of bidding
- Bidders of the bid act in concert for reducing competition for bids or for manipulating the process of bidding

(ii) **Principal Display Panel**

Please refer to '2009 - June [1] (c) (vii) of Chapter - 4 Essential Commodities & Standards of weights & Measures' under the head short notes.

(iii) **Collective trade mark**

Please refer to 2009 - Dec [3] (a) (i) under the head 'Distinguish between of Chapter - 7

(iv) **Relevant geographic market**

Please refer to '2008 - Dec [3] (a) (i)' the head 'Distinguish between of Chapter- 3

(v) **Legal Metrology :-**

Please refer to '2008 - Dec [1] (c) (iv) under the short notes' of Chapter - 4

(vi) **Potential infringement of patent**

- It refers to do any act which comes under the prohibited act with respect to a patented invention infringement of a patent occurs without Permission of the patent holder.
- It normally includes using or selling the patented invention.
- Patentee relief for infringement are as under
 - Interim injunction
 - Damages on account of profits
 - Permanent injunction

(vii) **Principles of sustainable liming**

Please refer to 2005 - June [1] (c) (ii) of Chapter - 6 under the head 'short notes'

Q 2. State, with reasons in brief, whether the following statements are true or false
Attempt any five:-

(i) **Time:**

Registration of an undertaking belonging to the first schedule of the industries

(Development and Regulation) Act, 1951 is not necessary in certain cases the conditions for the same are:-

- Undertaking is a small scale industrial undertaking
- It is exempt from the licensing or registration under the Act
- Undertaking is not satisfying the definition of the term factory under the Act.

(iii) **False:**

- The above statement is not correct
- The provisions of the Competition Act, 2002 are applicable to a government company.
- Government company false within the ambit of definition enterprise as defined under the Act.
- But sovereign functions of Government including activities carried by government departments dealing with atomic energy, currency defence are excluded from the definition of enterprise.

(iii) **False:**

- The above statement is not correct
- Money landing has a damping effect on foreign direct investment
- It is the processing of criminal proceeds to disguise its illegal origin
- Laundered funds which are owned by the criminals escape the Governments ability to control and regulate the economy

(iv) **True:**

- The above statement is correct
- Special economic Zones (SEZ) are meant to increase the export of goods & services, boost manufacturing, promote investment, reduce unemployment, improve the infrastructure facilities
- Government provide various incentives to Special economic Zones (SEZ) to achieve the above mentioned objectives of SEZ.
- SEZ are the growth engines for the developing country like India.

(v) **False:**

- The above statement is not true
- There is an exception to the provision relating to limitation period for filing a complaint in 2 years under the consumer Protection Act, 1986
- As per the provisions of the consumer Protection Act, 1986, where the complainant satisfies the District Forum/State Commission/National Commission as the case may be that the had sufficient cause for not filing the complaint within the prescribed period of 2 years the in that such complaint may be entertained condoning the delay has been recorded

(vi) **False:**

- The above statement is not correct

- As per the provisions of the Essential Commodities Act, 1955, there is a difference between the preparation for committing an offence & an attempt to commit an offence
- As per the provisions of the Act, any person who attempts to contravene any order shall be deemed to have contravened that order
- An attempt to commit an offence is punishable whereas preparation to commit the offence is not punishable under the law.

Q 3. Distinguish between any two of the following:

(i) 'Wholesale package' and 'retail package'

Answer: Wholesale Package:

Rule 2 (x) defines wholesale package as a package containing:-

- A number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary & is not intended for sale direct to single consumer, or
- A commodity sold to intermediary in bulk
- Packages containing 10 or more retail packages, being labeled as per statutory requirements

Retail package:

- Retail package are meant for retail sale
- They are meant for ultimate consumer for the purpose of consumption
- It is not meant for industrial consumer
- It is different from wholesale package

(ii) 'Carry, on Business licence' and 'Industrial Licence'.

Answer: Carry on Business Licence:

- This licence is required in following situations.
- When a small scale unit exceeds the prescribed limit of investment in plant & machinery such increase in investment should be by way of natural growth.
- Withdraw of exemption from industrial licencing for a particular item.
- For having carry on business licence, an application is required to be given to concerned department.

Industrial Licence:

- Industrial licence is different from carry on business licence
- It is a licence to an industrial undertaking to manufacture the specified articles, listed in first schedule to the Act
- This licence is given by the Government
- It is given for a particular period.

(iii) 'Invention' and 'Patentable' invention'

Please refer to 2008 - June [3] (a) (iii) under the head 'Distinguish between' of Chapter - 7

(iv) Appellate Tribunal and Court

Appellate Tribunal:

- It is constituted under a special enactment
- Members of Appellate Tribunal are both judicial & technical
- Procedure following by it are enshrined in the enactment itself
- Appellate Tribunal is an adjudicating body
- It discharge judicial functions

Court:

- Members of the court are judicial
- Court follow the procedures prescribed under the Civil Procedure code
- Courts are constituted by the state & are vested with judicial functions like that of Appellate Tribunal

Fill in the blanks :

- (i) 30
- (ii) 1,00,000
- (iii) State Government
- (iv) Venture capital fund
- (v) US \$ 1,00,000

Q 4. (a)

- (i)
 - In the above case, Ram, a person resident in India, intends to invest ₹ 25,000 in foreign securities in a calendar year
 - As per the provisions of the Act, investment in foreign securities is a capital account transaction specified schedule
 - For capital account transaction specified in schedule a resident individual may draw from an authorised person, not exceeding US \$ 2,00,000 per financial year.
 - Thus Ram can invest ₹ 25,000 in foreign securities in a calendar year
- (ii)
 - As per the provisions of the foreign exchange Management Act, 1999 & the rules & regulations made there under, an Indian company owing a micro/small enterprise can issue capital against foreign direct investment subject to compliance with FDI policy issued by Government
 - Thus in the above case, infotech Ltd. An Indian company owing a micro Small enterprise, can issue shares against foreign direct investment.
- (iii)
 - A person residing in India can acquire foreign securities as qualification shares for becoming a director of a company provided:
 - It does not exceed 1% of the paid up capital of the company and,
 - Consideration does not exceed US \$ 20,000
 - If the above conditions are not fulfilled then prior approval of RBI is required
 - Thus in the above case, shyam can acquire qualification shares with prior

- approval of RBI.
- (iv) • Prior approval of RBI is required in these circumstances
 - Thus in this case, Naresh can enter the above agreement with the prior approval of RBI
 - (v) • In the above case Mohan, an Indian citizen resident outside India, intends to acquire immovable property in India
 - As per the provisions of the Act, an Indian citizen resident outside India can acquire immovable property in India other than agricultural or plantation property or from house.
 - Thus, Mohan can acquire immovable property other than agricultural or plantation property or from house.

Q 4. (b)

- In this case, the contract made between the parties contained an arbitration clause to refer the disputes to an arbitral tribunal.
- The forums under the consumer Protection Act are not to be construed as Judicial authorities
- Proceedings before the forums cannot be taken to be legal proceedings
- It is to be noted that consumer forums are not governed by the Evidence Act or Civil procedure code, except for certain limited purposes
- Thus, in the above case, through the contract contained an arbitration clause to refer the disputes to an arbitral tribunal, then also the consumer forums can entertain a complaint.
- The facts of these case are similar to the case of 'N.K. Modi v/s Fair Air Engineers Pvt. Ltd'.

Q 4. ©)

Please refer to 2007 - Dec [4] (c) under the head 'Descriptive Questions' of Chapter- 8

Q 5. (a) National Green Tribunal constituted under the National Green Tribunal Act, 2010 has been entrusted with the same powers as are vested in a Civil Court under the code of civil procedure 1908

Some tribunal are as under:-

- (i) Summoning & enforcing the attendance of any person & examining him on oath.
- (ii) Requiring the discovery & production of documents
- (iii) Receiving evidence on affidavits
- (iv) Requisitioning any public record or document or copy of the same
- (v) issuing summons for the examination of witness or documents
- (vi) Revenging its decisions
- (vii) Setting aside any order
- (viii) Pass on interim order subject to some conditions

Other powers of National Green Tribunal:

- To provide relief & compensation to the victims of pollution & other environmental damage
- To Provide for restitution of property damaged
- Proceedings before the National Green Tribunal shall be deemed to be the judicial proceedings.

Q 5. (b) Please refer to 1998 - Dec [7] (iii) under the head 'Descriptive Questions' of Chapter - 6

Q 5. (c) Please refer to 2003 - December [6] (b) under the head 'Descriptive Questions' of Chapter - 6

Q 6. Write notes on any four of the following:-

- (i) 'Forfeiture of gratuity' under the payment of Gratuity Act, 1972.

Answer: Please refer to 2009 - Dec [7] (a) (I) under the head 'Distinguish between of Chapter - 11

- (ii) 'Employment injury' under the employees state Insurance Act, 1948.

Answer: Please refer to 1999 - June [3] (iv) under the head 'Short notes' of Chapter- 13

- (iii) 'Manufacturing process' under the Factories Act, 1948.

Answer: Please refer to 2008 - Dec [6] (iv) under the head 'Short notes' of Chapter- 18

- (iv) 'Partial disablement' under the workmen's Compensation Act, 1923

Answer: Please refer to 2004 - June [7] (c) (a) (ii) under the head 'Descriptive Questions' of Chapter - 14

- (v) 'General prohibition of strikes and lock-outs' under the Industrial Disputes Act, 1947

Answer: • Section 23 of the Industrial Disputes Act, 1947 covers in its ambit the general prohibition of strike & lock-outs

- Some of these situations include
- During the pendency of conciliation proceedings
- Conducting strike during the pendency of arbitration proceedings
- Conducting strike during the pendency of proceedings before the labour Court, Tribunal or National Tribunal
- During the period in which a settlement or award is in operation
- Section - 22 of the Act covers in its ambit the prohibition of strikes & lock-outs in public utility services.

- (vi) 'Temporary application of model standing orders' under the industrial Employment (Standing Orders) Act, 1946

Answer: Please refer to 1999 - Dec [3] (iv) under the head 'Descriptive Questions'

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2002 - Dec [7] {C} (b) (iii) under the head 'Descriptive Questions' of Chapter - 17

Q 7. (a) Distinguish Between any two of the following:-

- (i) 'Arbitration' and 'Conciliation' for the resolution of industrial disputes under the Industrial Disputes Act, 1947.

Answer: Arbitration:

- Arbitration is a procedure in which the parties to a contract opt for a private dispute resolution procedure instead of going to court.
- Arbitration is an alternative for court.
- In case of arbitration the dispute is referred to independent parties known as arbitrator.
- It is fast & less costly method
- Section 10 A of Industrial Disputes Act 1947 provides for arbitration.

Conciliation:

- It is the process of settlement of industrial disputes through third party intervention
- It is different from arbitration as it aims to reduce the extent of differences of parties & to arrive at an amicable solution.
- In Industrial Disputes Act, 1947 Conciliation officers are appointed by Government to create an environment where employers & employees can reconcile their disputes.

- (ii) 'Lay-off' & 'Lock-out' under the Industrial Disputes Act, 1947

Answer: Please refer to '2002 - Dec [7] {C} (a) (ii) under the head 'Distinguish Between' of Chapter - 16

- (iii) 'Principal employer' and 'Contractor' under the Contract Labour (Regulation & Abolition) Act, 1970.

Answer: Principal Employer :

- Section 2(1) (g) of the Contract Labour (Regulation & Abolition) Act, 1970 defines the term principal employer.
- The owner/ head of the factory/mine/department shall be considered as the principal employer'
- There are certain obligations which lie on principal employer
- In case of failure on the part of the contractor to pay wages either in part or in full, the principal employer is liable to pay the same & recover the amount so paid from the contractor

Contractor :

- Section 2(1) (c) of the Act describes the term 'contractor'
 - Contractor means who employs workers with contract labour or who supplies the contract labour for any work of the establishment
 - The term contractor also includes sub-contractor
 - A contractor is required to provide canteens, restrooms, drinking water, washing facilities & first aid facilities for the use of contract labour.
- (iv) 'Committee method' and 'notification method' for the fixation of minimum wages under the Minimum Wages Act, 1948.

Answer: Please refer to '2009 - June [6] (ii) under the head 'Short notes' of Chapter-9

Q 7. (b) Fill in the blanks :

- (i) 20 or more persons
- (ii) Employee's State Insurance Fund
- (iii) thirty
- (iv) 1%
- (v) Casual nature

Q 7. (C) Write the most appropriate answer from the given options in respect of the following:-

- (i) **Answer (b)**
He is guilty of any misconduct
- (ii) **Answer (a)**
20 or more persons
- (iii) **Answer (a)**
On the date of death/accident of the workman
- (iv) **Answer (b)**
By notification of the Government
- (v) **Answer (a)**
Labour Court

Q 8. Attempt any five of the following stating relevant legal provisions & decided case law, if any :-

- (i)
 - The facts of the case is similar to 'Bombay High Printers Ltd. & others v/s union of India & Others'
 - In this case, Raghu has withdrawn the entire amount of his accumulation in the provident fund & later re-appointed.
 - As for the provisions of the Act, claim made by the provident fund inspector is not tenable in law as once the employee has withdrawn the full amount of accumulation of the provident fund on has requirement then there is no requirement of may contribution in respect of the salary paid.
- (ii)
 - In the above case, XYZ Ltd. Employed more than 50 workmen in its factory
 - XYZ Ltd. (employer) denies the liability or applicability of the provisions of the Act
 - Employee's State Insurance Act, 1948 does not stipulate as to who has to approach the employees insurance court
 - In this case, employer is not justified as by general implication of law employer should approach the employees insurance court rather than the ESI corporation.
- (iii)
 - In this case, the hospital has a laundry in its premises & the inspector of

factories issued a notice to hospital to register it as a factory.

- As per the provisions of the Act, the primary character of the main institution alone has to be taken into consideration to determine whether it is factory or not
- The laundry in the hospital is not a factory as per the Act since the main institution is not factory
- The inspector of factories is not correct as held in 'Dr. PSS Sundar Rao V/s Inspector of Factories, Vellore'.
- (iv) • The facts of this case are similar to 'Schriram Yadav V/s Rajasthan State Road Transport Corporation, Jaipur & Other
- In this case Harish was alleged to have indulged in an act of misconduct & inquiry was held.
- In the above situation management is not correct since a copy of the inquiry report must be supplied to Harish in compliance to the principles of natural justice whether the standing order require it or not
- (v) • In this case, employer entered into a settlement for payment of gratuity at the rate of one month's salary for every year. But later denied to pay more than the rate prescribed under the Act.
- As per the provisions of payment of Gratuity Act, 1972, if an employee has made any agreement as a result of which he can receive better terms of gratuity, than in that case an employee can receive the gratuity as per the agreement/control
- Thus employer's contention is not tenable in law.
- (vi) • Workmen is entitled to claim bonus alongwith full back wages
- *Please refer to 2006 - June [7] {C} (b) (vii) of Chapter - 10 under the head 'Practical Questions'*
- (vii) • The facts of the case are similar to 'Local Government V/s Nauserwanji AIR'
- In case the work performed by the workers are incidental to or connected with the manufacturing process then those workman will be covered under the category of workers.
- Thus in the above case the workers employed by the merchants covered under the category of 'workers' under the provisions of the Factories Act, 1948.