

and unavoidable accident on payment of a fine up to 10 times of normal fee. Thus, a maximum period for presenting a document for registration is 8 months under Section 23 read with Section 25.

Hence, in this case the period of delay can be condoned by the Registrar on sufficient cause, but up to only 8 months and upon payment of fine.

Question 12] Mr. Rajan had executed a sale document outside India on 2nd January 2014. He came to India on 6th June 2015 and presented the document for registration. Would the Registrar accept the document? Would the document be valid if not registered in India?

CS (Final) – June 1995 (5 Marks)

Ans.: When a document have been executed out of India is not presented for registration within 4 months from the date of execution then registering officer may register within 4 months after its arrival in India on payment of the proper registration fee.

A document executed outside India is not valid unless it is registered in India. [*Nainsukhdas v. Gowardhandas*, AIR 1948 Nag. 110]

Thus, if Rajan has presents the document within 4 months form the 6th June 2015, the Registrar has to registrar document.

Question 13] A document was executed outside India and it was presented for registration after a lapse of four months from the date of its arrival in India. Whether the document may be accepted for registration by the Registrar? Decide.

CS (Executive) – June 2010 (6 Marks)

Ans.: As per Section 26, when a document have been executed out of India is not presented for registration within 4 months from the date of execution then registering officer may register within 4 months after its arrival in India on payment of the proper registration fee.

Section 25, gives the power to Registrar to give extra time for 4 months for a fine up to 10 times the normal registration fee. This provision is not applicable for documents executed outside India. Thus, the Registrar has the right to refuse registration of document presented for registration after a lapse of four months from the date of its arrival in India.

Question 14] Explain the provisions regarding re-registration of certain documents under Section 23A of Registration Act, 1908.

CS (Final) – Dec 1996 (6 Marks), Dec 1999 (6 Marks)

Ans.: Re-registration of certain documents [Section 23A]: If any person finds that, a document has been filled for registration by a person who is not empowered to do so, such person can present the document for re-registration within 4 months from the date become aware of the fact that registration of document is invalid.

Question 15] A document was executed by several person at different times. The person in whose favour such execution was made, presented the documents for re-registration after expiry of 3 months. Whether such documents can be registered and if yes, within what period?

CS (Executive) – Dec 2008 (5 Marks), June 2011 (5 Marks)

Ans.: As per Section 23, document other than a will shall be accepted for registration within 4 months from the date of its execution. Section 25 provides a further period of 4 months in cases of urgent necessity and unavoidable accident on payment of a fine up to 10 time of normal fee. Thus, a maximum period for presenting a document for registration is 8 months under Section 23 read with Section 25.

As per Section 23A, if any person finds that, a document has been filled for registration by a person who is not empowered to do so, then such person can present the document for re-registration within 4 months from the date he become aware of the fact that registration of document is invalid.

In given case, the document was executed by several persons at different times. The person in whose favour such execution was made presented the document for re-registration after the expiry of 3 months. Thus, period of 4 months has not been expired from the date he become aware of the fact that registration of document is invalid. Hence, document is presented within statutory time limit and hence can be registered by Registrar on payment of normal fees.

PLACE OF REGISTRATION

Question 16] What are the provisions relating to place of registration in regard to documents of land and other documents?

CS (Final) – June 1999 (6 Marks)

CS (Inter) – Dec 2005 (5 Marks)

State the places where documents effecting immovable property may be presented for registration under the Registration Act, 1908.

CS (Inter) – June 2006 (6 Marks)

CS (Executive) – June 2012 (5 Marks)

Ans.: Place for registering documents relating to land [Section 28]: Document relating to immovable property should be registered in the office of Sub-registrar of Sub-district under whose jurisdiction whole or some property is situated.

Place for registering other documents [Section 29]: Other document can be registered in the office of such sub-registrar, where all the person executing the document desires it to be registered.

Question 17] Rohit executes a sale deed of a house in favour of Prem. The house is situated at Noida, but the transferor and transferee want the sale deed to be registered at Lucknow, which is the capital of the State. Can they do so?

CS (Inter) – June 2005 (5 Marks), June 2006 (5 Marks)

CS (Executive) – June 2012 (6 Marks)

Ans.: As per Section 28, document relating to immovable property should be registered in the office of Sub-registrar of Sub-district under whose jurisdiction whole or some property is situated. In a given case house is situated at Noida, hence documents can be registered at Noida and not at Lucknow.

PRESENTING DOCUMENTS FOR REGISTRATION

Question 18] Who can present the document for registration?

CS (Final) – Dec 1997 (5 Marks)

CS (Final) – June 1999 (6 Marks)

What is the consequences in case a document for registration is presented by a person other than the party entitled to present it ?

CS (Final) – Dec 1997 (5 Marks), June 2000 (8 Marks)

Ans.: Persons to present documents for registration [Section 32]: Every document to be registered shall be presented at the proper registration office:

- (a) By some person **executing or claiming** under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
- (b) By the **representative or assignee** of such a person, or
- (c) By the **agent** of such a person duly authorized by power-of-attorney.

It is to be noted that, for the purpose of Section 32 **special power of attorney** is required, a general power of attorney will not do.

It is immaterial whether the registration is compulsory or optional but if document is presented for registration by a person other than a party mentioned in Section 32, such presentation is wholly inoperative and the registration of such a document is void. [*Kishore Chandra Singh v. Ganesh Prashad Singh*, AIR 1954 SC 316]

Question 19] Bijoy executed a contract for purchasing a piece of land in Delhi from Ajoy. Just after the execution of contract, Bijoy proceeded to England and he is not expected to return to India before six months. Chirag, a good friend of Ajoy who has general power of attorney to act on behalf of Bijoy, gets the said sale deed registered. Is this registration valid?

CS (Inter) - June 2007 (5 Marks)

Ans.: As per **Section 32**, document for registration can be presented at the proper registration office by the agent duly authorized by power-of-attorney of a person executing document. It is to be noted that, for the purpose of **Section 32 special power of attorney** is required, a general power of attorney will not do. As per facts given in case Ajoy has general power of attorney to act on behalf of Bijoy and hence registration effected by Ajoy is not valid.

WILLS

Question 20] Write a short note on: Registration of wills

Is the registration of a will optional under the Registration Act, 1908? Explain the manner in which it may be presented for registration.

CS (Inter) - June 2003 (5 Marks)

Ans.: As per **Section 18**, registration of will is optional. In *Celestine Silva Bai v. Josphin Noronh Bai* Madras HC held that the mere fact that a will is not registered is not much a circumstances as must *ispo facto* fell against its genuineness. For non-registration may be due to a dislike for publicity of the agreement that one may make or to avoid expense and trouble. Hence, the registration of will is optional.

Persons entitled to present Wills and authorities to adopt [Section 40]:

- (1) The **testator**, or after his death **executor** may present it for registration.
- (2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to for registration.

Registration of Wills and authorities to adopt [Section 41]:

- (a) A will or an authority to adopt may be registered in the same manner as any other document.
- (b) A will or authority to adopt presented for registration by any other person it shall be registered if the registering officer is satisfied that
 - (i) The will or authority was executed by the testator or donor
 - (ii) The testator or donor is dead and
 - (iii) The person presenting the will or authority is entitled to present the same.

Question 21] Explain the provisions of the Registration Act, 1908 relating to "Deposit of will".

Ans.:

- (1) **Deposit of Wills [Section 42]:** Any testator may, either personally or by duly authorized agent, deposit with *any Registrar* his will in a sealed cover.
- (2) **Procedure on deposit of Wills [Section 43]:** On receiving such cover, the Registrar, shall transcribe in his **Book No. 5** the superscription appearing on the sealed envelope. The Registrar shall then place and retain the sealed cover in his fireproof box.
- (3) **Withdrawal of sealed cover deposited [Section 44]:** The testator can withdraw sealed cover either personally or by duly authorized agent. If Registrar is satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.
- (4) **Proceedings on death of depositor [Section 45]:** On the death of a testator application can be made to the Registrar to open the same. If the Registrar is satisfied that the testator is dead, he shall open the cover at applicant's presence and will make suitable entries in his **Book No. 3**. When such copy has been made, the Registrar shall re-deposit the original will.

EFFECT OF REGISTRATION & NON-REGISTRATION

Question 22] Explain the effect of registration of documents relating to immovable property?

CS (Final) – June 1995 (5 Marks), Dec 2000 (6 Marks)

Registration of documents relates back to the date of their execution. Comment.

CS (Inter) – Dec 2007 (4 Marks)

Ans.: Time from which registered document operates [Section 47]: A document when registered takes effect from the date of execution and not from the time of its registration.

Example: Ram executes the document on 24.6.2015 and the same is registered on 18.7.2015. Thus, on registration document takes effect from the date of execution i.e. 24.6.2015 and not from 18.7.2015 i.e. date of registration.

As between two registered documents, the date of execution determines the priority. Of the two registered documents, executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first gets priority over the other, although the former deed is registered subsequently to the later one. [*K.J. Nathan v. S.V. Maruthi Rai*, AIR 1965 SC 430]

Question 23] There are two registered documents executed by same persons in respect of the same property to two different persons at two different times. One document was executed on 1st October, 2015 where as the other document was executed on 20th October, 2015. However, the document executed on 1st October, 2015 was registered subsequent to the registration of the other document. State which documents gets priority over the other under the provisions of the Registration Act, 1908.

CS (Final) – June 2001 (4 Marks)

CS (Executive) – Dec 2009 (5 Marks)

Ans.: Effect of registration can be stated as follows:

- (1) A registered document has priority over unregistered document.
- (2) A document when registered takes effect from the date of execution and not from the time of its registration. [Section 47]

As between two registered documents, the date of execution determines the priority of the two registered documents executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first under Section 47 gets priority over the other. This is the position even though the former deed is registered subsequently to the later one [*K.J. Nathan v. S.V. Maruthi Rai*, AIR 1965 SC 430]

Therefore, the document executed on 1.10.2015 gets priority over the document executed on 20.10.2015 even though the first document was registered subsequently.

Question 24] What is the effect of non-registration of documents requiring compulsory registration under the Registration Act, 1908?

CS (Inter) – Dec 2002 (4 Marks), June 2006 (4 Marks)

CS (Executive) – June 2014 (5 Marks), Dec 2014 (10 Marks)

CS (Executive) – Dec 2016 (5 Marks)

Ans.: Effect of non-registration of documents [Section 49]: Documents not registered u/s 17 or under the Transfer of Property Act, 1882 –

- (a) Does not affect any immovable property comprised therein, or
- (b) Does not confer any power to adopt (a son), or
- (c) Cannot be received as evidence of any transaction affecting such property or conferring such power.

Exception (i.e. cases in which unregistered document can be received as evidence): An unregistered document affecting immovable property may be received

- As evidence in a suit for **specific performance** under the Specific Relief Act, 1877, or
- As evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882, or
- As evidence of any collateral transaction.

It has been held that, it is settled legal principle that an unstamped instrument is not at all admissible in evidence even for collateral purpose. But an unregistered instrument originally unstamped, if duly stamped subsequently can be admitted in evidence even though it continues to be unregistered for collateral purpose but actual terms of transaction cannot be looked into. In instant case, however settlement deed in question produced by defendant was not only unregistered but also insufficiently stamped. That apart on an objection raised by plaintiff, Court had already passed an order directing impounding of document, which was never complied with by defendant. In such circumstances, document in question, which still remained insufficiently stamped could not be admitted in evidence even for collateral purpose. Application filed by defendant seeking to admit said document for collateral purpose is liable to be dismissed. [K. Narasimha Rao v. Sai Vishnu, AIR 2006 NOC (A.P.) p. 80]

Question 25] Ashok sells a house to Vinay by a written document and delivers possession to Vinay, but the document is not registered. After one year, Ashok sues Vinay to take back the possession of the property on the ground that non-registration of a document has no validity. Will Ashok succeed? Which doctrine of law can be invoked by Vinay in his defence?

CS (Inter) - Dec 2004 (5 Marks)

CS (Executive) - June 2010 (6 Marks)

Ans.: As per **Section 49**, documents not registered does not affect any immovable property comprised therein, or cannot be received as evidence of any transaction affecting such property. However, an unregistered document affecting immovable property may be received as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction.

As per the facts given in case Vinay has possession of the a house which has been taken from Ashok through written agreement and if Vinay has paid consideration to Asohk or ready to perform his part then case falls under Section 53A of the Transfer of Property Act, 1882 and such even though document not registered it can be received as evidence as per Section 49 of the Registration Act, 1908. Hence, Ashok will not succeed.

DUTIES & POWERS OF REGISTERING OFFICERS

Question 26] Which types of books are maintained at registrar office?

Discuss the duties of registrar in relation to documents presented for registration.

Ans.: Register books to be kept in the several offices [Section 51]: The following books are kept at registering office:

A	At All Registration Office
Book 1	Register of Non-testamentary document relating to immovable property
Book 2	Records of reasons for refusal to register
Book 3	Register of wills & authorities to adopt
Book 4	Register - for optional document u/s 18
B	At office of Registrar
Book 5	Register of deposit of wills

Duties of registering officers when document presented [Section 52]: The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every document at the time of presenting it:

- (a) A receipt for such document shall be given by the registering officer to the person presenting the same and
- (b) Every document admitted to registration shall without unnecessary delay be copied in the appropriate book

All such books shall be authenticated from time to time as prescribed by Inspector General.

Entries to be numbered consecutively [Section 53]: All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

The registering officer should enter the registration in the proper book. However, if by mistake and in good faith, the registration was entered in wrong book, it will not make the registration invalid.

Certificate of registration [Section 60]: If all the provisions relating to registration has been complied with, the registering officer shall endorse thereon a certificate containing the word "registered", together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act.

Question 27] Discuss the remedies available to a person who has been refused to register a document by a Sub-Registrar. Can registration of documents be refused on the ground of under valuation for stamp duty?

CS (Inter) – June 2007 (6 Marks)

CS (Executive) – Dec 2011 (5 Marks)

Ans.:

- (1) **Reasons for refusal to register to be recorded [Section 71]:** When sub-registrar refuses to register a document then he has to record the reason for refusing in **Book No. 2**. He also has to endorse the words '**Registration Refused**' on documents. If party makes application for getting the reasons of refusal, the Sub-registrar has to give it without payment.
- (2) **Appeal to Registrar from orders of Sub-Registrar refusing registration [Section 72]:** Appeal can be made to Registrar **within 30 days** against the order of Sub-Registrar and on receiving such appeal Registrar can also refuse or order the Sub-Registrar to get the document registered.
- (3) **Suit in case of order of refusal by Registrar [Section 77]:** If Registrar also refuses to register the document then appeal can be filed in Civil Court **within 30 days** from the date of refusal by Registrar.

Under valuation of stamp duty is not a valid ground for refusing registration of documents. If Sub-registrar is doubtful as to proper value of stamps affixed, he can refer the case to collector to be adjudicated.

Question 28] Gopal has filed a document regarding purchase of a piece of land for registration in his name. The Sub-Registrar has refused to register the document without stating any reason for such refusal. Explain the powers of the Registrar to refuse registration and the steps that Gopal has to take in the circumstances.

CS (Final) – Dec 2001 (6 Marks)

CS (Final) – June 2002 (6 Marks)

Ans.: Section 71 requires every Sub-Registrar to record reasons for refusal to register a document except where the property is not situated in his sub-district. Therefore, Sub-Registrar refusal to register the document without stating any reason for such refusal is not in accordance with the provisions of Section 71 of the Registration Act, 1908.

Thus, in terms of Section 72(1) of the Act, Mr. Gopal has right to file an appeal to the Registrar to whom such Sub-Registrar is subordinate, within 30 days of the order of the Sub-Registrar. The Registrar after examining the case may reserve or alter the order of Sub-Registrar.

INDUSTRIAL (DEVELOPMENT & REGULATION) ACT, 1951

INTRODUCTION : *The Industries (Development & Regulation) Act, 1951 provides wide powers to the Government of India in relation to regulation of scheduled industries. This Act was enacted with view to implement the industrial policy, to look after the regulation and development of important industries and to plan the future development of new undertakings.*

Existing undertakings need to be registered with the Government within the prescribed time limit while new units are permitted only through an industrial license. This Act also sees that the industries do not suffer due to financial mismanagement or technical inefficiencies or operational defects. Under this Act Government has the power to conduct an investigation, assume management control, provide relief or control, supply and distribution of products of certain industrial undertakings.

The Act can be divided into two parts: (i) those dealing with developmental aspects and (ii) those dealing with regulatory aspects of scheduled industries. The development of the Scheduled Industries is sought to be secured primarily through the agencies of Central Advisory Council and Development Councils as well as by offering certain special facilities that the Government may consider necessary. Regulation of these industries is sought to be done by means of a system of registration of existing undertakings, licensing of new undertakings for producing new articles and for substantial expansion or change of location of existing undertakings.

The Act came into force on 8.5.1951 and it extends to whole of India.

APPLICABILITY & DEFINITIONS

Question 1] Write a short note on: Object & Scope of Industrial (Development & Regulation Act, 1951

Write a short note on: Regulation of Scheduled Industries

CS (Inter) - Dec 1995 (5 Marks), Dec 1997 (5 Marks)

What is meant by a 'Scheduled Industry'?

CS (Inter) - June 1998 (5 Marks), Dec 2005 (3 Marks)

Ans.: The objects of the Act are as follows:

- ◆ To provide to the Central Government means of implementing the Industrial Policy.
- ◆ To regulate the deployment of material resources of the community according to the norms laid down in the policy and are thus an instrument for its implementation.
- ◆ To help the Government in directing the manner in which industrial development should take place in the country and also in optimising the development of scarce resources of the community amongst competing claims.

Scope: The preamble to the Act states that "to provide for the development and regulation of certain industries". The scope of the Act is limited to the industries mentioned in the First Schedule known as 'Scheduled Industries'.

Scheduled Industry [Section 3(i)]: Scheduled industry means any of the industries specified in the First Schedule.

Question 2] Write a short note on: Existing Industrial Undertaking

CS (Inter) - June 2001 (5 Marks)

What is meant by 'effective step' under the Registration & Licensing of Industrial Undertakings Rules, 1951.

CS (Inter) - June 2004 (2 Marks)

Ans.: Existing Industrial Undertaking [Section 3(bb)]: Existing industrial undertaking means:

- (a) In the case of an industrial undertaking specified in the First Schedule as originally enacted, an industrial undertaking which was in existence on the commencement of the Act or for the establishment of which, effective steps had been taken before such commencement, and
- (b) In the case of an industrial undertaking added to the First Schedule by an amendment, an industrial undertaking which is in existence on the coming into force of such amendment or for the establishment of which, effective steps had been taken before the coming into force of such amendment.

Example: The concept of existing industrial undertaking may be understood with the help of an illustration. Graphite Crucible was added as Item No. 8 under the head 34 Ceramics in the First Schedule to the Act with effect from 30.12.1978. All industries engaged in manufacture of graphite crucibles on 30.12.1978 and all such industries in respect of which effective steps had been taken on 30.12.1978 for establishment thereof would become existing industrial undertakings within the meaning of the Act

In simple words, existing industrial undertaking means industrial undertaking that exist on commencement of the Act or at the time of amendment to first schedule. Similarly, industrial undertaking in respect of which effective steps were taken before commencement of the Act or before amendment to first schedule are also existing industrial undertaking.

Effective Steps: Rule 2 of the Registration & Licensing of Industrial Undertakings Rules, 1952 defines 'effective steps' to mean one or more of the following:

- ◆ 60% or more of the capital has been paid up if it is public company
- ◆ A substantial part of the factory building has been constructed
- ◆ A firm order has been placed for a substantial part of the plant and machinery required for the undertaking.

Question 3] Write a short note on Factory under the Industries (Development & Regulation) Act, 1951

Ans.: Factory [Section 3(c)]: Factory means any premises, including the precincts, in any part of which a manufacturing process is being carried on or is ordinarily so carried on-

- (i) With the aid of power, provided that 50 or more workers are working or were working on any day of the preceding 12 months or
- (ii) Without the aid of power, provided that on 100 or more workers are working or were working on any day of the preceding 12 months

Judicial Views:

- ◆ In order to constitute 'manufacture', there must be a transformation. Merely labour bestowed on an article even if the labour is applied through machinery will not make it a manufacture unless it has progressed so far that transformation ensues, and the article becomes commercially known as another and different article from that with which it begins its existence. [AM Chinniah, Manager, Sangu Soap Works, AIR (1957) Mad. 755]

- ◆ It was not necessary that the manufacturing process should be carried on in the whole of the premises and that even if part of the premises was used for manufacturing process the other could as well be included in factory premises. [*Delhi Cloth & General Mills Co. Ltd. vs. Joint Secretary, Govt. of India (1978) Tax L.R. 2094*]

Question 4] Write a short note on: Industrial undertaking

CS (Inter) – Dec 1994 (5 Marks), June 2006 (3 Marks)

Ans.: Industrial Undertaking [Section 3(d)]: Industrial undertaking includes any undertaking pertaining to a scheduled industry carried on in factories by any person or authority including Government.

Question 5] What is 'New Article' is an industrial licence required to manufacture parts and accessories need for captive consumption in production of the article for which licence is granted?

CS (Inter) – Dec 1997 (15 Marks), June 2002 (10 Marks)

What do you mean by 'new article' under the Industries (Development and Regulation) Act, 1951?

CS (Executive) – Dec 2016 (3 Marks)

Ans.: New Article [Section 3(ad)]: New article means:

- Article not included in present licence issued to the undertaking
- Article for which it is licenced is manufactured under a different trade mark or which is subject to patent. Thus, same product with different brand name is also 'new article'.

Licence for producing or manufacturing new articles [Section 11A]: Owner of an industrial undertaking cannot start production of any new article without obtaining licence or permission.

Important points relating to New Article:

- ◆ An article not covered by the existing industrial licence would be a 'new article'.
- ◆ Where the article to be manufactured is covered under existing licence of the manufacturer by virtue of any broad banding facility announced by the Government, it would not be termed as a 'new article'.
- ◆ If the new article to be manufactured bears a new trade mark or a patent, a fresh licence would be required even if the article falls under the same item in the First Schedule for which the undertaking already possesses a licence.
- ◆ Where, it can be shown that the proposed article falls under a different item of the First Schedule; it would constitute a new article.
- ◆ The Licensing Committee had pointed out that, where no new trade mark or no new patent was involved and the product was covered within the ambit of the same item in the First Schedule, the article of proposed manufacture would not be considered as a new article.

CENTRAL ADVISORY COUNCIL & DEVELOPMENT COUNCILS

Question 6] Write a short note on: Central Advisory Council CS (Inter) – June 2000 (5 Marks)

Ans.: Establishment and constitution of Central Advisory Council & its functions [Section 5]: The Central Government by notified order establishes a Council to be called the Central Advisory Council to advise regarding the development and regulation of scheduled industries.

Composition of Advisory Council: The Advisory Council shall consist of a Chairman and members not exceeding 30, all of whom shall be appointed by the Central Government who are in its opinion capable of representing the interests of-

- Owners of industrial undertakings in scheduled industries

- (b) Persons employed in scheduled industries
- (c) Consumers of scheduled industries
- (d) Other class of persons including primary producers, as in the opinion of the Central Government, ought to be represented on the Advisory Council.

Functions of Advisory Council: The functions of Advisory Council are:

- (a) To make rules and
- (b) To advise the Central Government Council in regard to any other matter connected with the administration of the Act.

Question 7] Write a short note on: Development Council

Mention any six functions of Development Council setup under the Industries (Development & Regulation) Act, 1951. **CS (Inter) – June 2006 (3 Marks)**

Ans.: Establishment & constitution of Development Council and their functions [Section 6]: The Central Government may establish for any scheduled industry a Development Council.

Composition of Development Council: Development Councils shall consist of following members:

- (a) Persons representing the interests of scheduled industry
- (b) Persons having special knowledge of the scheduled industry
- (c) Persons representing the interests of employees of scheduled industry
- (d) Persons representing the interests of consumers of scheduled industry

Every Development Council shall be a body corporate and may hold and transfer property and shall by the said name sue and be sued.

Functions of Development Council: A Development Council shall perform following functions:

- ◆ Functions specified in the **Second Schedule** to increase the efficiency or productivity of scheduled industry and to improve or develop the services of scheduled industries.
- ◆ Such other functions as may be assigned to it under the Act.

Some of the functions specified in Second Schedule are as follows:

- ◆ Recommending targets for production, coordinating production programmes and reviewing progress from time to time.
- ◆ Suggesting norms of efficiency with a view to eliminating waste, obtaining maximum production, improving quality and reducing costs.
- ◆ Recommending measures for securing the fuller utilization of installed capacity.
- ◆ Promoting arrangements for better marketing.
- ◆ Promoting standardization of products.
- ◆ Assisting in the distribution of controlled materials.
- ◆ Promoting the training of persons engaged in the industry.
- ◆ Promoting or undertaking scientific industrial research.
- ◆ Promoting improvements and standardization of accounting and costing methods.
- ◆ Promoting or undertaking the collection and formulation of statistics.
- ◆ Advising on any matter relating to the industry requested the Central Government
- ◆ Undertaking arrangements for making available to the industry information.

REGULATION OF SCHEDULED INDUSTRIES**Question 8] Write a short note on: Registration of existing industrial undertakings****Ans.: Registration of existing industrial undertakings [Section 10]:**

- (1) The owner of every existing industrial undertaking shall register the undertaking in the prescribed manner within prescribed time.
- (2) The Central Government has also been put under obligation to register its own existing industrial undertakings.
- (3) On a registration the owner of the undertaking is issued a certificate of registration containing the productive capacity and other prescribed particulars.
- (4) In specifying the productive capacity in the certificate of registration, the Central Government takes into consideration the following matters:
 - ◆ The productive or installed capacity
 - ◆ Level of production before the date of registration
 - ◆ Level of highest annual production during three previous years
 - ◆ Extent of production utilized for export
 - ◆ Other factors as the Central Government may consider relevant.

Question 9] State the circumstances when registration of existing industrial undertaking is not necessary.**Ans.:** The registration of following existing industrial undertaking is not necessary:

- (1) Small scale industrial undertaking
- (2) Exempted industrial undertakings under the Act or
- (3) Undertakings not satisfying the criteria of 'factory'.

Question 10] What is the penalty for not registering the existing industrial undertakings?**Ans.:** The owner of an industrial undertaking which is not been registered is liable to be punished under **Section 24** with imprisonment up to **6 months** or fine up to **₹ 5,000** or with **both**.**Question 11] State the circumstances when registration of industrial undertaking can be revoked by the Central Government.****Ans.:** The Central Government can revoke the registration in following cases:

- (i) If registration was obtained by misrepresentation as to essential facts
- (ii) The undertaking has ceased to be registrable due to exemption
- (iii) If due to any reason the registration has become useless or ineffective.

However, before revocation the Central Government required to give an opportunity of being heard to the owner of the undertaking.

Question 12] What is meant by licensing of industrial undertakings?**CS (Inter) - June 1997 (8 Marks)****Ans.: Meaning Industrial Licence:** Industrial licence is a written permission from the Government to an industrial undertaking to manufacture specified articles which are listed in the First Schedule. Industrial licence includes following particulars of industrial undertaking

- Location

- Articles to be manufactured
- Production capacity of plant & machinery etc.

The licence is subject to a validity period within which the licensed capacity of the undertaking should be established.

Purpose Industrial Licensing: The system of industrial licensing helps the Government to provide and develop the industries in the country in conformity with the national objectives and priorities.

Question 13] What are the purposes for which an industrial licence is required?

CS (Inter) - Dec 1994 (10 Marks)

Ans.: An industrial licence is required for the following purposes:

- (1) **Licensing of new undertaking [Section 11]:** Any new industrial undertaking can be established only after obtaining a licence from the Central Government. If State Government wants to establish any new industrial undertaking, previous permission of the Central Government is also required.
- (2) **Licence for producing or manufacturing new articles:** The owner of an industrial undertaking can produce or manufacture any new article only after obtaining a licence for producing or manufacturing such new articles.
- (3) **Licence for carrying on business without registration:** Where an industrial undertaking is required to be registered but which has not been registered within the prescribed time, a licence is required for the purpose of carrying on business after expiry of the period within which it ought to have got registered.
- (4) **Licence for carrying on business after the revocation of certificate of registration:** The certificate of registration granted by the Central Government can be revoked under certain circumstances. After such revocation, the owner shall not carry on the business unless a licence or permission for this purpose has been obtained from the Government.
- (5) **Licence for carrying on business by an industrial undertaking to which the Act became applicable:** Where the Act did not originally apply to an industrial undertaking but subsequently becomes applicable then, owner of such undertaking shall not carry on the business after the expiry of 3 months unless a licence or permission is taken.
- (6) **Licence for change in location:** The owner of an industrial undertaking can change the location of the registered industrial undertaking only after taking permission or licence of the Central Government.
- (7) **Licence for effecting substantial expansion:** The owner of an industrial undertaking can effect substantial expansion of an industrial undertaking only after taking licence from the Central Government.

Question 14] Mention the provisions of Industries (Development and Regulation) Act, 1951 regarding license for effecting substantial expansion of an existing industrial undertaking.

CS (Executive) - June 2014 (5 Marks)

Ans.: Substantial Expansion: According to the clarification of the Department of Industrial Development any increase in production by 25% over the licensed capacity would not amount to substantial expansion if:

- No additional plant & machinery has been installed except minor balancing equipment.
- No additional expenditure had been incurred on foreign exchange and
- Extra production does not give rise to any additional demand for scarce raw materials.

Wherever a question arises as to whether or not there has been a substantial expansion of an industrial undertaking, the decision of the Central Government thereon shall be final.

The owner of an industrial undertaking can effect substantial expansion of an industrial undertaking only after taking licence from the Central Governments.

Carry on business licence is required by industries which have registered before 1991 policy but want to have *substantial expansion* or produce a new article.

Question 15] Mention the circumstances under which Central Government can revoke or amend licence?
CS (Inter) - Dec 1994 (5 Marks)

Ans.: Power of the Central Government to revoke or amend licence [Section 12]: The Central Government is empowered to revoke the licence if it is satisfied that the licensee has, failed to establish or to take effective steps to establish the new industrial undertaking within the prescribed time or the extended time.

The Central Government is also empowered to vary or amend any licence.

However, this power shall not be exercised when the licensee has already taken effective steps to establish the new industrial undertaking.

INVESTIGATION

Question 16] Discuss the law relating to ordering of investigation into affairs of an industrial undertaking under the Industries (Development & Regulation) Act, 1951.

CS (Inter) - Dec 1996 (5 Marks)

CS (Executive) - June 2014 (7 Marks)

Write a short note on: Investigation into scheduled industries

CS (Inter) - June 1999 (5 Marks)

Ans.: Power to investigate scheduled industries or industrial undertakings [Section 15]: The Central Government can order full and complete investigation by appointing suitable person of industrial undertaking in following cases:

- (1) There has been a **substantial fall** in the volume of production for which there is no justification considering economic conditions.
- (2) There **marked deterioration** in the quality of any article which could have been or can be avoided.
- (3) There has been **rise in the price** of any article for which there is no justification.
- (4) Action is necessary for the purpose of **conserving resources of national importance**.
- (5) Industrial undertaking is being **managed** in highly **detrimental manner** to industry or in **public interest**.

Procedure for Investigation: The procedure to be followed in making an investigation has been specified in the **Investigation of Industrial Undertakings (Procedure) Rules, 1967**.

Judicial View:

It was held that the Central Government is required to form before passing an order of investigation under this section is to be on a subjective satisfaction, which has to be based on relevant material before passing an order the party must be heard. [*Juggilal Kaniapat Cotton Spinning Mills v. Union of India* (1984) 3 Comp. L.J. 223]

Question 17] Write a short note on: Investigation into the affairs of a company in liquidation

CS (Inter) - Dec 1998 (5 Marks)

Ans.: Power to investigate into the affairs of a company in liquidation [Section 15A]: The Central Government can also investigate the affairs of any company which owns industrial undertaking and which is under liquidation under the supervision of High Court.

Such investigation can be made only with the permission of High Court.

The investigation can be done if the Central Government is of the opinion that it is necessary in public interest to investigate into the possibility of **running or restarting** the industrial undertaking. Where an application is made by the Central Government under this section, the High Court shall, notwithstanding anything contained in the Companies Act, 2013 or in any other law for the time being in force, grant the permission prayed for.

Judicial View:

The Madras High Court considered the question as to whether an application filed by the Central Government seeking permission of the Court to investigate or cause any investigation to be made in regard to restarting of manufacturing unit of a company u/s 15A is maintainable even where a petition for winding up of a company is pending under the Companies Act. The words used u/s 15A of the Act are the company is either being wound up by or under the supervision of a High Court. The Court held that even though the application for winding up a company is pending before the Court, it can take the expression being wound up by or under the supervision of the High Court to include a case where a petition the Companies Act is pending. [*Union of India v. Anglo-French Textiles Limited* (1985) 57 Comp. Cas. 489]

On the other hand, the Calcutta High Court held that the expression being wound up by or under the supervision of the High Court would mean that the company is directed to be wound up, and hence the Court held that the proper stage for application u/s 15A is when the order for winding up has been made by the Court and not before that. [*Union of India v. Shalimar Works Limited* 1977 47 Comp. Cas. 664]

Question 18] Write a short note on: Central governments directions after investigation under the Industries (Development & Regulation) Act, 1951 **CS (Inter) - Dec 2001 (5 Marks)**

Ans.: Powers of Central Government on completion of investigation u/s 15 [Section 16]: After making an investigation the Central Government can issue following directions to industrial undertaking:

- (a) Regulation of production of any article and fixing standards of production.
- (b) Requiring the industry to take steps to stimulate the development of the industry.
- (c) Prohibiting the industry from resorting to any act or practice which might reduce its production capacity or economic value.
- (d) Controlling the prices or regulating the distribution of any article.

TAKEOVERS

Sections 18A, 18AA, 18B, 18C, 18D, 18E & 18F vest in the Central Government substantial powers to assume management or control of an industrial undertaking in certain cases. While Section 18A empowers the Central Government to take over an industrial undertaking whose affairs had been investigated u/s 15, Section 18AA sets out the circumstances under which the Central Government can take over an industrial undertaking without any investigation.

Question 19] Write a short note on: Take over after investigation

Ans.: Power of Central Government to assume management or control of an industrial undertaking in certain cases [Section 18A]: The Central Government can order takeover of management of industrial undertaking in following circumstances:

- (1) If industrial undertaking does not follow the direction given u/s 16.
- (2) If industrial undertaking of which an investigation has been made u/s 15, is being **managed in a manner highly detrimental** to the scheduled industry or to public interest

Takeover of such industrial undertaking is done issuing notified order and by authorizing person or body of persons. Such order can be issued for **5 years**. It can be extended for **2 years** at a time, but total period cannot exceed **12 years**, beyond initial period of 5 years.

Question 20] What are the 'circumstances' under which the Central Government can assume management or control of an industrial undertaking without any investigation into circumstances or notice to the management? Whether it violates the principle of natural justice? Comment with reference to a leading case.

CS (Inter) - Dec 2001 (5 Marks), June 2002 (5 Marks)

CS (Inter) - Dec 2002 (4 Marks), Dec 2003 (4 Marks)

CS (Executive) - Dec 2015 (10 Marks), June 2016 (5 Marks)

Ans.: Power to take over industrial undertakings without investigation [Section 18AA]: The Central Government can takeover industrial undertaking without investigation in following cases:

- (1) If the persons in charge of industrial undertaking is making by reckless investments or creation of encumbrances on the assets or diversion of funds which will affect production and immediate action is necessary
- (2) Industrial undertaking is closed for a period of more than 3 months such closure is prejudicial to the industry undertaking and it is possible to restart the undertaking in the interests of the general public.

Takeover of such industrial undertaking is done issuing notified order and by authorizing person or body of persons. Such order can be issued for **5 years**. It can be extended for **2 years** at a time, but total period cannot exceed **12 years**, beyond initial period of 5 years.

Judicial View:

The Supreme Court held that in respect of such takeovers without investigation, hearing at pre decisional stage must be given and the rule of *audi alterem partem* could not be dispensed with. [Swadeshi Cotton Mills v. Union of India AIR (1981) SC 818]

Question 21] Distinguish between the circumstances under which the Central Government may take over the management of the industrial undertaking after investigation and without investigation under Sections 18A & 18AA of the Industrial (Development & Regulation) Act, 1951.

CS (Executive) - Dec 2013 (5 Marks)

Ans.: Following are the main point of distinction between takeover of industrial undertaking after investigation and without investigation:

Points	Takeover after investigation	Takeover without investigation
Circumstances leading to takeover	The Central Government can order takeover of management of industrial undertaking in following circumstances: <ol style="list-style-type: none"> (1) If industrial undertaking does not follow the direction given u/s 16. (2) If industrial undertaking of which an investigation has been made u/s 15, is being managed in a manner highly detrimental to the scheduled industry or to public interest 	The Central Government can takeover industrial undertaking without investigation in following cases: <ol style="list-style-type: none"> (1) If the persons in charge of industrial undertaking is making by reckless investments or creation of encumbrances on the assets or diversion of funds which will affect production and immediate action is necessary. (2) Industrial undertaking is closed for a period of more than 3 months and such closure is prejudicial to the industry undertaking and it is possible to restart the undertaking in the interests of the general public.
Section	Provision of takeover after investigation is contained in Section 18A.	Provision of takeover without investigation is contained in Section 18AA.
When	Takeover under Section 18A has to be done only if provisions of Sections 15 & 16 are not complied with.	The power granted under Section 18AA is an extraordinary power and needs to exercised in at special cases only.

Question 22] What is the effect of 'notified order' issued by the Central Government authorizing the taking over of the management of an industrial undertaking under the Industrial (Development & Regulation) Act, 1951?

CS (Inter) - June 2003 (4 Marks)

Ans.: Effect of Notified Order issued u/s 18A [Section 18B]: Following are the consequences of the notified order issued u/s 18A:

- (a) All persons holding office as managers or directors shall be deemed to have vacated their offices
- (b) Any contract between the industrial undertaking and any director shall be deemed to have terminated
- (c) The authorized persons will take over the management and to take into their custody all the property, effects and actionable
- (d) The authorized persons shall be the directors of the industrial undertaking if it is company and shall have all the powers of the directors.

The authorized persons will take necessary steps to manage the business and can exercise powers and other prescribed duties.

An industrial undertaking will be carried on pursuant to directions given by the authorized persons as per notified order, and any person having any functions of management in relation to the undertaking or part thereof shall comply with all such directions.

The authorized persons shall exercise their functions in accordance with directions given by the Central Government.

Question 23] A contract entered into by an industrial undertaking prior to taking over its management and control by the Central Government with third party is found detrimental to the interest of the undertaking. What is the remedy against the contract?

CS (Inter) - Dec 1999 (7 Marks), June 2004 (5 Marks)

Ans.: Contracts in bad faith may be cancelled or varied [Section 18C]: The authorized person who has taken over management can make application to Court for cancelling or varying the contract or arrangement entered before such takeover.

Court can cancel or vary such contract or arrangement if the Court is satisfied that it is in bad faith and detrimental to interest of industrial undertaking.

Question 24] Can directors or managers whose contract of management is terminated due to takeover of an industrial undertaking are entitled to claim any compensation?

Ans.: No right to compensation for termination of office or contract [Section 18D]: Directors or managers whose contract of management is terminated after the takeover of industrial undertaking will not be entitled to any compensation for the loss of office or for the premature termination of his contract of management. However, directors or managers are entitled to recover other dues, if any.

Question 25] Can shareholder of an industrial undertaking which has been taken over be entitled to appoint any directors or can pass other resolutions?

Ans.: Protection to industrial undertaking after takeover [Section 18E]: After takeover of industrial undertaking following restriction are applicable:

- (a) Shareholder cannot appoint any director
- (b) All resolutions of shareholders are subject to approval of Central Government.
- (c) Proceedings for the winding up or appointment of a receiver cannot continue without the consent of the Central Government.

- (d) Central Government can order by notification that provisions of the Companies Act will apply subject to restrictions, limitations exceptions as may be specified.

Question 26] Write a short note on: Takeover of industrial undertaking owned by company in liquidation
CS (Inter) - Dec 2000 (5 Marks)

Ans.: Power to takeover of industrial undertaking owned by company in liquidation [Section 18FA]: If the Central Government is of opinion that industrial undertaking may be re-started or kept running in public interest, in such case the Central Government can approach the High Court for permission to appoint any persons to take over the management of the industrial undertaking.

Where an application is made, the High Court shall by order authorize persons appointed by the Central Government to take over the management or to exercise control. Such order can be issued for **5 years**. It can be extended for **2 years** at a time, but total period cannot exceed **12 years**, beyond initial period of 5 years.

The High Court can direct the Official Liquidator of the industrial undertaking to takeover the management to the authorized person.

On such order the Official Liquidator has to make a complete inventory of all the assets and liabilities and deliver a copy of inventory to the authorized persons.

Powers of Authorized Persons:

- ◆ On taking over the management, the authorized person shall take immediate steps to run the industrial undertaking or to ensure the maintenance of production.
- ◆ The authorized person can raise loan, create a floating charge on the current assets of the industrial undertaking.
- ◆ The authorized person can make replacement or repair of machinery of the industrial undertaking for efficient running the industrial undertaking.
- ◆ The authorized person may employ former employees whose services became discharged by reason of the winding up.

The section further provides that proceedings of the winding up of the company will remain stayed during the period of takeover.

Question 27] What are the powers available to the Central Government to provide relief to industrial undertakings, the management or control of which has been taken over by it without investigation under the Industrial (Development & Regulation) Act, 1951?

CS (Executive) - June 2015 (5 Marks)

Ans.: Power of Central Government to make declarations of industrial undertakings which has been taken over u/ss 18A, 18AA 18FA [Section 18FB]: The Central Government has been given power to give protection or reliefs to the industrial undertakings taken over u/s 18A, 18AA or 18FA by issuing notified order. The Central Government can grant:

- (a) Full or partial exemption from the following Acts
 - The Industrial Employment (Standing Order) Act, 1946
 - The Industrial Dispute Act, 1947
 - The Minimum Wages Act, 1948
- (b) Full or partial operation of any contracts, assurances of property, agreements, settlements, awards, standing orders which were applicable to industrial undertaking before takeover.

The notified order can be issued for 1 year. It can be extended by 1 year at a time, but total extension cannot be more than 8 years.

During such period, enforcement of any right, privilege, obligation or liability under the contract, arrangement will remain stayed, but then will revive.

Question 28] What type responsibility is casted on the person authorized to take over industrial undertaking u/ss 18A, 18AA or 18FA relating to preparation of list of assets & liabilities etc. under the Industrial (Development & Regulation) Act, 1951?

Ans.: Preparation of inventory of assets & liabilities and list of members & creditors [Section 18FG]: After take over the authorized person as soon as possible make a complete inventory of:

- (a) All movable and immovable properties such as lands, buildings, works, workshops, stores, instruments, plant, machinery, automobiles, vehicles, stock, raw materials, cash, deposits in bank, investments and book debts.
- (b) All borrowings, liabilities and obligations of whatever kind.
- (c) A separate list of members, creditors showing separately secured and unsecured creditors.

Question 29] What are the powers available to the Central Government to control supply, distribution, prices of any article relating to industrial undertaking under the Industrial (Development & Regulation) Act, 1951?

Ans.: Power to control supply, distribution, price, etc. of certain articles [Section 18G]: The Central Government in order to secure the equitable distribution and to make available any article at fair prices may by issuing notified order can regulate the supply and distribution such article. To achieve above purpose the central government may take the following steps:

- ◆ Controlling the prices of such article
- ◆ Regulating the distribution, transport, disposal, acquisition, possession, use or consumption of such article by way of license
- ◆ Prohibiting or withholding sale of such article
- ◆ Requiring manufacturer, producer or holder any such article to sell it to person or class of persons as may be specified in the order
- ◆ Regulating or prohibiting commercial or financial transactions relating to such article
- ◆ Collecting information or statistics to regulate or prohibit any of the aforesaid matters
- ◆ Any incidental or supplementary matters.

No such order shall be called in question in any Court.

Question 30] Can State Government takeover the management or control of industrial undertaking?

Ans.: General prohibition of taking over management or control of industrial undertakings by State Government [Section 20]: This Section imposes general prohibition on any State Government or a local authority to take over the management or control of any industrial undertaking under any law which authorizes any State Government or local authority to do so.

Question 31] Explain the powers of Central government to grant exemption to an industry from operation of all or any of the provisions of the Industries (Development & Regulation) Act, 1951.

CS (Inter) – June 1998 (5 Marks)

Ans.: Power to exempt in special cases [Section 29B]: The Central Government by notification in the Official Gazette exempt any industrial undertaking from all or any of the provisions of the Act or Rule or Order made thereunder.

The Central Government can give such exemption after considering:

- The smallness of the number of workers employed or
- The amount invested in any industrial undertaking or
- The desirability of encouraging small industrial undertakings
- The stage of development of any scheduled industry

Before granting such exemption the Central Government is to be convinced that it would not be in public interest to apply all or any of the provisions of the Act to such undertakings.

MISCELLANEOUS

Question 32] What is a 'letter of intent'? When it is required?

Explain the concept of 'letter of intent'

CS (Inter) - Dec 1998 (5 Marks)

Ans.: When application for industrial licence is made by industrial undertaking, government will issue 'letter of intent' which is also called as 'provisional licence'. Latter this 'letter of intent' is converted into licence.

Validity period: It is valid for 3 years form production

Extension: It can be extended for 3 more years. Extension beyond this period can be given only in exceptional cases.

Question 33] Distinguish between: Letter of intent & Industrial licence

CS (Inter) - June 2001 (5 Marks), June 2007 (5 Marks)

Ans.: Following are the main points of difference between 'letter of intent' & 'industrial licence':

Points	Letter of intent	Industrial licence
Meaning	When application for industrial licence is made by industrial undertaking, government will issue 'letter of intent' which is also called as 'provisional licence'. Latter this 'letter of intent' is converted into licence.	An Industrial licence is a written permission from the Government to an industrial undertaking to manufacture specified articles, listed in the First Schedule and includes particulars of industrial undertaking, its location, articles to be manufactured, the capacity on the basis of maximum utilization of plant and machinery etc.
Nature	It is temporary in nature.	It is permanent in nature.
Valid	It is valid for 3 years form production and can be extended for 3 more years. Extension beyond this period can be given only in exceptional cases.	It is valid until is cancelled or terminated.

Question 34] Write a short note on: Carry on Business (COB) Licence

CS (Inter) - Dec 2003 (3 Marks)

CS (Executive) - Dec 2008 (3 Marks)

Ans.: Following are the important points relating to COB licence

- (1) **In which case COB requires:** Industries which have registered before 1991 policy but
 - Want to have substantial expansion
 - Produce a new article
- (2) If exemption from Industrial licensing granted for any item is withdrawn, the industrial undertakings manufacturing such items require COB licence.
- (3) **When SSI unit is required to take COB licence:** A COB licence is required when a small scale unit exceeds the prescribed small scale limit of investment in plant and machinery by way of natural growth and continues to manufacture small scale reserved items.
- (4) **Fee payable:** Crossed demand draft of ₹ 2,500.
- (5) **Procedure for obtaining COB licence:** The application for COB licence should be submitted in Form EE to:

The Secretariat for Industrial Approval (SIA),
Department of Industrial Policy and Promotion,
Udyog Bhavan, New Delhi - 110011

Question 35] Distinguish between: Carry on Business Licence and Industrial Licence

CS (Inter) - June 2009 (5 Marks)

CS (Executive) - Dec 2011 (5 Marks)

Ans.: Following are the main points of distinction between COB and Industrial Licence:

Points	Carry on Business Licence	Industrial Licence
Meaning	<p>Carry on business licence is required by industries which have registered before 1991 policy but want to have substantial expansion or produce a new article.</p> <p>A COB licence is also required when a small scale unit exceeds the prescribed small scale limit of investment in plant and machinery by way of natural growth and continues to manufacture small scale reserved item(s). Also, if exemption from Industrial licensing granted for any item is withdrawn, the industrial undertakings who are manufacturing such item(s) require COB licence.</p>	<p>An Industrial licence is a written permission from the Government to an industrial undertaking to manufacture specified articles, listed in the First Schedule.</p> <p>Industrial licence includes following particulars of industrial undertaking</p> <ul style="list-style-type: none"> - Location - Articles to be manufactured - Production capacity of plant & machinery etc.
From	The application for COB licence should be submitted in Form EE .	All industrial undertakings subject to compulsory industrial licensing are required to submit an application in the prescribed format, i.e. Form FC-IL

MICRO, SMALL & MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

INTRODUCTION : *The role of micro, small and medium enterprises (MSMEs) in the economic and social development of the country is well established. The MSME sector is a nursery of entrepreneurship, often driven by individual creativity and innovation. This sector contributes 8% of the country's GDP, 45% of the manufactured output and 40% of its exports. The MSMEs provide employment to about 60 million persons through 26 million enterprises. The labour to capital ratio in MSMEs and the overall growth in the MSME sector is much higher than in the large industries. The geographic distribution of the MSMEs is also more even. Thus, MSMEs are important for the national objectives of growth with equity and inclusion.*

With the enactment of MSMED Act, 2006, the concept and classification of enterprises on the basis of investment were introduced. The Company Secretaries play an important role in educating the promoters and management of the MSMEs and also perform the functions like counselling of MSMEs for the rights and benefits available to them; advisory role in formation, registration, taxation and foreign direct investment; assistance in compliance with the technicalities laid down by the MSMED Act, 2006 itself like classification of industries, registration under the Act, procedure of filing of Entrepreneurs Memorandum and disclosure requirements.

Question 1] State the meaning of 'supplier' under the Micro, Small & Medium Enterprises Development Act, 2006.

CS (Executive) – Dec 2013 (3 Marks)

Ans.: Supplier [Section 2(n)]: Supplier means a micro or small enterprise, which has filed a memorandum with the authority referred to in Section 8(1) and includes:

- (i) The National Small Industries Corporation
- (ii) The Small Industries Development Corporation of a State or a Union territory
- (iii) Any company, co-operative society, trust or a body registered under any law for the time being in force and engaged in selling goods produced or services rendered by micro or small enterprises.

NATIONAL BOARD

Question 2] Write a short note on: Functions of National Board for micro, small & medium enterprises

CS (Executive) – June 2011 (3 Marks)

Ans.: Establishment of Board [Section 3]: The Central Government is empowered to establish National Board for Micro, Small & Medium Enterprises with its head office at Delhi.

Function of National Board [Section 5]: The Board can perform following functions namely:

- (a) **Promotion & Development Function:** The Board has to examine the factors affecting the promotion and development of micro, small & medium enterprises. The Board also reviews the policies and programmes of the Central Government relating to the promotion, development and enhancing the competitiveness of micro, small & medium enterprises.
- (b) **Recommendations on various matters:** The Board has make recommendations on any matter referred by the Central Government which is related to the promotion, development and enhancing the competitiveness of the micro, small & medium enterprises.
- (c) **Advising Function:** The Board has to advise the Central Government on the use of the Fund constituted u/s 12.

CLASSIFICATION OF ENTERPRISES

Question 3] Discuss the criteria of classification of enterprises into micro, small and medium enterprises under the Micro, Small and Medium Enterprises Development Act, 2006.

CS (Executive) - Dec 2016 (5 Marks)

Ans.: Classification of Enterprises [Section 7(1)]:

- (a) In the case of industry specified in the First Schedule to the Industries (Development & Regulation) Act, 1951, as -

Micro Enterprise	Where investment in plant & machinery is below ₹ 25 lakhs
Small Enterprise	Where investment in plant & machinery is above ₹ 25 lakh but below ₹ 5 Crore
Medium Enterprise	Where investment in plant and machinery is above ₹ 5 Crore but below ₹ 10 Crore

- (b) In the case of the enterprises engaged in providing or rendering of services, as -

Micro Enterprise	Where the investment in equipment is below ₹ 10 lakh
Small Enterprise	Where the investment in equipment is above ₹ 10 lakh but below ₹ 2 Crore
Medium Enterprise	Where the investment in equipment is above ₹ 2 Crore but below ₹ 5 Crore

Note: It has been clarified that the cost of pollution control, research and development, industrial safety devices and such other items as may be specified will be excluded while calculating the investment in plant and machinery.

Question 4] Write a short note on: Advisory Committee under the Micro, Small & Medium Enterprises Development Act, 2006

Ans.: Constitution of Advisory Committee [Section 7(2)]: The Central Government is empowered to constitute an Advisory Committee consisting of the following members, namely:

- (1) The Secretary of the Ministry of the Central Government having administrative control of the small & medium enterprises as the Chairperson, *ex-officio*.
- (2) 5 officers of the Central Government possessing necessary expertise in matters relating to micro, small & medium enterprises as members, *ex-officio*.
- (3) 3 representatives of the State Governments, as members, *ex-officio*.
- (4) 1 representative each associations of micro, small & medium enterprises, as member, *ex-officio*.

Question 5] Discuss in brief the functions of Advisory Committee constituted under the Micro, Small & Medium Enterprises Development Act, 2006

Ans.: Functions of Advisory Committee are follows [Section 7(5) to (8)]: the Advisory Committee has to perform following functions under the Act:

- (1) To examine the matters referred to it by the National Board.
- (2) To advise Central Government on any of the matters dealing with measures for promotion, development and enhancement of competitiveness of micro, small & medium enterprises.
- (3) To advise the State Government on specified matters.
- (4) To advise or make recommendations to the Central or State Government or National Board after considering the following:
 - (a) Level of employment in enterprises
 - (b) Level of investments in plant & machinery or equipment in enterprises
 - (c) Need of higher investment in plant & machinery or equipment for technological up-gradation, employment generation and enhanced competitiveness of enterprises
 - (d) Possibility of promoting and diffusing entrepreneurship in a micro, small or medium enterprise and
 - (e) International standards for classification of small & medium enterprises.

Question 6] Who are required to file "memorandum of micro, small & medium enterprises"? With whom it is required to be filed?

Ans.: Memorandum of Micro, Small & Medium Enterprises [Section 8]: The memorandum has to file with specified authority of the Central or State Government by any person who intends to establish:

- (1) Micro or small enterprise
- (2) Medium enterprise engaged in providing services
- (3) Medium enterprise engaged in the manufacture of industries specified in First Schedule to the Industries (Development & Regulation) Act, 1951.

Any person who has established following enterprises before the commencement of the Act has to file an **Industrial Entrepreneur Memorandum (IEM)** within **180 days** from the commencement of the Act.

- (i) Small Scale Industries (SSI)
- (ii) Industry engaged in the manufacture of goods specified in the First Schedule to the Industries (Development & Regulation) Act, 1951, having investment in plant & machinery of more than ₹ 1 Crore but up to ₹ 10 Crore.

MEASURES FOR PROMOTION & DEVELOPMENT

Question 7] What measures are specified for promotion, development and enhancement of micro, small & medium enterprises under the Micro, Small & Medium Enterprises Development Act, 2006?

Ans.: Following measures are specified for promotion, development and enhancement of micro, small & medium enterprises:

- (1) **Promotion & Development [Section 9]:** The Central Government may specify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of micro, small & medium enterprises.

These measures may include:

- Development of skill in the employees, management and entrepreneurs,
- Provisioning for technological up-gradation, marketing assistance or infrastructure facilities.

- (2) **Credit Facilities [Section 10]:** The policies and practices in respect of credit to the micro, small & medium enterprises should be progressive. Such policies and practices will be framed as per guidelines or instructions issued by the RBI.

Such credit facilities will ensure:

- Timely and smooth flow of credit
- Minimizing the incidence of sickness
- Enhancing the competitiveness

- (3) **Procurement Preference Policy [Section 11]:** The Central or State Government can notify preference policies in respect of procurement of goods and services, produced and provided by micro & small enterprises to facilitate promotion and development of micro & small enterprises.
- (4) **Funds [Section 12]:** The Central Government in order to provide grants may constitute one or more funds by issuing notification.
- (5) **Grants by Central Government [Section 13]:** The Central Government is obliged to credit to the fund by way of grants such sums of money as may be considered necessary.
- (6) **Administration & utilization of Funds [Section 14]:** It empowers the Central Government to administer the fund in the prescribed manner. The fund should be utilized exclusively for the specified measures. The Central Government has responsibility for the coordination and ensuring timely utilization and release of sums in accordance with prescribed criteria.

DELAYED PAYMENTS TO MICRO & SMALL ENTERPRISES

Question 8] Write a short note on: Delayed payment to micro and small enterprises

CS (Executive) - Dec 2008 (3 Marks)

What do you understand by 'day of acceptance' under the Micro, Small & Medium Enterprises Development Act, 2006?

CS (Executive) - Dec 2014 (3 Marks), June 2015 (3 Marks)

CS (Executive) - June 2016 (5 Marks)

Ans.: This is the most important provision of the Act. One of the major reason for sickness of small & medium enterprises is that they are not getting timely payments which may affect their liquidity and cash position. Hence, following provisions are made so that small & medium enterprises can get timely payment for the sale of their goods or services:

- (1) **Liability of buyer to make payment [Section 15]:** Where any supplier, supplies any goods or renders services to any buyer, the buyer shall make payment before the agreed date. If there is no agreement then buyer should make the payment before the appointed day. However, in no case the period agreed upon between the supplier and the buyer in writing should exceed **45 days** from the day of acceptance.

Appointed Day [Section 2(b)]: Appointed day means the day following immediately after the expiry of the period of 15 from the day of acceptance or the day of deemed acceptance of any goods or any services to a buyer from a supplier.

Explanation: For the purposes of this clause,

- (a) **The day of acceptance** means day of the actual delivery of goods or rendering of services or where any objection is made in writing by the buyer regarding acceptance of goods or services within 15 days, the day on which such objection is removed by the supplier.
- (b) **The day of deemed acceptance** means, where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

In simple words the Act cast responsibility on the buyer buying goods from of small & medium enterprises to make the payment within 15 days from the date of sale of goods, if there is no agreed credit period. If credit period is agreed then buyer has to make the payment within agreed credit period. However in no case such agreed period should be more than 45 days.

(2) **Payment of Interest [Section 16]:** If buyer fails to pay the amount to the supplier, the buyer should pay compound interest to the supplier for the delayed period at **3 times** of the bank rate notified by the RBI.

(3) **Reference to Micro & Small Enterprises Facilitation Council [Section 18]:** In the case of dispute regarding payment of amount due, any of the party to the dispute can make a reference to the Facilitation Council. The Council on receipt of a reference either itself conducts conciliation or seeks the assistance of any institution by making a reference for conducting conciliation as per the Arbitration & Conciliation Act, 1996.

If conciliation fails, the Council can take the dispute for arbitration or refer it to any institution for arbitration as per the Arbitration & Conciliation Act, 1996.

Every reference should be decided within a period of **90 days** from the date of making of such a reference.

(4) **Application for setting aside decree, award or order [Section 19]:** Application for setting aside any decree, award or order made by the Facilitation Council or by any institution can be entertained by any Court only if the appellant (buyer) has deposited 75% of the amount specified in decree, award or order.

However, pending disposal of the case the Court can order give reasonable amount out of deposited amount to the supplier.

Question 9] Write a short note on: Micro & Small Enterprises Facilitation Council

Establishment of Micro & Small Enterprises Facilitation Council [Section 20]: The State Government has been empowered to establish Micro & Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

Composition of Facilitation Council [Section 21]: The Facilitation Council shall consist of 3 to 5 members as mentioned below:

- (i) Director of Industries or any officer not below the rank of such Director
- (ii) One or more office-bearers or representatives of associations of micro or small enterprises in the State and
- (iii) One or more representatives of banks and financial institutions lending to micro or small enterprises
- (iv) One or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

Question 10] Which type of additional information the buyer is required to file along with annual statement of accounts as per the Micro, Small & Medium Enterprises Development Act, 2006?

Ans.: Requirement to specify unpaid amount with interest in the annual statement of accounts [Section 22]: Where any buyer is required to get his annual accounts audited under any law, such buyer shall furnish the following additional information in his annual statement of accounts, namely:

- (1) Principal amount along with interest **due** to any supplier at the end accounting year.
- (2) Amount of interest **paid** by the buyer along with principle amounts paid to the supplier beyond the appointed day during accounting year.
- (3) Amount of interest **due and payable** for the period of delay
- (4) Amount of interest **accrued and remaining unpaid** at the end of each accounting year
- (5) Amount of further interest remaining **due and payable** in the **succeeding years**.

Question 11] Whether the amount of interest paid by buyer under the Micro, Small & Medium Enterprises Development Act, 2006 be allowed as deduction for the purposes of computation of income under the Income-tax Act, 1961?

Ans.: Interest not to be allowed as deduction from income [Section 23]: The amount of interest payable or paid by buyer as per provisions of this Act shall not be allowed as deduction for the purposes of computation of income under the Income-tax Act, 1961.

Question 12] What are provisions of the Micro, Small & Medium Enterprises Development Act, 2006 relating to closure of business of micro, small and medium enterprises?

Ans.: Scheme for closure of business of micro, small & medium enterprises [Section 25]: The Central Government may notify a Scheme for closure of business by a micro, small or medium enterprise within 1 year from the date of commencement of this Act. Such scheme will not be applicable for company registered under the Companies Act, 2013.

POLLUTION CONTROL & PROTECTION

INTRODUCTION : *There are many environmental issues in India. Air pollution, water pollution, garbage, and pollution of the natural environment are all challenges for India. The situation was worse between 1947 through 1995. According to data collection and environment assessment studies of World Bank experts, between 1995 through 2010, India has made one of the fastest progress in the world, in addressing its environmental issues and improving its environmental quality. Still, India has a long way to go to reach environmental quality similar to those enjoyed in developed economies. Pollution remains a major challenge and opportunity for India.*

Environmental issues are one of the primary causes of disease, health issues and long term livelihood impact for India. Thus, there is urgent necessity to take proper steps to pollution control & protection of environment.

Question 1] Explain the concept of sustainable development

CS (Inter) - June 2005 (3 Marks), June 2006 (5 Marks)

CS (Inter) - Dec 2006 (5 Marks), June 2008 (3 Marks)

CS (Executive) - June 2010 (3 Marks), June 2011 (3 Marks)

CS (Executive) - Dec 2011 (3 Marks), Dec 2013 (5 Marks)

Ans.: Sustainable development means development that meets the needs of the present generation without compromising the ability of future generation to meet their own needs.

Important points relating to concept of sustainable development are as follows:

- ◆ Humanity must live within the carrying capacity of the earth. It is essential for the people who live now to use the resources of earth sustainably and prudently so that they do not deny certain benefits to future generations. Modern states use the natural resources of the earth recklessly. This will result that the Earth will not be able to support everyone unless there is less waste and extravagance. We should have a new approach to future, to secure a widespread and deeply held commitment for sustainable living.
- ◆ The concept of 'sustainable development' was first highlighted at the **UN Conference on the Human Environment** held at **Stockholm** in June, 1972.
- ◆ Since then, various countries such as Japan, US, France, Germany, etc. besides India, have enacted legislative measures for protection of the environment introducing strict penal measures for damages caused due to hazardous substances, etc.

Principles of sustainable living:

- ◆ The principles of sustainable living, focus on community of life, improving the quality of human life, conserving the earth's vitality and diversity, minimizing the depletion of non-renewable resources, keeping within the earth's carrying capacity, changing personal attitudes and practices, enabling communities to care for their own environments, providing a natural framework for integrating

development and conservation. In addition to the above, more familiar sectors of environment and policy which requires attention are, energy, business, human settlements, fresh water, oceans and coastal areas etc.

- ◆ The aim of development is to improve the quality of human life. Some of universally accepted goals are, healthy life, education, access to the resources needed for a decent standard of living, political freedom etc.
- ◆ Most important principle of the sustainable development is to conserve the earth's vitality and diversity. Development must be conservation based. It must protect the structure, functions and diversity of the world's natural systems on which our species depends.
- ◆ Scientists and environmentalists warn that there are finite limits to the carrying capacity of the earth's eco-systems.
- ◆ Information must be disseminated through formal and informal education so that actions needed are widely understood.
- ◆ Global sustainability depends upon a firm alliance among all countries. But levels of development in world are unequal and the lower income countries must be helped to develop sustainability and to protect their environments. No nation is self sufficient. All tend to gain from worldwide sustainability and all are threatened if we fail to attain it.
- ◆ The lower income countries must develop their industry to escape from acute poverty and achieve sustainability.

Case laws on sustainable development:

- ◆ The principal sustainable development was approved in *M C Mehta v. UOI*. In this case, further building construction in sensitive area i.e. area up to 5 km from the bird sanctuary was stopped.
- ◆ Order to close unauthorized brick kilns, foundries and factories was ordered to save Taj Mahal in *M C Mehta v. UOI*.

Question 2] Write a short note on: The Biological Diversity Act, 2002

Ans.: The Biological Diversity Act, 2002 is an Act of the Parliament of India for preservation of biological diversity in India, and provides mechanism for equitable sharing of benefits arising out of use of traditional biological resources and knowledge. The Act was enacted to meet the obligations under **Convention on Biological Diversity (CBD)**, to which India is a party.

Biodiversity has been defined as, "the variability among living organisms from all sources and the ecological complexes of which they are part, and includes diversity within species or between species and of eco-systems".

The Act also defines Biological resources as, "plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material."

The **National Biodiversity Authority (NBA)** is a statutory autonomous body, headquartered in **Chennai**, under the **Ministry of Environment & Forests**, Government of India established in **2003** to implement the provisions under the Act.

State Biodiversity Boards (SBB) has been created in **28 States** along with 31,574 Biological management committees (for each local body) across India.

Question 3] Write a short note on: Carbon Credit CS (Executive) - Dec 2013 (5 Marks)

Ans.: The most dangerous gases thrown out by the industrial units are carbon dioxide, methane, nitrous oxide, etc. and the major industry sources of green house gases are cement, steel, textile and fertilizer manufacturers. The groups of such gases, which are responsible for removing greenery from our planet, are known as green house gases (GHGs).

Carbon credits are a key component of national and international attempts to mitigate the growth in concentration of green house gases (GHGs).

One Carbon Credit = One Ton of Carbon

A company has two ways to reduce emissions. One, it can reduce the greenhouse gases by adopting new technology or improving upon the existing technology to attain the new norms for emission of gases or it can tie up with developing nations and help them set up new technology that is eco-friendly, thereby helping developing country or its companies 'earn credits'.

Any company, factories or farm owner in India can get linked to **United Nations Framework Convention on Climate Change** (UNFCCC). The extent to which one emitting less carbon one can get credited in a developing country. This is called carbon credit. There are two distinct types of Carbon Credits: Carbon Offset Credits (COCs) and Carbon Reduction Credits (CRCs).

Carbon Offset Credits consist of clean forms of energy production, wind, solar, hydro and bio-fuels.

Carbon Reduction Credits consists of the collection and storage of carbon from our atmosphere through reforestation, forestation, ocean and soil collection and storage efforts.

Both approaches are recognized as effective ways to reduce the Global Carbon Emissions crisis.

Question 4] Write a short note on: Regulatory framework for environmental protection in India

CS (Executive) - June 2009 (5 Marks), June 2011 (5 Marks)

Ans.: For pollution control protections following laws are enacted by the central government:

- ◆ Environment (Protection) Act, 1986
- ◆ Air (Prevention & Control of Pollution) Act, 1981
- ◆ Water (Prevention & Control of Pollution) Act, 1974
- ◆ Public Liability Insurance Act, 1991
- ◆ National Green Tribunal Act, 2010

Some other Acts also make provisions for environmental protection. They are as follows:

Factories Act, 1948	To control emission of air pollutant, improper handling of hazardous substances.
Motor Vehicle Act, 1988	To control excessive emission of smoke/noise beyond prescribed limit.
Indian Port Act, 1908	To control throwing ballast or rubbish in water.
Merchant Shipping Act, 1958	To check water pollution by oil
Indian Penal Code, 1860	To control public nuisance, mischief, rash and negligent acts.
Indian Fisheries Act, 1987	To control putting any poison, lime or noxious material in any water.
Atomic Energy Act, 1962	To regulate nuclear energy and radioactive substance by atomic energy regulatory board.

PUBLIC LIABILITY INSURANCE ACT, 1991

INTRODUCTION : *The Public Liability Insurance Act, 1991 has been passed in background of Bhopal Gas Tragedy in the factory of Union Carbide in the night of 2.12.1984 and caustic chlorine plant accident in Delhi. Growth of hazardous industries and processes accompany risk of accident not only to workman but also to innocent members of public. Mandatory public liability insurance is felt necessary to provide for liability of such hazards to victims of the accident.*

The liability is on 'no fault' basis. Industries storing hazardous substance beyond specified limit are liable to pay to victims in case of accidents. Public sector units are also made liable but they can pay out of special fund setup by government of India instead of taking insurance cover.

Application for relief is to be made by the applicant to the Collector within 5 years of the accident, who, after giving notice to the owner and the insurer and giving the parties an opportunity of being heard, shall make the award determining the amount of relief payable. The victim will however be free to approach the Court for higher compensation.

Question 1] What do you understand by the term "Accident" & "Hazardous Substance" under the Public Liability Insurance Act, 1991? CS (Executive) - June 2012 (3 Marks), Dec 2014 (3 Marks)

Ans.: Accident [Section 2(a)]: Accident means an accident involving a fortuitous or sudden or unintentional occurrence while handling any hazardous substance resulting in continuous, intermittent or repeated exposure to death of, or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity.

Hazardous Substance [Section 2(d)]: Hazardous substance means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 and exceeding such quantity as may be specified, by notification, by the Central Government

Hazardous substance u/s 2(e) of Environment (Protection) Act, 1986 means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, micro-organism, property or the environment.

Question 2] Briefly explain the major provisions of the Public Liability Insurance Act, 1991.

CS (Inter) - Dec 2002 (5 Marks), Dec 2006 (5 Marks)

What is meant by 'compulsory insurance' under the Public Liability Insurance Act, 1991?

CS (Executive) - June 2015 (3 Marks)

Whether taking insurance policy is compulsory by the owner of the enterprise before starting the handling of hazardous substance under the provisions of the Public Liability Insurance Act, 1991?

If yes, what should be the sum assured?

CS (Executive) - Dec 2015 (5 Marks)

Ans.: Following are the important provisions of Public Liability Insurance Act, 1991:

- (1) **Liability to give relief in certain cases on principle of no fault [Section 3]:** Owner shall be liable to give relief as specified in the Schedule to the Act for death, injury or damage caused due to an accident. For this purpose, injury includes permanent total or permanent partial disability or sickness resulting out of an accident. As per Schedule to the Act a person can get the following relief:

Nature of accident	Relief
For death and total permanent disability	₹ 37,500 (including medical expenses of ₹ 12,500)
For Damage to third party property	₹ 6,000
For partial disablement	₹ 1,000 per month up to 3 months <i>plus</i> medical expenses up to ₹ 12,500

- (2) **Duty of owner to take out insurance policies [Section 4]:** Every owner shall take insurance policies, before starting the handling of hazardous substance. Such insurance policy can be used to discharge the liability under Section 3. The amount of insurance policy should not be **less than paid up capital** of the undertaking and **more than ₹ 50 crore**.

Such insurance policy should be renewed from time to time before the expiry of the period of validity throughout the period during which such handling of hazardous substance is continued.

- (3) **Verification & publication of accident [Section 5]:** Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident.

- (4) **Application for claim for relief [Section 6]:** An application for claim for relief may be made by

- ◆ The person who has sustained injury
- ◆ Owner of the property to which damage has been caused
- ◆ In the case of death resulting from accident, by all or any of the legal representatives of the deceased
- ◆ By duly authorized agent

Every application is required to be submitted to collector in **Form I** along with prescribed documents within **5 years** of the occurrence of the accident.

- (5) **Award of relief [Section 7]:** The collector, on receipt of application for claim for relief, to hold an inquiry into the claim or each of the claims, after giving notice of application to owner and after giving the parties an opportunity of being heard and make an award determining the amount of relief payable to person or persons.

The insurers have to deposit the amount within 30 days from the date of announcement of the award as specified by the collector. The collector than arrange to pay from the relief fund to the persons such amount in prescribed manner as may be specified in the scheme.

- (6) **Establishment of Environment Relief Fund [Section 7A]:** The Central Government is empowered to establish Environment Relief Fund, by notification in the official Gazette, to be utilized for paying relief under Act. This provision is applicable for the industries established by central or state government which are not required to take insurance policies as per Section 4. In such case the amount of relief shall be paid out of the Environmental Relief Fund.

- (7) **Provisions as to other right to claim compensation for death, etc. [Section 8]:** If a person also claims compensation for death, injury or damage to property under any other law then compensation payable under that Act will be reduced by the relief claimed under this Act.

Question 3] Briefly explain the various powers available to central government to enforce the provisions of the Public Liability Insurance Act, 1991.

Ans.: The various powers available to central government are as follows:

- (1) **Power to call for information [Section 9]:** The owner of hazardous installation has been put under obligation to submit necessary information to any person authorized by the Central Government.
- (2) **Power of entry & inspection [Section 10]:** Any person, authorized by the Central Government can rightfully, enter at all reasonable times with the necessary assistance, any place, premises, or vehicle where hazardous substance is handled for determining whether any provision of the Act has been complied with. The owner must render all assistance to such persons.
- (3) **Power of search & seizure [Section 11]:** The person authorized by the Central Government may search place, premises or vehicle, and may seize hazardous substances, the handling of which have been found to have taken place. Such authorized person may also dispose of seized hazardous substances, if in his opinion it is expedient to prevent an accident. The expenses incurred in disposing of such hazardous substances shall be recoverable from the owner.
- (4) **Power to give directions [Section 12]:** The Central Government has been empowered to issue directions in writing to any owner or officer or authority or agency. The power may include the power to direct prohibition or regulation of the handling of any hazardous substance or stoppage or regulation of the supply of electricity, water or any other service.

Question 4] Briefly state the various penalties for non-compliance of provisions of the Public Liability Insurance Act, 1991.

Ans.: Offences & Penalties [Sections 14, 15, 16, 17 & 18]: The penalties in the case of serious lapses like not taking insurance policies, or failure to comply with any direction issued in regard to prohibition or regulation of the handling of any hazardous substance or stoppage of supply of electricity, water etc. are

- ◆ Imprisonment form 1.5 year to 6 year, or
- ◆ With fine up to ₹ 1 lakh or
- ◆ With both.

For second and subsequent offences, the person shall be punishable with the minimum imprisonment of 2 years but which may extend to 7 years and with fine which shall not be less than ₹ 1 lakh.

Additionally lapses like default, in compliance with the directions issued or failure to comply with orders issued or creating obstruction to any person in discharge of his duties shall be punishable with:

- ◆ Imprisonment up to 3 months or
- ◆ With fine up to ₹ 10,000 or
- ◆ With both

NATIONAL GREEN TRIBUNAL ACT, 2010

INTRODUCTION : *The National Green Tribunal Act, 2010 is an Act which enables creation of a special Tribunal to handle the expeditious disposal of the cases pertaining to environmental issues. It was enacted under India's Constitutional provision of Article 21, which assures the citizens of India the right to a healthy environment.*

Question 1] What is the objective of National Green Tribunal Act, 2010?

CS (Executive) – June 2015 (3 Marks)

Ans.: The National Green Tribunal Act, 2010 intend to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to:

- ◆ Environmental protection
- ◆ Conservation of forests
- ◆ Other natural resources
- ◆ Enforcement of any legal right relating to environment
- ◆ Giving relief and compensation for damages to persons and property
- ◆ For matters connected therewith or incidental thereto.

Question 2] Define the term 'substantial question relating to environment' under the National Green Tribunal Act, 2010.

CS (Executive) – Dec 2015 (5 Marks)

Ans.: **Substantial question relating to environment [Section 2(m)]:** "Substantial question relating to environment" shall include an instance where,

- (i) There is a direct violation of a specific statutory environmental obligation by a person by which-
 - (a) The community at large is affected or likely to be affected by the environmental consequences or
 - (b) The gravity of damage to the environment or property is substantial or
 - (c) The damage to public health is broadly measurable
- (ii) The environmental consequences relate to a specific activity or a point source of pollution.

Question 2A] Discuss briefly the composition of National Green Tribunal under the National Green Tribunal Act, 2010.

CS (Executive) – Dec 2015 (5 Marks)

Ans.: **Composition of Tribunal [Section 4]:**

- (1) The Tribunal shall consist of –
 - (a) Full time Chairperson

- (b) Not less than 10 but subject to maximum of 20 full time Judicial Members.
- (c) Not less than 10 but subject to maximum of 20 full time Expert Members.
- (2) The Chairperson of the Tribunal may invite any person having specialized knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.
- (3) The Central Government by notification may specify the ordinary place of sitting of the Tribunal and the territorial jurisdiction.
- (4) The Central Government in consultation with the Chairperson of the Tribunal may make rules regulating the practices and procedure of the Tribunal including –
 - (a) The rules as to the persons who shall be entitled to appear before the Tribunal.
 - (b) The rules as to the procedure for hearing applications and appeals and other matters.
 - (c) The minimum number of members who shall hear the application and appeals. However, the number of Expert Members hearing an application or appeal shall be equal to the number of Judicial Members hearing such application or appeal.
 - (d) Rules relating to transfer of cases by the Chairperson from one place of sitting to other place of sitting.

Question 3] Write a note on the jurisdiction and powers of the National Green Tribunal under the National Green Tribunal Act, 2010. CS (Executive) – June 2016 (5 Marks), Dec 2016 (5 Marks)

Ans.: Tribunal to settle disputes [Section 14]: The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment including enforcement of any legal right relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I.

The Tribunal shall hear the disputes and settle such disputes and pass order thereon.

Application for adjudication of dispute under this section shall be made within a period of **6 months** from the date on which the cause of action for such dispute first arose.

However, the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within 6 months, allow it to be filed within a further period not exceeding **60 days**.

Schedule I specifies following enactments:

- ◆ The Water (Prevention & Control of Pollution) Act, 1974
- ◆ The Water (Prevention & Control of Pollution) Cess Act, 1977
- ◆ The Air (Prevention & Control of Pollution) Act, 1981
- ◆ The Environment (Protection) Act, 1986
- ◆ The Forest (Conservation) Act, 1980
- ◆ The Public Liability Insurance Act, 1991
- ◆ The Biological Diversity Act, 2002,

Question 4] State the powers of National Green Tribunal relating to grant of relief, compensation and restitution.

Ans.: Relief, compensation & restitution [Section 15]: The Tribunal by an order, provide-

- (a) Relief and compensation to the victims arising under the enactments specified in the Schedule I
- (b) For restitution of property damaged
- (c) For restitution of the environment for such area as the Tribunal may think fit.

The relief and compensation and restitution of property and environment referred above shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991.

Time Limit: Application for grant of any compensation or relief or restitution of property or environment shall be made within a period of **5 years** from the date on which the cause for compensation or relief first arose. However, the Tribunal may allow a further period not exceeding 60 days if sufficient cause is shown.

The Tribunal may divide the compensation or relief payable under separate heads specified in **Schedule II** having regard to the damage to public health, property and environment.

Every claimant of the compensation shall intimate to the Tribunal about the application filed or as compensation or relief received from any other court or authority.

Question 5] Enumerate the heads under which compensation for damages may be claimed from the National Green Tribunal under the National Green Tribunal Act, 2010.

CS (Inter) - Dec 2005 (5 Marks), Dec 2007 (5 Marks)

CS (Executive) - Dec 2009 (5 Marks), Dec - 2012 (5 Marks)

CS (Executive) - Dec 2014 (3 Marks)

Ans.: The Schedule II lists out the following heads under which compensation for damages may be claimed:

- (a) Death
- (b) Permanent, temporary, total or partial disability or other injury or sickness
- (c) Loss of wages due to total or partial disability or permanent or temporary disability
- (d) Medical expenses incurred for treatment of injuries or sickness
- (e) Damage to private property
- (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons
- (g) Expenses incurred by Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment
- (h) Loss to Government or local authority arising out of, or connected with, the activity causing any damage
- (i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna
- (j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards
- (k) Claim including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-system
- (l) Loss and destruction of any property other than private property
- (m) Loss of business or employment or both
- (n) Any other claim arising out of or connected with, any activity of handling of hazardous substance.

Question 6] Write a short note on: Appellate jurisdiction of National Green Tribunal

Ans.: Any person aggrieved by order of any authority under the Schedule I enactments may, within a period of **30 days** from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal.

However, the Tribunal may allow further period of **60 days** on showing **sufficient cause**.

Question 7] Mention the provision of the National Green Tribunal Act, 2010 relating to compensation for death, injury to a person and damage to property & environment.

CS (Inter) - June 2007 (5 Marks)

Ans.: Liability to pay relief or compensation [Section 17]: The person responsible shall be liable to pay relief or compensation for such death, injury or damage to the property which has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in **Schedule I**. Such relief or compensation shall be paid under all or any of the heads specified in **Schedule II**, as may be determined by the Tribunal.

In case of an accident, the Tribunal shall apply the principle of "no fault".

Question 8] Who are entitled to make application for grant of relief or compensation under the National Green Tribunal Act, 2010? Also state the period within which the application should be disposed by the tribunal.

Ans.: Application or Appeal to the Tribunal [Section 18]: An application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by –

- (a) The person, who has sustained the injury
- (b) The owner of the property to which the damage has been caused
- (c) The legal representatives of the deceased
- (d) Any agent duly authorized by such person or owner of such property or legal representatives of the deceased
- (e) Any aggrieved person, including any representative body or organization
- (f) The Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986

Application to be made for the benefit of all the legal representatives of the deceased: Where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made for the benefit of all the legal representatives of the deceased and the legal representatives.

No application if appeal is filed u/s 16: It is to be noted that the person shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person have preferred an appeal u/s 16.

Disposal of application: The application or appeal filed before the Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application or appeal, finally within **6 months** from the date of filing the same.

Question 9] State the powers of National Green Tribunal.

CS (Inter) – June 2006 (5 Marks)

CS (Executive) – Dec 2011 (5 Marks), Dec 2013 (3 Marks)

Ans.: Procedure & powers of Tribunal [Section 19]: The Tribunal shall not be bound by the procedure laid down by the **Code of Civil Procedure, 1908** but shall be guided by the principles of **natural justice**.

The Tribunal has power to regulate its own procedure.

The Tribunal shall also not be bound by the rules of evidence contained in the **Indian Evidence Act, 1872**.

The Tribunal shall have the same powers as are vested in a Civil Court while trying a suit, in respect of the following matters, namely:

- (a) Summoning and enforcing the attendance of any person and examining him on oath
- (b) Requiring the discovery and production of documents
- (c) Receiving evidence on affidavits
- (d) Requisitioning any public record or document or copy of such record or document
- (e) Issuing commissions for the examination of witnesses or documents

- (f) Reviewing its decision
- (g) Dismissing an application for default or deciding it *ex-parte*
- (h) Setting aside any order of dismissal of any application
- (i) Pass an interim order including granting an injunction or stay
- (j) Pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I
- (k) Any other prescribed matter

All proceedings before the Tribunal shall be deemed to be the **judicial proceedings** within the meaning of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the Code of Criminal Procedure, 1973.

Question 10] Which principles should be observed by National Green Tribunal before passing any order or decision or award?

Ans.: Tribunal to apply certain principles [Section 20]: The Tribunal shall, while passing any order or decision or award apply:

- ◆ Principles of sustainable development
- ◆ Precautionary principle
- ◆ Polluter pays principle.

Question 11] Write a short note on: Appeal to the Supreme Court under the National Green Tribunal Act, 2010

Ans.: Appeal to the Supreme Court [Section 22]: Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within **90 days** from the date of communication of the award, decision or order of the Tribunal to him.

Any aggrieved person can also file appeal on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

Extension of time: The Supreme Court may entertain any appeal after the expiry of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.

Question 12] What are the penalties provided for non-compliance with the order of National Green Tribunal under the National Green Tribunal Act, 2010? CS (Executive) – June 2014 (5 Marks)

Ans.: Penalty for failure to comply with orders of Tribunal [Section 26]: If any person fails to comply with any order or award or decision of the Tribunal, he shall be punishable

- ◆ With imprisonment for a term which may extend to **3 years**, or
- ◆ With fine which may extend to **Rs. 10 Crore**, or
- ◆ With **both**

In case the failure or contravention continues then additional fine may be levied to the extent of **Rs. 25,000** for every day during which such failure or contravention continue after conviction for the first such failure or contravention.

If a company fails to comply with any order or award or a decision of the Tribunal then such company shall be punishable with fine which may extend to **Rs. 25 Crore**.

In case the failure or contravention continues then additional fine may be levied to the extent of **Rs. 1 lakh** for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

Every offence under the Act shall be deemed to be **non-cognizable**.

AIR (PREVENTION & CONTROL OF POLLUTION) ACT, 1981

INTRODUCTION : *The objective of this Act is to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.*

Decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, includes the preservation of the quality of air and control of air pollution.

Therefore it is considered necessary to implement the decisions aforesaid insofar as they relate to the preservation of the quality of air and control of air pollution.

Question 1] Define: Air Pollutant & Air Pollution

CS (Inter) Dec 2004 (3 Marks)

Ans.: Air Pollutant [Section 2(a)]: Air pollutant means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

Air Pollution [Section 2(b)]: Air pollution means the presence in the atmosphere of any air pollutant.

Question 2] Define the following terms

- Approved Appliance
- Chimney
- Control Equipment
- Emission
- Industrial Plant
- Occupier

Ans.: Approved Appliances [Section 2(c)]: Approved appliances means any equipment or gadget used for the bringing of any combustible material or for generating or consuming any fume, gas of particulate matter and approved by the State Board for the purpose of the Act.

Chimney [Section 2(h)]: Chimney includes any structure with an opening or outlet from or through which any air pollutant may be emitted.

Control equipment [Section 2(i)]: Control equipment means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial Plant.

Emission [Section 2(j)]: Emission means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet.

Industrial Plant [Section 2(k)]: Industrial plant means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere.

Occupier [Section 2(m)]: Occupier, in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance.

CENTRAL & STATE BOARD

Question 3] Write a short note on: Central & State Pollution Control Boards

Ans.: Following are important points relating to Central & State Board.

- ◆ Central Pollution Control Board is constituted for prevention and control of air pollution.
- ◆ The Central Board constituted u/s 3 of the Water (Prevention & Control of Pollution) Act, 1974 shall exercise the powers and perform the functions of the Central Board for the prevention and control of air pollution under the Act.
- ◆ A State Board under the Water (Prevention & Control of Pollution) Act, 1974 shall be the State Board for Prevention and Control of air pollution under the Act.
- ◆ Where in any State there is no such State Pollution Control Board the State Government shall constitute a State Board for prevention and control of air pollution.
- ◆ The Central Board shall exercise the powers and perform the functions of a State Board in any Union Territory. However the Central Board may delegate all or any of its powers and functions to any person or body of persons as the Central Government may specify.

Question 4] Explain the functions of the Central Board and State Boards under the Air (Prevention & Control of Pollution) Act, 1981.

CS (Inter) - Dec 1993 (5 Marks), Dec 1994 (5 Marks)

CS (Executive) - June 2012 (3 Marks)

Ans.: Functions of Central Board [Section 16]: The main functions of the Central Board shall be to improve the quality of air and to **prevent, control or abate** air pollution in the country.

To achieve above main function, the Central Board may -

- (a) Advise the Central Government on any matter concerning the improvement of the **quality of air** and the prevention, control or abatement of air pollution
- (b) Plan and cause to be executed a **nationwide programme** for the prevention, control or abatement of air pollution
- (c) **Co-ordinate activities** of the State Boards and **resolve disputes** among them
- (d) Provide **technical assistance and guidance** to the State Boards, carry out and sponsor investigations and research relating to problems of air-pollution and prevention, control or abatement of air pollution
- (e) Perform the **functions of State Board**
- (f) Plan and organize the **training of persons** engaged in programmes for the prevention, control or abatement of air pollution
- (g) Organize through mass media a **comprehensive programme** regarding the prevention, control or abatement of air pollution
- (h) **Collect, compile and publish technical and statistical data** relating to air pollution and the measures devised for its effective prevention, control or abatement
- (i) **Prepare manuals, codes or guides** relating to prevention, control or abatement of air pollution

- (j) **Lay down standards** for the quality of air
- (k) **Collect and disseminate information** in respect of matters relating to air pollution
- (l) Perform other prescribed functions

The Central Board may **establish or recognize a laboratory** to enable the Central Board to perform its functions efficiently.

The Central Board may –

- (i) Delegate any of its functions to any of the committees appointed by it
- (ii) Do other things and perform such other acts for the proper discharge of its functions and for the purpose of carrying into effect the purposes of this Act.

Question 5] Write a short note on: Functions of the State Board

Ans.: Functions of State Boards [Section 17]: The functions of a State Board shall be –

- (a) To plan a **comprehensive programme** for the prevention, control or abatement of air pollution and to secure the execution such programme.
- (b) To **advise the State Government** on any matter concerning the prevention, control or abatement of air pollution
- (c) To **collect and disseminate information** relating to air pollution
- (d) To **collaborate with the central board** in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution
- (e) To organize **mass-education programme** relating to prevention, control or abatement of air pollution
- (f) To **inspect** at reasonable times, any **control equipment, industrial plant or manufacturing process** and
- (g) To **directions to inspecting officers** to take steps for the prevention, control or abatement of air pollution
- (h) To **inspect air pollution control areas** and take steps for the prevention, control or abatement of air pollution
- (i) To **lay down standards** for the discharge of any air pollutant into the atmosphere
- (j) To **advise state government** with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution
- (k) To **perform other prescribed functions** entrusted to it by the Central Board or the State Government
- (l) To do other things and to perform such other acts as it may think necessary for the proper discharge of its functions and carrying into effect the purposes of this Act.

A State Board may **establish or recognize a laboratory** to enable the State Board to perform its functions efficiently.

PREVENTION & CONTROL OF AIR POLLUTION

Question 6] Enumerate the provisions for prevention and control of air pollution. What are the special requirements applicable for industries in an air pollution control area?

CS (Inter) June 1996 (5 Marks)

Explain how the provisions of the Air (Prevention & Control of Pollution) Act, 1981 seek to control the omission of air pollutant from automobiles and establishment of industrial plants in air pollution control areas.

CS (Inter) June 1998 (5 Marks)

Ans.: Power to declare air pollution control areas [Section 19]: The State Government after consultation with the State Board may declare any area as air pollution control by notification in the Official Gazette. The State Government is also authorized to alter air pollution control area or declare a new air pollution control area.

If the State Government is of opinion that the use of any fuel in any air pollution control area may cause air pollution, it may prohibit the use of such fuel in that area. However, such prohibition can be effected after 3 months from the date of notification. Further such prohibition is not applicable for an approved fuel. The State Government can also direct to use only an approved appliance in the premises situated in an air pollution control area.

If the State Government is of opinion that the burning of any material in any air pollution control area may cause air pollution, it may prohibit the burning of such material in air pollution control area.

Power to give instructions for ensuring standards for emission from automobiles [Section 20]: The State Government may issue instructions to the motor vehicles registration authority under the **Motor Vehicles Act, 1988**, to ensure that standards for emission of air pollutants from automobiles laid down by the State Board are complied with.

Supreme Court observed that even if the State Government has not framed rules prescribing the manner in which the area is to be declared as air pollution control area, the State Government is empowered to declare any area within the State as an Air Pollution Control Area by notification in the Official Gazette. It may, however, be after consultation with Board and in the manner as may be prescribed. Absence of Rules will not render the Act inoperative. Section 19 vests the State Government with power to notify any area, in an official gazette, as Air Pollution Control Area, but it cannot be said that the exercise of such power is solely dependent upon framing of the rules prescribing the manner in which an area may be declared as Air Pollution Control Area. [Orissa State Prevention & Control of Pollution Board vs. Orient Paper Mills AIR 2003 SC 1966]

Question 7] Write a short note on: Restrictions on use of certain industrial plants

CS (Inter) – Dec 1997 (5 Marks), June 2002 (5 Marks)

Define 'control equipment' and enumerate the compliances an occupier should observe under the Air (Prevention & Control of Pollution) Act, 1981 once the State Board accords its consent with regard to control equipment.

CS (Inter) – June 2000 (5 Marks), Dec 2001 (6 Marks)

Ans.: Restrictions on use of certain industrial plants [Section 21]: Person shall establish or operate industrial plant in an air pollution control area only after taking the permission of the State Board.

A person already operating any industrial plant has to apply for permission within 3 months after declaration of area as air pollution control area.

An application for consent of the State Board shall be made in prescribed form along with prescribed fees.

The State Board may make inquiry before granting consent to operate industrial plant.

The State Board has to accept or reject application within a period of **4 month** from the date of making application.

The State Board can cancel such consent if the conditions subject to which such consent has been granted are not fulfilled. However, before cancelling consent a reasonable opportunity of being heard shall be given to the person concerned.

Every person to whom consent has been granted by the State Board shall comply with the following conditions-

- (1) The control equipment shall be installed and operated in the premises as per approved specifications by the State Board.
- (2) The existing control equipment shall be altered or replaced as per directions of the State Board.
- (3) The control equipment shall be kept at all times in good running condition.

- (4) Chimney shall be erected as per approved specifications.
- (5) Other conditions as may be specified by the State Board.

State Board can vary above condition if there is technological change or otherwise the State board forms opinion to change the condition.

Question 8] What kind of responsibility is casted on the person operating any industrial plant? What action can be taken by State Board when there is violation of such responsibility?

Ans.: Person operating any industrial plant in air pollution control area shall not discharge or emission of any air pollutant in excess of the standards laid down by the State Board. [Section 22]

Furnishing of information to State Board and other agencies in certain cases [Section 23]: Where in any area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises shall forthwith intimate such fact to the State Board and to prescribed authorities or agencies.

On receipt of above information, the State Board and the authorities or agencies shall take remedial measures to mitigate the emission of air pollutants.

Expenses incurred by the State Board, authority or agency with respect to the remedial measures together with interest may be recovered by the Board, authority or agency from the concerned person, as arrears of land revenue or public demand.

Question 9] What are the powers available to State Board to make application to Court for restraining persons from causing air pollution?

Ans.: **Power of Board to make application to Court for restraining persons from causing air pollution [Section 22A]:** Where it is apprehended by a Board that there is emission of any air pollutant in excess of laid down standards by any person operating an industrial plant in any air pollution control area, then the Board may make an application to a **Metropolitan Magistrate** or a **Judicial Magistrate of First Class** for restraining such person from emitting such air pollutant.

On receipt of the application, the Court may make such order as it deems fit.

While passing the order the Court may direct the person to desist from causing emission of air pollution. If the concerned person fails to observe the order then authorize the State Board to implement the direction.

All expenses incurred by the State Board in implementing the directions of the Court shall be recoverable from the person concerned as arrears of land revenue or public demand.

Question 10] Discuss the power of the State Pollution Control Board to enter and inspect a premise under the Air (Prevention & Control of Pollution) Act, 1981.

CS (Inter) - Dec 1998 (5 Marks), June 2001 (5 Marks)

Ans.: **Power of entry and inspection [Section 24]:** The State Board is empowered to authorize any person to enter into any place, with such assistance as he considers necessary, for following purpose:

- (a) To perform functions entrusted to him by the State Board
- (b) To determine whether any provisions of this Act or the rules or any notice, order, direction is being or has been complied with
- (c) To examine and testing any control equipment, industrial plant, record, register, document
- (d) To conduct a search of any place in which he has reason to believe that an offence under this Act or the rules has been or is about to be committed
- (e) To seize control equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence regarding the offence punishable under this Act or the rules made thereunder.

Every person operating any control equipment or any industrial plant shall be bound to render all assistance to the person empowered by the State Board.

If any person wilfully delays or obstructs any person empowered by the State Board in the discharge of his duties, he shall be guilty of an offence under this Act.

The provisions of the **Code of Criminal Procedure, 1973** shall apply to any search or seizure under this section.

Question 11] Discuss the power of the State Pollution Control Board to obtain information and take samples under the Air (Prevention & Control of Pollution) Act, 1981.

CS (Inter) - June 1994 (5 Marks), Dec 1995 (5 Marks)

CS (Inter) - June 1997 (5 Marks)

Mention the conditions under which the report in respect of samples of air or emission from chimney, flue or duct or any other outlet be admissible under the Air (Prevention & Control of Pollution) Act, 1981

CS (Inter) - June 2006 (5 Marks)

Ans.: Power to obtain information [Section 25]: The State Board or any officer empowered by it may call for any information from the occupier or person carrying on any industry or operating any control equipment or industrial plant. Such officer shall have the right to inspect for the purpose of verifying the correctness of such information.

Power to take samples [Section 26]: A State Board or any officer empowered by it shall have power to take samples of air or emission from any chimney, flue or duct or any other outlet.

The result of any analysis of a sample of emission taken shall be admissible in evidence in any legal proceeding if following are complied with:

When a sample of emission is taken for analysis, the person taking the sample shall -

- (a) Serve a notice on the occupier or his agent in prescribed form
- (b) Such sample should be collected in the presence of the occupier or his agent
- (c) The sample be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent
- (d) After taking sample they should be sent to the laboratory established or recognized by the State Board for analysis.

In case the occupier or his agent wilfully absents himself, the person taking the sample shall collect the sample of emission for analysis to be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample.

In case the occupier or his agent is present at the time of taking the sample but refuses to sign the marked and sealed container of the sample of emission, the marked and sealed container shall be signed by the person taking the sample, and the container shall be sent without delay for analysis to the laboratory. Person taking the sample shall inform the Government analyst in writing about the wilful absence of the occupier or his agent, or his refusal to sign the container or containers.

Reports of the result of analysis on samples taken [Section 27]: Where a sample of emission has been sent for analysis, the board analyst shall analyze the sample and submit a report in the prescribed form in **triplicate** to the State Board.

On receipt of the report, one copy of the report shall be sent to the occupier or his agent; another copy shall be preserved for production before the court in case any legal proceedings and the third copy shall be kept by the State Board.

Any cost incurred in getting any sample analyzed at the request of the occupier or his agent or when he wilfully absents himself or refuses to sign the marked and sealed container of sample of emission, shall

be payable by such occupier or his agent and it shall be recoverable from him as arrears of land revenue or of public demand.

Question 12] Write a short note on: State Air Laboratory

Ans.: State Air Laboratory [Section 28]: The State Government have been authorised to establish, by notification in the Official Gazette, one or more laboratories or specify one or more laboratories to carry out functions entrusted under the Act.

The State Government may after consultation with the State Board, make rules prescribing the functions of the State Air Laboratory, the procedure for submission to the State Laboratory of samples for analysis and reports thereon and the fees payable in respect of such reports and such other matter as may be necessary or expedient to enable that Laboratory to carry out its functions.

The State Government can appoint such persons having the prescribed qualifications, as Government analysts for the purpose of analysis of samples.

APPEAL, OFFENCES & PENALTIES

Question 13] Write a short note on: Appeal

Ans.: Appeals [Section 31]: Any person aggrieved by an order made by the State Board may within 30 days from the date on which the order is communicated to him, prefer an appeal to **Appellate Authority** constituted by the State Government.

The Appellate Authority may entertain the appeal after the expiry of 30 days if **sufficient cause** is shown.

Appeal to Appellate Authority has to be filed in prescribed form along with prescribed fees.

On receipt of an appeal, the Appellate Authority shall dispose of the appeal as expeditiously as possible after giving the appellant and the State Board an opportunity of being heard.

Question 14] What are the liabilities and penalties for offences by company under the pollution control laws?
CS (Inter) - Dec 1999 (5 Marks)

Ans.: Offences by Companies [Section 40]: Where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, such person will not be held liable if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, then all person or officers shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:

- (a) Company means any body corporate, and includes a firm or other association of individuals
- (b) Director, in relation to a firm, means a partner in the firm.

Question 15] Write a short note on: Control of noise pollution

CS (Inter) - Dec 2002 (3 Marks), June 2005 (5 Marks)

What is meant by 'noise pollution'? How can noise pollution be controlled?

CS (Executive) - June 2016 (5 Marks)

Ans.: Noise pollution simply connotes unwanted sound in the atmosphere. Noise is sound, but it is pollution when the effects of sound become undesirable.

Important points relating to control of noise pollution is as follows:

- ◆ In order to control the noise pollution caused from various sources such as industrial activity, construction activity, generator sets, loud speakers, public address system, music systems, vehicular horns and other mechanical devices the Central Government has framed certain rules known as **The Noise Pollution (Regulation & Control) Rules, 2000.**
- ◆ The rules provide for the ambient air quality standard in respect of noise for different areas/zones. An area comprising **100 meters** around hospitals, educational institutions and courts has been declared as the silence area/zone. The ambient air quality standards shall also be considered by the all development authorities, local bodies while taking any development activity.
- ◆ A loud speaker or a public address system shall not be used at night between **10 p.m. to 6 a.m.** except in closed premises for communication.
- ◆ Whoever commits any offence of playing music or uses any sound amplifiers, beats a drum or blows a horn, etc. in a silence zone/area shall be liable to a penalty.

WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974

INTRODUCTION : After the Stockholm conference on Human Environment on June, 1972, it was considered appropriate to have a uniform law all over country for broad Environment problems endangering the health and safety of our people as well as of our flora and fauna. The Water (Prevention & Control of Pollution) Act, 1974 is the first enactment by the Parliament in this direction. This is also the first specific and comprehensive legislation institutionalizing simultaneously the regulatory agencies for controlling water pollution. The Pollution Control Board at the Central and in the State level came into being in terms of this Act.

According to the Article 51A(g) it is the fundamental duty of every citizen of India to protect and improve the natural environment including Forest, Lakes, Rivers and Wildlife and to have compassion for living creatures.

This Act is enacted with the aim of prevention and control of Water Pollution in India. Pollution means contamination of water or such alteration of the Physical, Chemical or Biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gas and Solid substance into water (whether directly or indirectly) as may be the case or is likely to create nuisance or render such water harmful or injurious to public health or safety or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plant or of aquatic organizations.

Question 1] Define the following terms as per Water (Prevention & Control of Pollution) Act, 1974:

- Occupier
- Pollution
- Stream
- Sewage Effluent & Trade Effluent

CS (Inter) – June 1996 (3 Marks), June 2007 (3 Marks)

CS (Inter) – June 2002 (4 Marks)

CS (Inter) – Dec 2005 (3 Marks)

CS (Executive) – Dec 2009 (3 Marks)

Ans.: Occupier [Section 2(d)]: Occupier in relation to any factory or premises means the person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance.

Pollution [Section 2(e)]: Pollution means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or any other liquid, gaseous or solid substance into water as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

Sewage Effluent [Section 2(g)]: Sewage effluent means an effluent from any sewerage system or sewage disposal works and includes sullage from open drains.

Stream [Section 2(j)]: Stream includes:

- (a) River
- (b) Water course (whether flowing or for the time being dry)
- (c) Inland water (whether natural or artificial)
- (d) Sub-terranean waters
- (e) Sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf.

Trade Effluent [Section 2(k)]: Trade effluent includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process or treatment and disposal system, other than domestic sewage.

Question 2] State the Constitution of Central Pollution Control Board.

CS (Executive) - Dec 2013 (3 Marks)

Ans.: Constitution of Central Pollution Control Board [Section 3]: The Central Government is empowered to constitute a Central Pollution Control Board which consists of the following members:

- (a) A full-time Chairman having special knowledge or practical experience in respect of matters relating to environmental protection
- (b) Five officials to represent the Central Government.
- (c) Five officials amongst the members of the State Boards out of which two shall be the members of the local authorities functioning within the State.
- (d) Three non-officials to represent the interests of agriculture, fishery or industry or trade.
- (e) Two persons to represent the companies or corporations owned, controlled or managed by the Central Government.
- (f) A full time member secretary possessing qualifications and experience of scientific, engineering or management aspects of pollution control.

Thus, there will be total **17 members** will be appointed in Central Board.

All the members are to be nominated by the Central Government.

The Central Board shall be a body corporate with a perpetual succession and common seal with a right to own property and right to sue or to be sued.

Question 3] Explain the constitution of State Pollution Control Board.

CS (Executive) - Dec 2014 (3 Marks), Dec 2016 (3 Marks)

Ans.: Constitution of State Pollution Control Board [Section 4]: The State Government is empowered to constitute the State Boards which consists of the following members:

- (a) A Chairman having special knowledge or practical experience in respect of matters relating to environmental protection.
- (b) Five officials to represent the State Government.
- (c) Five officials amongst the members of the local authorities functioning within the State.
- (d) Three non-officials to represent the interests of agriculture, fishery or industry or trade.
- (e) Two persons to represent the companies or corporations owned, controlled or managed by the State Government.
- (f) A full time member secretary possessing qualifications and experience of scientific, engineering or management aspects of pollution control.

The State Board shall also be a body corporate with a perpetual succession and common seal with a right to own property and right to sue or to be sued.

Thus, there will be total 17 members will be appointed in State Board.

All the members are to be nominated by the State Government.

Question 4] State the functions of the Central Board under the Water (Prevention & Control of Pollution) Act, 1974.

Ans.: Functions of Central Board [Section 16]: The main function of the Central Board shall be to promote cleanliness of streams and wells in different areas of the States.

The Central Board may perform all or any of the following functions-

- (a) **Advice the Central Government** on any matter concerning the prevention and control of water pollution
- (b) **Co-ordinate activities** of the State Boards and **resolve disputes** among them
- (c) Provide **technical assistance & guidance** to the State Boards
- (d) **Carry out and sponsor investigations** and research relating to problems of water pollution and prevention, control or abatement of water pollution
- (e) Plan & organize the **training of persons** engaged or to be engaged in programmes for the prevention, control or abatement of water pollution
- (f) Organize through mass media a **comprehensive programme** regarding the prevention and control of water pollution
- (g) Perform the specified functions of any State Boards
- (h) **Collect, compile & publish technical & statistical data** relating to water pollution
- (i) **Prepare manuals, codes or guides** relating to treatment and disposal of sewage and trade effluents and disseminate information connected to it
- (j) **Lay down standards** for a stream or well
- (k) Plan and cause to be executed a **nation-wide programme** for the prevention, control or abatement of water pollution
- (l) Perform other **prescribed functions**.

The Board may establish or recognize a laboratory to enable the Board to perform its functions efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

Question 5] State the functions of the State Board under the Water (Prevention & Control of Pollution) Act, 1974.

Ans.: Functions of State Board [Section 17]: The functions of a State Board are as follows:

- (a) To plan a **comprehensive programme** for the prevention, control or abatement of pollution of streams and wells
- (b) To **advise the State Government** on any matter concerning the prevention, control or abatement of water pollution
- (c) To **collect & disseminate information** relating to water pollution
- (d) To encourage, conduct and participate in **investigations & research** relating to problems of water pollution
- (e) To **collaborate with the Central Board** in organizing the training of persons relating to prevention, control or abatement of water pollution
- (f) To **organize mass education programmes** relating to prevention, control or abatement of water pollution

- (g) To inspect sewage or trade effluence, works and plants for the treatment of sewage and trade effluents and
- (h) To review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents
- (i) To lay down effluent standards for the sewage and trade effluents
- (j) To evolve methods of treatment of sewage & trade effluents
- (k) To evolve methods of utilization of sewage & trade effluents in agriculture
- (l) To evolve efficient methods of disposal of sewage and trade effluents on land
- (m) To lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream
- (n) To make, vary or revoke any order for
 - the prevention, control or abatement of discharges of waste into streams or wells
 - requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to adopt such remedial measures as are necessary to prevent, control or abate water pollution
- (o) To lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both
- (p) To advise the State Government with respect to the location of any industry
- (q) To perform other prescribed functions entrusted to it by the Central Board or the State Government.

The Board may establish or recognize a laboratory to enable the Boards to perform its functions efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

Question 6] State the power of State Government to declare certain area as water pollution control area under the Water (Prevention & Control of Pollution) Act, 1974.

Ans.: Power of State Government to restrict the application of the act to certain areas [Section 19]:

State Government after consultation with the State Board restrict the application of the Act to areas as may be declared as water pollution, prevention and control areas and thereupon the provisions of this Act shall apply only to such areas.

Each water pollution, prevention and control area may be declared either by reference to a map or by reference to the line of any watershed or the boundary of any district.

The State Government may, by notification in the Official Gazette -

- (a) Alter any water pollution, prevention and control area
- (b) Define a new water pollution, prevention and control area

Question 7] What are the powers of State Government to obtain information under the Water (Prevention & Control of Pollution) Act, 1974

Ans.: Power to obtain information [Section 20]: The State Board or any officer authorized by it may make surveys of any area and gauge. Such authorized officer can keep records of the flow or volume and other characteristics of any stream or well.

Authorized officer may take steps for the measurement and recording of the rainfall for the installation and maintenance of gauges or other apparatus and works connected therewith.

Authorized officer may carry the surveys of stream and may take other steps in order to obtain any required information.

A State Board may give directions requiring any person who is abstracting water from any stream or well in substantial quantities to give information as to the abstraction or discharge in such specified form.

A State Board may require any person in charge of any establishment or industry to furnish it information regarding the construction, installation or operation of establishment or of any disposal system or of any extension or addition to such establishment.

Question 8] What are the powers of State Government to take samples of effluents and procedure to be followed in connection therewith under the Water (Prevention & Control of Pollution) Act, 1974
CS (Inter) - Dec 1994 (10 Marks), Dec 1995 (10 Marks)

What is the procedure required to be followed under the Water (Prevention & Control of Pollution) Act, 1974 to ensure that the result of the analysis of the sample of sewage effluent or trade effluent is admissible in legal proceedings?
CS (Inter) - June 2002 (6 Marks), Dec 2006 (5 Marks)

Ans.: Power to take samples of effluents and procedure to be followed [Section 21]: A State Board or officer authorized by shall have power to take samples of water from any stream or well or any sewage or trade effluent for the purpose of analysis.

The result of any analysis of a sample shall be admissible in evidence in any legal proceeding if following provisions are complied with.

Procedure: When a sample of any sewage or trade effluent is taken for analysis, the person taking the sample shall observe the following provisions:

- (a) He shall serve a notice prescribed form to the person in charge or occupier or his agent of his intention to have it so analyzed.
- (b) He shall take the sample in the presence of the occupier or his agent and divide the sample into two parts.
- (c) He shall place the sample in container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent.
- (d) He shall send one container to forthwith to the laboratory for analysis.

When a sample of any sewage or trade effluent is taken for analysis and the occupier or his agent wilfully absents, even then the sample can be taken and be placed in a container and shall be signed by the person taking the sample. In such case person taking the sample has to inform the Government analyst in writing about the wilful absence of the occupier or his agent.

The cost incurred in getting such sample analyzed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent as an arrear of land revenue or of public demand.

Reports of result of analysis on samples taken [Section 22]: Where a sample of any sewage or trade effluent has been sent for analysis to the laboratory, the concerned analyst shall analysis the sample and submits a report in prescribed form in triplicate to the Board.

On receipt of the report, one copy of the report shall be sent by the Board to the occupier or his agent, another copy shall be preserved for production before the Court as evidence and remaining copy shall be kept by the Board.

If there is any inconsistency or discrepancy between or variation in the results of the analysis carried out by the laboratory established or recognized by the Central Board or the State Board, and Central Water Laboratory, the report of the latter shall prevail.

Any cost incurred in getting any sample analyzed at the request of the occupier or his agent shall be payable by such occupier or his agent and in case of default the same shall be recoverable from him as arrears of land revenue or of public demand.

Report of Analysts [Section 54]: Any document or a report signed by a Government analyst or a Board analyst may be used as evidence in any legal proceedings.

Question 9] Discuss the power of the State Board of entry and inspection under the Water (Prevention & Control of Pollution) Act, 1976.

Ans.: Power of entry & inspection [Section 23]: Person authorized by a State Board shall have a right at any time to enter with assistance at any place -

- (a) For the purpose of performing any of the functions entrusted to him
- (b) For the purpose of determining whether any provisions or the rules or any notice, order, direction is being or has been complied with
- (c) For the purpose of examining any plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence has been or is being or is about to be committed
- (d) For seizing any plant, record, register, document or other material object, if he has reason to believe that it may furnish evidence of the commission of an offence punishable under the Act

The right to enter for the inspection of well shall be exercised only at reasonable hours if well is located in residential areas and the water such well is used exclusively for domestic purposes.

The provisions of the **Code of Criminal Procedure, 1973** are applicable to search or seizure.

Question 10] What are the prohibition on use of stream or well for disposal of polluting matter under the Water (Prevention & Control of Pollution) Act, 1974? CS (Inter) - Dec 1998 (5 Marks)

What are the obligation of person discharging sewage or trade effluent under the Water (Prevention & Control of Pollution) Act, 1974 CS (Inter) - June 1996 (7 Marks), Dec 2005 (5 Marks)

Ans.: Prohibition on use of stream or well for disposal of polluting matter [Section 24]: No person shall knowingly cause or permit any poisonous, noxious or polluting matter to enter into any stream or well or sewer or on land.

No person shall knowingly cause or permit to enter into any stream any other matter which may tend to impede the proper flow of the water of the stream.

If following acts are done then person doing so shall not be guilty of offence under this section.

- ◆ Constructing, improving or maintaining in or across or on the bank or bed of any stream any buildings, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain
- ◆ For reclaiming land deposit any materials on the bank or in the bed of any stream
- ◆ Putting sand or gravel or other natural deposit which has flowed from current of such stream
- ◆ Entering the deposit accumulated in a well, pond or reservoir to enter into any stream with the consent of State Board.

Question 11] Discuss briefly the restriction on new outlets and new discharges under the Water (Prevention & Control of Pollution) Act, 1974.

CS (Inter) - June 2001 (10 Marks), Dec 1998 (5 Marks)

CS (Inter) - June 2003 (10 Marks)

Ans.: Restrictions on new outlets and new discharges [Section 25]: No person shall, without the previous consent of the State Board -

- (a) Establish any industry, operation or process which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land or
- (b) Use any new or altered outlet for the discharge of sewage or
- (c) Make any new discharge of sewage

An application for consent of the State Board shall be made in prescribed form along with prescribed fees.

The State Board may make necessary inquiry in respect of the application for consent.

The State Board may grant its consent subject to certain conditions. Such consent would be valid only for such period as may be specified in the order.

In the case of consent for new discharge, the State Board may impose conditions as to the nature and composition, temperature, volume or rate of discharge.

The State Board may refuse to grant consent for reasons to be recorded in writing.

Every State Board has to maintain a register containing particulars of the conditions imposed.

So much of the register as related to any outlet or to any effluent from any land or premises shall be open to inspection at all reasonable hours by any person and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

Refusal or withdrawal of consent by state board [Section 27]: A State Board shall not grant its consent for the establishment of any industry, operation or process or to the bringing into use of a new or altered outlet unless conditions imposed by the Board complied with.

A State Board may from time to time review –

- (a) Any condition imposed and may serve on the person to whom a consent is granted a notice making any reasonable variation of revoking any such condition.
- (b) The refusal of any consent without any condition, any may make such order as it deems fit.

Question 12] State the provisions relating to appeal against the order of State Board under the Water (Prevention & Control of Pollution) Act, 1974

Ans.: Appeals [Section 27]: Any person aggrieved by an order made by the State Board may within 30 days from the date of order prefer an appeal to appellate authority as the State Government may constitute.

The appellate authority may entertain the appeal after the expiry of the 30 days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The Appellate Authority after giving the appellant and the State Board an opportunity of being heard and shall dispose of the appeal as expeditiously as possible.

The Appellate Authority may direct annulment or substitution of any unreasonable condition imposed by the State Board.

Question 13] Discuss the power of the State Board to carry out certain works under the Water (Prevention & Control of Pollution) Act, 1974

Ans.: Power of State Board to carry out certain works [Section 30]: Where any conditions have been imposed on any person while granting consent and such conditions require such person to execute any work and such work has not been executed within the prescribed time, the State Board may serve a notice requiring him to execute the work within 30 days.

If the person concerned fails to execute the work, then the State Board may itself execute or cause to be executed such work.

All expenses incurred by the State Board for the execution of the aforesaid work, together with interest may be recovered from the person concerned, as arrears of land revenue, or of public demand.

Question 14] Discuss the provisions relating to furnishing of information to State Board and other agencies due to accident or other unforeseen under the Water (Prevention & Control of Pollution) Act, 1974

Ans.: Furnishing of information to State Board and other agencies [Section 31]: The person in charge of an industry, operation or process shall forthwith intimate the occurrence of accident as a result of discharge any poisonous, noxious or pollution matter in any stream or well or sewer or on land to the State Board and other prescribed authorities or agencies.

The above provision is also applicable to local authorities if they operates any sewerage system or sewage works and hence local authorities are under obligation to intimate the occurrence of accident as a result of discharge any poisonous, noxious or pollution matter in any stream or well or sewer or on land to the State Board and other prescribed authorities or agencies.

Question 15] What are the emergency measures available to State Board in case of pollution of stream or well under the Water (Prevention & Control of Pollution) Act, 1974?

CS (Inter) - Dec 1993 (4 Marks), June 2000 (10 Marks)

A complaint was made the a particular industrial plant belonging to XYZ Ltd. was discharging polluting matter in a stream affecting the purity of water supply to be residents. Examine what emergency measure the State Pollution Control Board can initiate to control such pollution.

CS (Inter) - June 1998 (10 Marks)

Ans.: Emergency measures in case of pollution of stream or well [Section 32]: Where it appears to the State Board that any poisonous, noxious or polluting matter is present in any stream or well or on land due to any accident or other unforeseen act or event then the Board by taking immediate action carry out the following operations -

- (a) Removing that matter from the stream or well or land and dispose of it in appropriate manner
- (b) Remedying or mitigating any pollution
- (c) Issuing orders restraining or prohibiting the concerned person from discharging any such poisonous, noxious or polluting matter into the stream or well or on land

Question 16] Discuss the remedies available to the pollution control board for restraining apprehended pollution of water in streams. CS (Inter) - Dec 1996 (10 Marks), Dec 1999 (10 Marks)
State the powers of the State Boards to make application to Court?

CS (Inter) - June 2000 (10 Marks)

A complaint has been made to the State Pollution Control Board stating that ABC Ltd. has been polluting the water by discharging waste material. Examine whether the Board has any power to make an application to the Court so as to prevent the pollution. Also examine whether directors and officers of ABC Ltd. can be made liable for the offence of committing pollution.

CS (Inter) - Dec 2000 (10 Marks)

Ans.: Power of board to make application to Court for restraining apprehended pollution of water in streams or wells [Section 33]: Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal of any matter in stream or well or in any sewer or on any land, the Board may make an application to Metropolitan Magistrate or a Judicial Magistrate of First Class, for restraining the person from so causing pollution.

On receipt of an application the court may make such order as it deems fit.

Where the Court makes an order restraining any person from polluting the water in any stream or well, it may direct the person to desist from taking such action as is likely to cause pollution or to remove from stream or well polluting matter. If the concerned person fails to observe the order then authorize the State Board to implement the direction.

All expenses incurred by the State Board in implementing the directions of the Court shall be recoverable from the person concerned as arrears of land revenue or public demand.

Question 17] Discuss about 'Offences by Companies' under the Water (Prevention & Control of Pollution) Act, 1974

CS (Inter) - Dec 1997 (10 Marks)

Ans.: Offences by Companies [Section 40]: Where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was

responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such person will not be held liable if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, then all persons or officers shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:

- (a) Company means any body corporate, and includes a firm or other association of individuals
- (b) Director, in relation to a firm, means a partner in the firm.

Question 18] X Ltd. is a 100% fully owned subsidiary of ABC Ltd. a government company. For an offence committed by X Ltd. under the Water (Prevention & Control of Pollution) Act, 1974, the State Pollution Control Board launched proceedings against X Ltd. No prosecution was, however, launched against ABC Ltd. in the circumstances, can the chairman and other directors of ABC Ltd. escape vicarious liability? Discuss with reference to relevant case law.

CS (Inter) – June 1995 (10 Marks)

Ans.: Directors of the company and its chairman/vice-chairman could be prosecuted against on the ground of being in charge of and responsible for the conduct of business of the company. However, they cannot be held to be vicariously liable unless there was a prosecution against company. [*U. P. Control Board v. Modi Distillery*, (1988) 63 Comp. Cas. 77]

However, the SC also observed that though there could be no vicarious liability of the chairman, vice-chairman, managing director and member of the board of directors unless there was a prosecution against the company, viewed in the conspectus of facts and events these officers were also liable for the offence committed by the company. Therefore, prosecution of a director without prosecuting the company only suffered from a minor legal infirmity or a technical flaw in that the name of the company could be substituted in the complaint for the name of the director by making a formal application by the appellant for amendment of the complaint.

Question 19] Ajay Ltd. is engaged in the manufacture and sale of industrial alcohol. In the course of manufacture of industrial alcohol, the industrial unit discharged noxious and polluted trade effluents into a nearby river through a drain, which is a stream within the meaning of the Water (Prevention and Control of Pollution) Act, 1974. The company and the industrial unit, had applied for the grant of requisite consent to discharge the trade effluents into the stream but the consent was withheld as it did not make good the inadequacies and defects pointed out by the State Pollution Control Board. Are the managing director and other members of the Board of directors liable to be proceeded against under the Water (Prevention and Control of Pollution) Act, 1974 in the absence of prosecution of the company owning the industrial unit? Give reasons and refer to decided case law, if any.

CS (Executive) – June 2012 (5 Marks)

Ans.: Same answer as given to earlier question.

ENVIRONMENT (PROTECTION) ACT, 1986

INTRODUCTION : *In the wake of the Bhopal Tragedy, the Government of India enacted the Environment Protection Act of 1986 under Article 253 of the Constitution. Passed in March 1986, it came into force on 19th November 1986. The purpose of the Act is to implement the decisions of the United Nations Conference on the Human Environments they relate to the protection and improvement of the human environment and the prevention of hazards to human beings, other living creatures, plants and property. The Act is an "umbrella" legislation designed to provide a framework for central government co-ordination of the activities of various central and state authorities established under previous laws, such as the Water Act and the Air Act.*

Question 1] Discuss the object, scope and scheme of the Environment (Protection) Act, 1986

CS (Inter) – June 1999 (10 Marks), June 2001 (10 Marks)

How does the Environment (Protection) Act, 1986 seek to prevent, control and abate environmental pollution?

CS (Inter) – Dec 2002 (10 Marks)

Ans.: The Environment Protection Act, 1986 to provide for the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.

The Act fixes responsibility on persons carrying on industrial operations or handling hazardous substances to comply with certain safeguards for the prevention, control and abatement of environmental pollution.

It also cast responsibility to furnish certain information to the authorities in certain cases.

The Central Government has been granted general powers for taking all necessary measures under the Act. The main object of the Act is:

- ◆ To protect the quality of the environment.
- ◆ To laying down standards for emission or discharge of environmental pollutants.
- ◆ To provide safeguards for prevention of accidents and
- ◆ To provide safeguards in respect of handling hazardous substances.
- ◆ To require persons to furnish information, issue directions.
- ◆ To plan nationwide pollution control programmes.
- ◆ To co-ordination of the actions of various agencies and authorities etc.

Question 2] Define the term: Environment

Ans.: Environment [Section 2(a)]: Environment includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

Question 3] Define the terms: Environmental Pollutant & Environmental Pollution

Ans.: Environment Pollutant [Section 2(b)]: Environmental pollutant means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment.

Environment Pollution [Section 2(c)]: Environmental pollution means the presence in the environment of any environmental pollutant.

Question 4] What is meant by 'hazardous substance'?

CS (Inter) – June 1998 (3 Marks), June 2005 (3 Marks)

What do you mean by 'hazardous substance' under the Environment (Protection) Act, 1986? Examine the status of electricity as a hazardous substance.

CS (Executive) – Dec 2016 (5 Marks)

Ans.: Hazardous Substance [Section 2 (e)]: Hazardous substance means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment.

In *UP Electricity Board and Another vs. District Magistrate, Dehradun and Others* (AIR 1998 All LJ 1), Allahabad High Court observed that Electricity is hazardous substance covered by definition under section 2 (d) of the Environment (Protection) Act, 1986. Electricity is the flow of free electrons in a particular direction at the particular moment. The flow can be any wire or even an atmosphere like lightening or in body or in other body. The electron is very small and it has been discovered by the scientist that an electron is a pins about an excess and it has got organic field. The electron is thus a material article and electricity is the flow of all these material particular in particular direction. The flow consequently is the flow of matter having physico-chemical properties like when passed through water, it separate the hydrogen form the Oxygen atoms (electrolysis). Thus, electricity is a substance having physico-chemical process and also hazardous. Accordingly it is hazardous substance covered by definition under the Environment (Protection) Act, 1986.

Question 5] Define the term: Occupier

Ans.: Occupier [Section 2(f)]: Occupier in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance.

Question 6] Enumerate the general powers of the Central Government for protecting and improving the quality environment and for preventing, controlling and abating environmental pollution under the Environment (Protection) Act, 1986.

CS (Inter) – Dec 2005 (5 Marks), June 2007 (5 Marks)

CS (Executive) – June 2012 (5 Marks), June 2015 (5 Marks)

Ans.: Power of Central Government to take measures to protect & improve environment [Section 3]: The Central Government shall have the power to take all measures for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Such measures may include the following matters:

- (a) To co-ordinate the actions State Governments and its officers
- (b) To plan and execute a nation-wide programme for the prevention, control and abatement of environmental pollution
- (c) To lay down standards for the quality of environment

- (d) To lay down standards for emission or discharge of environmental pollutants
- (e) To **restrict** the carrying on of industries, operations or processes
- (f) To **prevent accidents** by laying down procedure and safeguards
- (g) To **lay down procedures and safeguards** for the handling of hazardous substances.
- (h) To **examine manufacturing processes, materials & substances** causing environmental pollution
- (i) To **carry out, sponsor, investigate & research** relating to problems of environmental pollution.
- (j) To **inspect** premises, plant, equipment, machinery, manufacturing process, materials, etc.
- (k) To **issue directions** for the prevention, control and abatement of environmental pollution.
- (l) To establish or recognize **environmental laboratories**.
- (m) To **collect and disseminate information** relating to environmental pollution
- (n) To **prepare manuals, codes, guides** etc.
- (o) Such other matters as the Central Government deems necessary.

The Central Government is also empowered to constitute by order one or more authorities for exercising and performing such powers and functions of the Central Government as may be specified in the order.

Question 7] Discuss the powers of the Central Government to issue directions under the Environment (Protection) Act, 1986.

Ans.: Power to give directions [Section 5]: The Central Government may issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation: The power to issue directions includes the power to direct -

- (a) The closure, prohibition or regulation of any industry, operation or process or
- (b) Stoppage or regulation of the supply of electricity or water or any other service.

Question 8] Discuss the powers of the Central Government to make rules under the Environment (Protection) Act, 1986.

Ans.: Rules to regulate environmental pollution [Section 6]: The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters:

- (a) The standards of quality of air, water or soil for various areas and purposes
- (b) The maximum allowable limits of concentration of various environmental pollutants including noise for different areas
- (c) The procedures and safeguards for the handling of hazardous substances
- (d) The prohibition and restrictions on the handling of hazardous substances in different areas
- (e) The prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas
- (f) The procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

Power to make Rules [Section 25]: This section empowers the Central Government to make rules for carrying out the purpose of the Act. These rules may provide for all or any of the following matters:

- (a) Standards for discharge or emission of environmental pollutants
- (b) Procedure and safeguards for handling hazardous substances
- (c) Intimation of occurrence or apprehension of occurrence of the discharge of environmental pollutant in excess of the prescribed standards

- (d) Manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken
- (e) Serving notice to analyze sample
- (f) Functions of the environmental laboratories
- (g) Procedure for the submission samples of air, water, soil and other substances for analysis or test
- (h) Form of the laboratory report
- (i) Fees payable for such report and other matters
- (j) Qualifications of Government analyst appointed
- (k) Manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given.
- (l) Authority or officers to whom any reports, returns, statistics, accounts shall be furnished.
- (m) Any other prescribed matter.

In exercise of its powers the Central Government has framed.

- ◆ The Environment (Protection) Rules, 1986
- ◆ The Hazardous Wastes (Management & Handling) Rules, 1989
- ◆ The Manufacture, Storage & Import of Hazardous Chemicals Rules, 1989.

Question 9] Write a short note on: Standards for emission of environmental pollutants

CS (Executive) – Dec 2010 (3 Marks)

Ans.: Standards of emissions [Section 7]: It prohibits carrying on of any industry, operation or process which discharges or emits any environmental pollutant in excess of prescribed standards.

Schedule I to the Environment (Protection) Rules, 1986 specifies the standards for emission or discharge of environmental pollutants.

Handling of hazardous substances [Section 8]: Person shall handle any hazardous substance only in accordance with prescribed procedure and after complying with prescribed safeguards.

Question 10] State the provisions relating to obligation to furnish information to authorities in cases of discharge of environmental pollutant under the Environment (Protection) Act, 1986.

Ans.: Furnishing of information to authorities & agencies [Section 9]: Where there is discharge of excess environmental pollutant than prescribed standards or it is apprehended to occur due to any accident or other unforeseen act then it is obligatory for the person responsible for such discharge to mitigate the environmental pollution caused and furnish information to authorities and other appointed agencies.

On receipt of information, the authorities or agencies shall take necessary remedial measures to prevent or mitigate the environmental pollution.

The expenses incurred by authorities together with interest may be recovered from the person concerned as arrears of land revenue or of public demand.

Question 11] State the provisions relating to power to enter and inspection under the Environment (Protection) Act, 1986.

Ans.: Power of entry & inspection [Section 10]: Any person empowered by the Central Government shall have a right to enter at reasonable time with necessary assistance at any place -

- (a) For performing any of the functions entrusted to him
- (b) For the purpose of determining whether any provisions of this Act or the rules or any notice, order, direction or authorization is being or has been complied with

- (c) For the purpose of examining and testing any equipment, industrial plant, record, register, document
- (d) For conducting a search of any building in which he has reason to believe that an offence has been or is being or is about to be committed
- (e) For seizing any such equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence or that such seizure is necessary to prevent or mitigate environmental pollution.

Every person carrying on any industry, operation or process or handling any hazardous substance shall be bound to render all assistance to the person empowered by the Central Government for carrying out his the functions if he fails to do so, he shall be guilty of an offence under the Act.

If any person wilfully delays or obstructs any person empowered by the Central Government in the performance of his functions, he shall be guilty of an offence under this Act.

The provisions of the **Code of Criminal Procedure, 1973** will apply to any search or seizure under this section.

Question 12] State the provisions relating to power to take samples under the Environment (Protection) Act, 1986.

Ans.: Power to take samples [Section 11]: The Central Government or officer empowered by it shall have power to take samples of air, water, soil or other substance from any factory, premises for the purpose of analysis.

The result of any analysis of a sample shall be admissible in evidence in any legal proceeding if following provisions are complied with.

Procedure for taking sample: The person taking the sample shall serve on the occupier or his agent a notice prescribed form.

Sample should be taken in the presence of the occupier or his agent for analysis.

The person taking the sample shall take the samples in a container which shall be marked, sealed and signed both by the person taking the sample and the occupier or his agent.

Sample taken should be send to the laboratory established or recognized by the Central Government.

When a sample is taken for analysis and the occupier or his agent wilfully absents even then authorized person should take sample in a container and shall be signed by the person taking the sample.

In a case where the occupier or his agent present at the time of taking the sample but refuses to sign, the marked and sealed container shall be signed by the person taking the samples and the container shall be sent for analysis to the laboratory. However authorized person shall inform the Government Analyst in writing about the wilful absence of the occupier or his agent or his refusal to sign the container.

Question 13] Write a short note on: Environmental Laboratories

CS (Inter) - June 2005 (5 Marks), June 2006 (3 Marks)

Explain the role of environmental laboratories to protect & safeguard the environment.

CS (Inter) - June 1996 (5 Marks), June 1997 (10 Marks)

CS (Executive) - Dec 2016 (5 Marks)

Ans.: Environmental Laboratories [Section 12]: The Central Government may by notification in the Official Gazette, -

- (a) Establish one or more environmental laboratories
- (b) Recognize one or more laboratories or institutes as environmental laboratories

Functions of environmental laboratories: Rule 9 of the Environment (Protection) Rules, 1986 specified the following functions of environmental laboratories:

- ◆ To evolve standardized methods for sampling and analysis of environmental pollutants.
- ◆ To analyze samples sent by the Central Government
- ◆ To carry out investigations as per direction by the Central Government
- ◆ To send periodical reports regarding its activities to the Central Government
- ◆ To carry out other prescribed functions

Question 14] What are the liabilities and penalties for offence by a company under the Environment (Protection) Act, 1986?

CS (Inter) - Dec 2001 (5 Marks), June 2002 (5 Marks)

CS (Inter) - June 2007 (5 Marks)

CS (Executive) - Dec 2008 (5 Marks)

Ans.: Offences by Companies [Section 16]: Where any offence under the Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, such person will not be held liable if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, then all person or officers shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:

- (a) Company means any body corporate, and includes a firm or other association of individuals
- (b) Director, in relation to a firm, means a partner in the firm.

Penalty for Contravention [Section 15]: Contravention of any provisions or any rules are punishable with:

- ◆ Imprisonment up to 5 years or
- ◆ With fine up to Rs. 1 lakh or
- ◆ With both

An additional fine of Rs. 5,000 would also be leviable for every day of **continuing default**.

Where such contravention continues beyond a period of one year then it shall be punishable with imprisonment up to 7 years.

Question 15] Examine the extent of liability, if any, for the offences committed by government departments and their officers under the Environment (Protection) Act, 1986?

CS (Inter) - Dec 2000 (6 Marks)

Ans.: Offences by Government Departments [Section 17]: Where an offence under the Act has been committed by the Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, Head of the Department is not liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Where an offence under the Act has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect

on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Question 16] Under what circumstances can the Central Government withhold environmental clearance for location of a project in a certain location?

CS (Inter) - Dec 1996 (10 Marks), Dec 1999 (10 Marks)

Explain the powers of the central government to prohibit or restrict the location of industries and carrying on of processes and operation in different areas under the Environment (Protection) Act, 1986.

CS (Inter) - June 2000 (10 Marks)

Write a short note on: Environmental clearance for setting up industrial project

CS (Inter) - June 2004 (3 Marks), Dec 2005 (4 Marks)

Write a short note on: Environmental Impact Assessment & Management Plan

CS (Inter) - Dec 2007 (3 Marks)

Ans.: Relevant Sections & Rules: Section 3(1) & (2) read with Rule 5 of the Environment Protection Rules, 1986 empowers the Central Government to prohibit or restrict the location of industries and carrying on of processes and operations in different areas.

In exercise of these powers, the Ministry of Environment and Forests has issued notifications restricting location of any industry etc.

Who are required to take environmental clearance: Project/industries listed in Schedule I to the notification dated 27.1.1994 are required to environmental clearance. If project/industry is already setup then environmental clearance will be required if there is expansion or modernization.

To whom apply: Any person who wants to undertake New Project or there is expansion or modernization then he has to apply:

The Secretary

Ministry of Environment & Forest

New Delhi

Application From & Document to be submitted: Application has to be made in form specified in Schedule II along with following

- ◆ Detailed project report
- ◆ Environmental Impact Assessment report
- ◆ Environment Management Plan

Assessment of feasibility report: Expert Committee for Environmental Impact Assessment set up as per Schedule 3 to the notification will make detailed analysis & feasibility report. The said committee can also make an entry for inspection at the site.

Submission of report to Government: The assessment is generally completed within a period of 3 months and committee submits report to the government. Thereafter Government may grant permission for setting up project or reject the application.

Question 17] Write a short note on: Environmental Audit

CS (Inter) - Dec 1997 (5 Marks), Dec 2000 (3 Marks)

CS (Inter) - June 2003 (4 Marks), Dec 2005 (3 Marks)

CS (Executive) - Dec 2009 (4 Marks)

Ans.: Following are some of the important points relating to Environmental Audit:

- (1) **Rule 14 of the Environment (Protection) Rules, 1986** inserted provides for the submission of environmental audit report.

- (2) Every person carrying on an industry, operation or process requiring consent under following Acts or Rules are required to submit an environmental audit report.
 - ◆ Section 25 of the Water Act or
 - ◆ Section 23 of the Air Act or
 - ◆ Hazardous Wastes (Management & Handling) Rules, 1989
- (3) Environmental audit report has to be submitted in **Form V**.
- (4) Environmental audit report has to be submitted for the financial year ending on 31st March every year on or before the **15th May** to the concerned State Board.

Question 18] Write a short note on: Ecomark Scheme

CS (Inter) – Dec 1997 (5 Marks), Dec 2000 (3 Marks)

Ans.: The government has decided to issue Ecomark Label to **15 industrial products** which will be deemed environment friendly and cause either minimum or no pollution.

The general requirements to be met by these products are as follows:

- ◆ They should conform to the standards of the **Bureau of Indian standards**.
- ◆ The manufacturer must produce the consent under Water, Air & Environment Protection Act.
- ◆ The product packaging material shall be made from recyclable reusable or biodegradable material
- ◆ The product is accompanied by detailed instruction for proper use so as to maximize product performance and minimize wastage.

Question 19] Evolution and development of pollution control laws with particular reference to civil and criminal liabilities.

CS (Inter) – Dec 2000 (3 Marks)

Write a note on liability for pollution referring to pronouncement by the Supreme Court of India.

CS (Inter) – June 2005 (5 Marks)

Ans.: Liability for pollution, whether the pollution is caused by individual or by a corporation, may be civil or criminal. Civil liability refers to what is known as tortious liability. A tort is a civil wrong for which the ordinary remedy is damages. The duty breached by the wrong-doer is not one owed to any particular person but owed to all persons in general who are likely to be affected by the particular wrongful conduct. Of the various species of torts, negligence is the most directly related tort in the field of pollution. Sometimes the tort applicable in case of pollution may be that of public nuisance.

The ruling of the English Court in **Rylands v. Fletcher** provides that the person who for his own purpose brings on to his land and collects or keeps anything likely to do mischief, if it escapes must keep so at his peril and if he fails to do so, is prima facie liable for the damage. The liability under this rule is strict and it is no defense that the thing escaped without that persons wilful act, default or neglect or that he had no knowledge of its existence. This rule laid down the principle of liability that if a person brings on his land and collects and keeps there anything likely to do harm and such thing escaped causing damage to another, he is liable to compensate for the damage caused. This rule applied only to non natural user of land and it did not apply to things naturally on the land or where the escape is due to an act of God, or an act of a stranger or the default of the person injured or where a thing which escapes is present by the consent of the person injured or where there is a statutory authority for doing such act.

The pollution laws at present, are so stringent that non-conforming factories may be asked to even close down.

The Supreme Court in *Shriram Foods & Fertilizer Industries v. Union of India* (1986) 1 Comp. LJ 25 considered a writ petition seeking re-commencement of manufacturing operations in the plant especially after the manufacturing operations were ordered to be closed down because of a major leakage of oleum gas. The Supreme Court allowed the recommencement of manufacturing operations subject to the condition that

the chairman and managing director of the company and also the officers who were in actual management of the plant concerned gave an undertaking that in case there was any escape of chlorine gas resulting in death or injury to the people living in the vicinity as well as to any workman, they shall be personally liable for payment of compensation for such death or injury.

Subsequently, the Court relaxed the condition a little, by ordering that an officer who is the occupier of the plant under the Factories Act, 1948 or the officer who is responsible to the management for the actual operation of the caustic chlorine plant as its head shall be the officer who would be personally responsible to the extent of his annual salary with allowances for payment of compensation, in case of any death or injury resulting from any gas leak.

Question 20] Mention the silent features of the Supreme Court judgment in the matter of M. C. Mehta and another vs. Union of India and others (1987) relating to liability for pollution.

CS (Inter) – June 2008 (5 Marks)

Critically examine the application of the rule of strict liability while fixing the liability for environmental pollution.

CS (Executive) – June 2010 (5 Marks)

“An enterprise which is engaged in hazardous or inherently dangerous activity and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the surrounding areas owes an absolute and non-delegatable duty to the community.” Comment.

CS (Executive) – June 2015 (5 Marks), June 2016 (3 Marks)

Ans.: The Supreme Court in *M. C. Mehta v. Union of India* [(1987) 1 Comp. LJ 99 (SC)] ruled that an application for compensation in a pollution case can be maintained under Article 32 of the Constitution, for, such application is for the protection of the fundamental rights of the people and the Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights. On the question of liability of an enterprise engaged in hazardous activities, the Supreme Court laid down for the first time a far-reaching ruling, that an enterprise which is engaged in hazardous or inherently dangerous activity and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the surrounding area owes an absolute and non-delegatable duty to the community to ensure that no harm results to any one on account of an hazardous or inherently dangerous nature of the activity which it has undertaken. The Court further reiterated that the rule in *Rylands v. Fletcher* of strict liability would apply in India but without any exceptions whatsoever recognised in England. The Court also ruled that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect.

ESSENTIAL COMMODITIES ACT, 1955

INTRODUCTION : *The Essential Commodities Act, 1955 was enacted to ensure the delivery of certain commodities or products, the supply of which if obstructed owing to hoarding or black marketing would affect the normal life of the people. This includes foodstuff, drugs, fuel, petroleum products etc. The Act provides for regulation and control of production, distribution and pricing of commodities, which are declared as essential for maintaining or increasing supplies or for securing their equitable distribution and their availability at fair prices.*

The Act is being implemented by the State Governments availing of the delegated powers under the Act. The State Governments have issued various Control Orders for regulation, production and distribution of essential commodities. The Central Government regularly monitors the action taken by State Governments to implement the provisions of Act.

The items declared as essential commodities are reviewed from time to time in the light of liberalized economic policies in consultation with the Departments administering the essential commodities and particularly with regard to their production, demand, and supply. The Act came into force on 1.4.1955 and it extends to the whole of India.

APPLICABILITY & DEFINITIONS

Question 1] Write a short note on: Object & Scope of the Essential Commodities Act, 1955

CS (Inter) – Dec 1998 (4 Marks)

Ans.: The Essential Commodities Act, 1955 was enacted to ensure the delivery of certain commodities, the supply of which if obstructed owing to hoarding or black marketing would affect the normal life of the people. This includes foodstuff, drugs, fuel, petroleum products etc. The Act provides for regulation and control of production, distribution and pricing of commodities, which are declared as essential for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices.

The dominant object and intendment of the Act is to secure equitable distribution and availability at fair prices of essential commodities in the interest of the general public.

The items declared as essential commodities are reviewed from time to time in the light of liberalized economic policies in consultation with the Departments administering the essential commodities and particularly with regard to their production, demand, and supply.

Question 2] Explain the term 'essential commodities' as per the provisions of the Essential Commodities Act, 1955.

CS (Inter) – Dec 1998 (5 Marks), Dec 2000 (5 Marks)

CS (Executive) – Dec 2016 (5 Marks)

Whether 'tea' is food stuff under the Essential Commodities Act, 1955? Does it have any nutritional value? Discuss in reference with leading case law, if any.

CS (Executive) – Dec 2015 (3 Marks)

Ans.: Essential Commodity [Section 2(a)]: Essential commodity means any of the following classes of commodities:

- (i) Cattle fodder, including oilcakes and other concentrates
- (ii) Coal, including coke and other derivatives
- (iii) Component parts and accessories of automobiles
- (iv) Cotton and woollen textiles
- (v) Drugs
- (vi) Foodstuffs, including edible oilseeds and oils
- (vii) Iron and steel, including manufactured products of iron and steel
- (viii) Paper, including newsprint, paperboard and straw board
- (ix) Petroleum and petroleum products
- (x) Raw cotton, whether ginned or unginned, and cotton seed
- (xi) Raw jute
- (xii) Any other class of commodity declared by notified order by the Central Government to be an essential commodity as per 7th Schedule to the Constitution.

Judicial View:

Supreme Court has held that Tea is not foodstuff. Tea leaves are not eaten. Tea is a beverage produced by steeping tea leaves or buds of the tea plants in the boiled water. Such tea is consumed hot or cold for its flavour, taste and its quality as a stimulant. It does not have any nutritional value. Tea or its beverage does not go into the preparation of any foodstuff. In common parlance, anyone who has taken tea would not say that he has taken or eaten food. Thus, tea is not a food. [*S. Samuel, AID. Harrisons Malayaya v. Union of India, AIR 2004 SC 218*]

Question 3] How is the order issued by the Central Government under the Essential Commodities Act, 1955 served? What is the effect of such order? CS (Inter) - Dec 2001 (8 Marks)

Evaluate the efficacy of the Essential Commodities Act, 1955 in controlling the production, supply and distribution of essential commodities in the country. CS (Executive) - June 2010 (5 Marks)

Discuss the power of the Central Government to control production, supply and distribution of any essential commodity under the Essential Commodities Act, 1955.

CS (Executive) - June 2015 (5 Marks)

Ans.: Powers to control production, supply, distribution, etc. of essential commodities [Section 3(1)]: The Central Government can regulate or prohibit the production, supply and distribution of any essential commodity by order for securing equitable distribution and to ensure that such essential commodities are available at fair prices.

Content of Order [Section 3(2)]: Such order may provide -

- (a) Issuing licenses or permits for production or manufacture of essential commodity
- (b) Bringing under cultivation any land for maintaining or increasing the cultivation of food crops
- (c) Controlling price of essential commodity
- (d) Regulating the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity by licenses or permits
- (e) Prohibiting the withholding of sale of any essential commodity
- (f) Requiring any person holding stock any essential commodity to sell it to public or to the Central or State Government or to a Corporation owned or controlled by Government
- (g) Regulating or prohibiting commercial or financial transactions relating to foodstuffs or cotton textiles which are unregulated or are likely to be detrimental to the public interest

- (h) Collecting information or statistic to regulating or prohibiting any of the aforesaid matters
- (i) Requiring persons engaged in the production, supply or distribution of any essential commodity to maintain and produce for inspection books, accounts and records.
- (j) Any incidental and supplementary matters such as - the entry, search or examination of premises, aircraft, vessels, vehicles and animals, and the seizure by a authorized person.

Issuance & service of Order [Section 3(5)]: An order made under this section shall be issued and served in the following manner -

- (a) In the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette and
- (b) If an order is directed to a specified individual be served on such individual -
 - ◆ by delivering or tendering it to that individual or
 - ◆ by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report shall be prepared and witnessed by two persons living in the neighbourhood.

Laying the Order before Parliament [Section 3(6)]: Every order made under this section shall be laid before both Houses of Parliament after it is made.

Effect of the Order [Section 6]: The order made u/s 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment or any instrument having effect by virtue of any enactment.

The ultimate effect of Section 6 is that an order u/s 3 will override existing laws. [*Ramananda Agrawala vs. State AIR 1951 Calcutta 120*]

Question 4] Write short note on: Fixing the price of essential commodities being sold to Government

Ans.: Fixing the price of essential commodities being sold to Government [Section 3(3)]: If any person sells essential commodity in compliance with an order u/s 3(1) then he shall be paid price as mentioned below:

- (a) **Agreed Price**, when the price can be agreed upon consistently with the controlled price
- (b) **Controlled Price**, when no such agreement can be reached or
- (c) **Market Rate Price** as per the prevailing market rate in the locality at the date of sale where clause (a) or (b) does not apply.

Question 5] State the powers of Central Government under the Essential Commodities Act, 1955 regarding fixation of the price of the essential commodities during an emergency.

CS (Inter) - Dec 1997 (8 Marks), June 2002 (7 Marks)

Ans.: Fixing the price of essential commodities during emergency [Section 3(3A)]: The Central Government by notification in the Official Gazette can issue an order to control the rise in prices or prevent the hoarding of any foodstuff in any locality and can direct that foodstuff shall be sold at the price in that locality in compliance provisions of this section. Such notification issued shall remain in force for **3 months**.

After the issue of a notification if any person sells foodstuffs in the locality then he shall be paid price as mentioned below:

- (a) **Agreed Price**, when the price can be agreed upon consistently with the controlled price
- (b) **Controlled Price**, when no such agreement can be reached or
- (c) **Average Price** of last 3 months before the date of the notification where clause (a) or (b) does not apply.

For the purposes clause (c), the average price shall be determined by an authorized officer of the Central Government and the average price so determined shall be final and cannot be questioned in any Court.

Question 6] What provisions are incorporated under the Essential Commodities Act, 1955 relating to "Sugar"?

Ans.: Fixing price for sugar to be paid to producer [Section 3(3C)]: Where any producer is required by an

Order to sell sugar to Central or State Government then he shall be paid such price of sugar as the Central Government may determine by Order. While fixing price of sugar the Central Government may consider -

- (a) Minimum price fixed for sugarcane
- (b) Manufacturing cost of sugar
- (c) Duty or tax paid or payable on sugar
- (d) Reasonable return on the capital employed in manufacturing of sugar

The Central Government may determine different prices for different areas or for different factories or for different kinds of sugar.

Restriction on selling & disposal of sugar [Section 3(3D)]: The Central Government is empowered to direct any producer, importer or exporter not to sell or dispose of or deliver sugar or remove sugar from the bonded godowns of the factory in which it is produced except under and in accordance with its direction.

However, this provision does not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank.

Issuance of Directions [Section 3(3E)]: The Central Government has been empowered to direct by general or special order to any producer or importer or exporter or recognized dealer to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of sugar in the manner specified in the direction.

Question 7] What are the provisions of the Essential Commodities Act, 1955 relating to appointment of "Authorized Controller"?

Ans.: Power to Appoint Authorized Controller [Section 3(4)]: If the Central Government is of opinion that it is necessary to maintain or increase the production and supply of an essential commodity then it may by Order authorize any person (*called authorized controller*) to exercise prescribed functions.

The authorized controller shall exercise his functions as per the instructions given by the Central Government. However, he shall not have any power to give any direction inconsistent with the provisions of any law.

If authorized controller gives directions to any undertaking then it is the responsibility of such undertaking to comply with the directions given by the authorized controller.

SEIZURE & CONFISCATION

Question 8] Distinguish between 'seizure' and 'confiscation' of an essential commodity under the Essential Commodities Act, 1955.

CS (Inter) - June 2001 (7 Marks), Dec 2001 (4 Marks)

CS (Executive) - June 2016 (5 Marks)

Ans.: Following are the main points of distinction between seizure & confiscation:

Points	Seizure	Confiscation
Meaning	'Seize' means to take possession contrary to the wishes of the owner of the property.	Confiscation is means to take possession & ownership contrary to the wishes of the owner of the property.
Property in goods	Property in goods remains with owner.	Property in goods does not remain with owner.
Disposal of goods	Seized goods cannot be disposed of by government.	Confiscated goods can be disposed of by government.
Section	Commodity can be seized as per Section 3.	Confiscation is per circumstances mentioned in Section 6A.

Distinction as per Essential Commodities Act, 1955: In the context of Essential Commodities Act, 1955, it could be seen that an essential commodity which has been seized could be confiscated. Therefore, confiscation is an action posterior to the seizure of the essential commodity. A commodity that cannot be seized cannot be confiscated.

Question 9] Mention the provisions of the Essential Commodities Act, 1955 regarding confiscation of essential commodities seized in contravention of section 3 of the Act.

CS (Executive) - Dec 2009 (5 Marks), Dec 2014 (5 Marks)

Ans.: Confiscation of Essential Commodity [Section 6A(1)]: Where any essential Commodity is seized as per an Order made u/s 3 then a report of such seizure shall be made to the Collector of the district in which such essential commodity is seized. The Collector may direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the Order then he may order confiscation of, -

- (a) Essential commodity so seized
- (b) Package, covering or receptacle in which such essential commodity is found and
- (c) Animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

However, no food grains or edible oilseeds seized from a producer shall be confiscated if the same is produced for inspection.

In the case of any animal, vehicle, vessel or other conveyance the owner of such animal vehicle etc., shall be given an **option to pay in lieu of its confiscation**, a fine not exceeding the market price.

Question 10] State the provisions relating to 'Seizure & Confiscation' of essential commodities under the Essential Commodities Act, 1955?

CS (Inter) - June 1994 (8 Marks)

Ans.: The Essential Commodities Act envisages two independent proceedings against a person charged with contravention of the provisions of the Act. Under Section 6A, the Collector can confiscate the seized commodity and u/s 7. Confiscation of essential commodities is a sharp weapon which the Act has provided to the Central Government u/s 6A of the Act.

Section 6A provides that where any essential commodity is seized u/s 3, a report of such seizure shall be made to the Collector. The Collector at his discretion, may direct for the production of the seized commodity before him and if he is satisfied that there has been contravention of the order he may pass order for confiscation of the essential commodity so seized.

The Act uses the expressions 'confiscation' and 'seizure' in Section 6A and under this section a commodity which has been seized in pursuance of an order u/s 3 can be confiscated under the circumstances mentioned in Section 6A.

In the context of the Essential Commodities Act, it could be seen that an essential commodity which has been seized, could be confiscated. Therefore, confiscation is an action posterior to the seizure of the essential commodity. A commodity that has not been seized cannot be confiscated. Seizure itself does not imply confiscation.

Question 11] State the powers of collector under the Essential Commodities Act, 1955 to prevent speedy and natural decay of confiscated commodity. How are the sale proceeds of the confiscated commodity dealt with by collector?

CS (Inter) - Dec 1999 (8 Marks)

What is the procedure for disposal of confiscated commodities? How can the sale proceeds of such commodities be utilized?

CS (Inter) - Dec 2001 (8 Marks)

Ans.: Sale of the Confiscated Commodity [Section 6A(2)]: On receiving seizure or inspection report of any essential commodity if the Collector is of the opinion that the essential commodity is subject to speedy and natural decay he may order the same to be sold -

- (i) At the controlled price or
- (ii) By public auction.

However, if the retail sale price of any such essential commodity has been fixed by the Central or State Government then the Collector may order to sell it at fair price through any shops for equitable distribution and availability at fair prices of such essential commodity.

Disposal of sale proceeds of confiscated goods [Section 6A(3)]: Where any essential commodity is sold as aforesaid then the sale proceeds after deduction of the selling expenses shall be paid to the owner or person from whom it is seized in the following circumstances:

- (a) Where no order of confiscation is ultimately passed by the Collector
- (b) Where appeal is decided in favour of such person or
- (c) Where concerned person is acquitted in a prosecution

Question 12] Discuss whether issue of show cause notice is necessary before ordering confiscation of an essential commodity under the Essential Commodities Act, 1955?

CS (Inter) - June 1998 (7 Marks), Dec 1998 (5 Marks)

CS (Inter) - Dec 2002 (5 Marks)

Ans.: Issue of show-cause notice before confiscation [Section 6B]: Before passing an order for confiscation, the owner of the essential commodity, package, covering, receptacle, animal, vehicle, vessel or the person from whom it is seized is required to be given a notice in writing informing him of the grounds on which it is proposed to confiscate the above goods.

Such person should also be given an opportunity of making a representation in writing within a reasonable time.

Judicial View:

It is not sufficient for the owner to prove that the vehicle carried the essential commodity without his knowledge or concurrence. He must also prove that the vehicle was used without the knowledge, or concurrence of the person in charge of the vehicle. In addition, he must prove that not only he but also the person-in-charge of the vehicle had taken all reasonable and necessary precautions against such use. [*Shai Rahhim v. State of Andhra* (1976) LT 357]

Question 13] A lorry carrying unauthorized stock of wheat bags was seized by the collector. The owner of the vehicle was under charge of the driver and that he had no knowledge of the transaction. Decide giving reasons with reference to provisions of the Essential Commodities Act, 1955?

CS (Inter) - Dec 1999 (4 Marks)

Ans.: Animal, vehicle or conveyance which was carrying the goods cannot be confiscated if the owner of such conveyance proves that the vehicle was used for carrying essential commodities without knowledge or without connivance or his agent or the person in charge of the vehicle and he had taken precaution against misuse of the conveyance.

Thus, if the owner of lorry proves that the lorry was carrying unauthorized stock of wheat bags without his knowledge or connivance then seizure of such lorry will not be valid under the Essential Commodities Act, 1955.

As per **Section 6A**, in the case of any animal, vehicle, vessel or other conveyance the owner of such animal vehicle etc., shall be given an **option to pay in lieu of its confiscation**, a fine not exceeding the **market price**.

Question 14] State the provisions relating to Appeal against Confiscation Order under the Essential Commodities Act, 1955?

Ans.: Appeal [Section 6C]: Any person aggrieved by an order of confiscation may file an appeal to the State Government within **1 month** from the date of the communication order. The State Government shall after giving an opportunity to the appellant to be heard, pass such order as it may think fit confirming, modifying or annulling the order appealed against.

If in appeal Order passed u/s 6A is modified or annulled or the person concerned is acquitted from a prosecution instituted and in either case it is not possible to return the essential commodity seized then such person shall be paid the price as if the essential commodity had been sold to the Government with reasonable interest.

Question 15] "Every offence punishable under the Essential Commodities Act, 1955 is cognizable and non-bailable." Comment. CS (Inter) - Dec 1996 (7 Marks)

Ans.: Offences to be cognizable & bailable [Section 10A]: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under the Act shall be cognizable and non-bailable.

A cognizable offence is one, where, under the Criminal Procedure Code or any other law in force, a police officer may arrest a person without a warrant.

Cognizance of offences [Section 11]: Court shall take cognizance of any offence under the Act only on a report in writing of the facts constituting such offence made by

- A person who is a public servant or
- Any person aggrieved or
- Any recognized consumer association

Question 16] "*Mens rea* is an essential ingredient of an offence punishable under the Essential Commodities Act, 1955". Discuss with case law.

CS (Executive) - June 2010 (3 Marks), June 2011 (3 Marks)

CS (Executive) - Dec 2013 (5 Marks), June 2015 (5 Marks)

Ans.: It was held by the Supreme Court that *mens rea* or guilty mind is an ingredient of the offence punishable under the Essential Commodities Act, 1955 i.e., an intentional contravention of an order made u/s 3, is an essential ingredient of an offence u/s 7. [*Nathulal v. State of Madhya Pradesh*, AIR 1966 SC 43]

In other words, if the dealer did believe *bona fide* that he could store the foodgrains for instance, without infringing any order u/s 3, there could be no contravention u/s 7.

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

In *Hariprasad Rao v. State* AIR 1951 SC 264, it was observed that unless a Statute either clearly or by necessary implication rules out *mens rea* as a constituent part of a crime, an accused cannot be found guilty of an offence against the criminal law unless he has got a guilty mind. Therefore, *mens rea* is an essential ingredient of an offence under Section 7 of the Act.

Question 17] State the offences enumerated under the Essential Commodities Act, 1955 and penalties enumerated for such offences. CS (Inter) - Dec 1998 (5 Marks), Dec 2000 (5 Marks)

Ans.: Following penalties are provided under the Essential Commodities Act, 1955.

Offence	Punishment
Contravention of an order passed by the Central Government u/s 3(2) with reference to clause (h) or (i)	Imprisonment for a term which may extend to 1 year and with fine
For the contravention of an order with reference to other clauses of Section 3(2)	Imprisonment for a term ranging from 3 months to 7 years and fine.
If any person to whom a direction is given u/s 3(4)(b) fails to comply with it.	Imprisonment not less than 3 months but which may extend to 7 years and fine.
If any person convicted of an offence u/s 7(1)(a)(ii) or 7(2) is again convicted of an offence under the same provision he shall be punishable with imprisonment for the second and for every subsequent offence	Imprisonment for a term which shall not be less than 6 months but which may extend to 7 years besides fine.

LEGAL METROLOGY ACT, 2009

INTRODUCTION : Metrology is the science of measurement. Metrology includes all theoretical and practical aspects of measurement. The branch of knowledge concerning weights and measure is technically known as Legal Metrology. Legal metrology "concerns activities which result from statutory requirements and concern measurement, units of measurement, measuring instruments and methods of measurement and which are performed by competent bodies." Such statutory requirements might arise from, amongst others, the needs for protection of health, public safety, the environment, enabling taxation, protection of consumers and fair trade.

It is right of every buyer to have information regarding net weight or quantity, price and other information of commodity he buys. Before introduction of this Act there were lots of non-standard practices followed in the country. There are no rules regarding quantity or weight to be contained in package. Consumers were being cheated by sellers by putting less quantity or weight and by give false information on package. To curb all such malpractices the Act has been introduced. The Act extends to the whole of India and had come into force on 1st April, 2011.

INTERNATIONAL ORGANIZATION OF LEGAL METROLOGY

Question 1] What do you understand by International Organization of Legal Metrology (OIML) Certificate System?
CS (Executive) - Dec 2016 (5 Marks)

Ans.: The International Organization of Legal Metrology (OIML) is an inter-governmental organization, created in 1955 and based in Paris. OIML is created to promote the global harmonization of the legal metrology procedures that underpin and facilitate international trade. Such harmonization ensures that certification of measuring devices in one country is compatible with certification in another, thereby facilitating trade in the measuring devices and in products that rely on the measuring devices. Such products include weighting devices, taxi meters, speedometers, agricultural measuring devices such as cereal moisture meters, health related devices such as exhaust measurements and alcohol content of drinks. Since its establishment, it has developed a number of guidelines to assist members, particularly developing nations, to draw up appropriate legislation concerning metrology.

The OIML organization has no legal authority to impose solutions on its members, but its recommendations are often used by member states as part of their own domestic law.

The OIML develops model regulations, International Recommendations, which provide Members with an internationally agreed-upon basis for the establishment of national legislation on various categories of measuring instruments.

The International Organization of Legal Metrology in French called *Organisation Internationale de Métrologie Légale*. Thus short form is OIML.

Question 2] What is meant by International Organization of Legal Metrology OIML Certificate System for measuring instruments?
CS (Executive) - Dec 2013 (3 Marks)

Ans.: The OIML certificate system for measuring instruments was introduced in 1991 to facilitate administrative procedures and lower the costs associated with the international trade of measuring instruments subject to legal requirements.

Once a member state had set up certificate issuing authorities (laboratories competent to validate that a particular product complied with the regulations), that issuing authority could issue OIML Basic certificates. The System provides the possibility for a manufacturer to obtain an OIML Certificate and a Test Report indicating that a given instrument complies with the relevant requirements of OIML. Certificates are delivered by OIML Member States that have established one or several Issuing Authorities responsible for processing applications by manufacturers wishing to have their instrument certified.

Question 2A] Write a short note on: Salient features of the Legal Metrology Act, 2009

CS (Executive) - June 2012 (3 Marks)

Ans.: It is right of every buyer to have information regarding net weight or quantity, price and other information of commodity he buys. Before introduction of the Legal Metrology Act, 2009 there were lots of non-standard practices followed in the country. There are no rules regarding quantity or weight to be contained in package. Consumers were being cheated by sellers by putting less quantity or weight and by give false information on package. To curb all such malpractices the Legal Metrology Act, 2009 has been introduced. Salient features of the Legal Metrology Act, 2009 are as follows:

- (1) Legal metrology Act, 2009 intend to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto.
- (2) Legal Metrology Act, 2009 provides for penalty for use of non-standard Weight or measure.
- (3) Legal Metrology Act, 2009 empowers the Central Government and State Governments to make rules for carrying out the provisions of the Act.

DEFINITIONS

Question 3] Define the term "Dealer" with reference to the Legal Metrology Act, 2009.

Ans.: Dealer [Section 2(b)]: Dealer in relation to any weight or measure means a person who carries on business of buying, selling, supplying or distributing any weight or measure.

It may be for cash or deferred payment or commission, remuneration or other valuable consideration.

Dealer also includes a commission agent, an importer, a manufacturer, who sells, supplies, distributes or otherwise delivers any weight or measure manufactured by him to any person other than a dealer.

Question 4] Explain the term 'legal metrology' under the Legal Metrology Act, 2009.

CS (Inter) - Dec 1997 (7 Marks)

CS (Executive) - Dec 2008 (3 Marks), Dec 2011 (3 Marks)

CS (Executive) - Dec 2014 (3 Marks)

Ans.: Metrology is the science of measurement. The branch of knowledge concerning weights and measure is technically known as Legal Metrology.

Legal Metrology [Section 2(g)]: Legal Metrology means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurement.

Question 5] Define the term "Manufacturer" with reference to the Legal Metrology Act, 2009.

Ans.: Manufacturer [Section 2(i)]: Manufacturer in relation to any weight or measure, means a person who -

- (i) Manufactures weight or measure,

- (ii) Manufactures parts, and acquires parts of weight or measure and after assembling parts claims the end product to be a weight or measure manufactured by himself.
- (iii) Does not manufacture any part of weight or measure but assembles parts manufactured by others and claims the end product to be a weight or measure manufactured by himself.
- (iv) Puts his own mark on any complete weight or measure made or manufactured by any other person and claims such product to be a weight or measure made or manufactured by himself.

Question 6] Define the term "Protection" with reference to the Legal Metrology Act, 2009.

Ans.: Protection [Section 2(k)]: Protection as to mean the utilization of reading obtained from any weight or measure. Such reading may be obtained for the purpose of determining any step which is required to be taken

- ◆ To safeguard the well-being of any human being or animal or
- ◆ To protect any commodity, vegetation or thing

Question 7] Explain the term 'Pre-packaged Commodity' under the Legal Metrology Act, 2009.

CS (Executive) – Dec 2012 (3 Marks)

Ans.: Pre-packaged Commodity [Section 2(l)]: Pre-packaged commodity means a commodity which is placed in a package without the purchaser being present, whether sealed or not and such package has a pre-determined quantity of any product.

Question 8] Explain the term 'Person' under the Legal Metrology Act, 2009.

Ans.: Person [Section 2(m)]: Person includes-

- (i) Hindu undivided family
- (ii) Every department or office
- (iii) Every organization established or constituted by Government
- (iv) Every local authority
- (v) A company, firm and association of individuals
- (vi) Trust
- (vii) Every co-operative society
- (viii) Every society registered under the Societies Registration Act, 1860

Question 9] Explain the term 'Sale' under the Legal Metrology Act, 2009.

Ans.: Sale [Section 2(r)]: Sale with its grammatical variations and cognate expressions, means transfer of property in weight, measure or goods by one person to another for cash or for deferred payment or for any other valuable consideration.

Sale also includes a transfer of weight, measure or goods on the hire-purchase or instalment system, but does not include a mortgage or hypothecation or charge or pledge of such weight, measure or other goods.

Question 10] Explain the term 'Seal' under the Legal Metrology Act, 2009

Ans.: Seal [Section 2(s)]: Seal means a device or process by which a stamp is made, and includes any wire or other accessory which is used for ensuring the integrity of any stamp.

Question 11] Define the term 'Stamp' under the Legal Metrology Act, 2009

CS (Executive) – Dec 2015 (3 Marks)

Ans.: Stamp [Section 2(t)]: Stamp as to mean a mark, made by impressing, casting, engraving, etching, branding, affixing pre-stressed paper seal or any other process in relation to, any weight or measure with a view to-

- (i) certifying that such weight or measure conforms to the specified standard or
- (ii) indicating that any mark which was previously made thereon certifying that such weight or measure conforms to the specified standard has been obliterated.

Question 12] Explain the term 'Verification' under the Legal Metrology Act, 2009.

Ans.: Verification [Section 2(v)]: Verification includes, in relation to any weight or measure, the process of comparing, checking, testing or adjusting weight or measure with a view to ensuring that weight or measure conforms to the established standards and also includes re-verification and calibration.

Question 13] Explain the term 'Weight or Measure' under the Legal Metrology Act, 2009.

Ans.: Weight or Measure [Section 2(w)]: Weight or measure means a weight or measure specified by or under this Act and includes a weighing or measuring instrument.

STANDARD WEIGHTS & MEASURES**Question 14] State the provisions relating to "Standard of Weight & Measure" under the Legal Metrology Act, 2009.**

Ans.: Units of weights & measures to be based on metric system [Section 4]: Every unit of weight or measure shall be in accordance with the metric system based on the international system of units.

Base unit of weights & measures [Section 5]: The base unit should be as follows:

Weights & Measures	Base Unit
Length	Metre
Mass	Kilogram
Time	Second
Electric current	Ampere
Luminous intensity	Candela
Amount of substance	Mole

Base unit of numeration [Section 6]: The base unit of numeration shall be the unit of the international form of Indian numerals. Every numeration shall be made in accordance with the decimal system. The decimal multiples & sub-multiples shall be written in prescribed manner.

Standard units of weights & measures [Section 7]: The base units of weights and measures specified in Section 5 shall be the standard units of weights and measures.

The base unit of numeration specified in section 6 shall be the standard unit of numeration.

For the purpose of deriving the value of base units mentioned in section 5, the Central Government shall prepare objects or equipments in prescribed manner.

The physical characteristics, configuration, constructional details, materials, equipments, performance, tolerances, period of re-verification, methods or procedures of tests shall be such as may be prescribed.

Standard weight, measure or numeral [Section 8]: Any weight or measure which conforms to the standard unit of weight or measure should also conform to the provisions of section 7.

Any numeral which conforms to the provisions of section 6 shall be the standard numeral.

No weight, measure or numeral, other than the standard weight, measure or numeral, shall be used as a standard weight, measure or numeral.

No weight or measure shall be manufactured or imported unless it conforms to the standards of weight or measure. However, the aforesaid provisions shall not apply for manufacture done exclusively for export or for the purpose of any scientific investigation or research.

Reference, secondary & working standard [Section 9]: The reference, secondary and working standards of weights and measures shall be such as may be prescribed.

Every reference, secondary and working standard shall be verified and stamped in prescribed manner and after payment of prescribed fee.

Every reference, secondary and working standard which is not verified and stamped shall not be deemed to be a valid standard.

Use of weight or measure for particular purposes [Section 10]: Any transaction, dealing or contract in respect of any goods, class of goods or undertakings shall be made in prescribed weight, measure or number.

Prohibition of quotation which are not standard units of weight, measure or numeration [Section 11]:

No person shall, in relation to any goods, things or service,-

- Quote or announce any price or
- Issue or exhibit any price list, invoice, cash memo or other document, or
- Prepare or publish advertisement, poster or other document or
- Indicate the net quantity of a pre-packaged commodity or
- Express quantity or dimension which is not in accordance with the standard unit of weight, measure or numeration.

This provision shall not be applicable for export of any goods, things or service.

Any custom, usage contrary to standard weight, measure or numeration to be void [Section 12]:

Any custom, usage, practice which permits a person to demand, receive any quantity of article, thing or service which is contrary to standard weight, measure or numeration to be void

Question 15] State the power of director to inspect and seize under the Legal Metrology Act, 2009.

CS (Executive) - June 2014 (5 Marks)

Ans.: Power of inspection & seizure [Section 15]: The Director, Controller or legal metrology officer may exercise the following powers if there is reason to believe that any offence committed or is likely to be committed in relation to any weight or measure or other goods:

- (a) Enter into any such premises at any reasonable time for search and inspection of any weight, measure, other goods, record, register or other document
- (b) Seize any weight, measure, other goods, record, register or other document or article which may furnish evidence.

The Director, Controller or any legal metrology officer may also require the production of every document or other record relating to the weight or measure.

Where any goods seized are subject to speedy or natural decay, they may be disposed in such prescribed manner.

Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973.

Manufacturers to maintain records & registers [Section 17]: Every manufacturer, repairer or dealer of weight or measure shall maintain prescribed records and registers. The records and registers shall be produced before authorized persons at the time of inspection.

Question 16] State the provision relating to forfeiture of non-standard weight or measure or package under the Legal Metrology Act, 2009.

Ans.: Forfeiture [Section 16]: Every non-standard or unverified weight or measure and every package on which required declaration are not made and which is seized as per Section 15, shall be liable to be forfeited to the State Government.

However, if the person from whom weight or measure was seized gets the same verified and stamped within prescribed time then no forfeiture can be made.

Question 17] Health Foods gave an advertisement in daily newspaper for its pre-packed snacks mentioning retail sale price of the package. However, in the advertisement, neither the net quantity nor the number of snacks contained in the package was given. What are the legal provisions in this regard and whether the advertisement given by Health Foods is appropriate and sufficient as per relevant law?

CS (Executive) - June 2013 (5 Marks)

What are the declarations required to be made by the manufacturer on pre-packaged commodities? Also refer to penalties provided under the Legal Metrology Act, 2009 for such contravention.

CS (Executive) - June 2014 (5 Marks)

CS (Executive) - June 2015 (3 Marks)

Ans.: Declarations on pre-packaged commodities [Section 18]: No person shall manufacture, pack, sell, import, distribute, deliver, offer for sale any pre-packaged commodity unless such package is in standard quantities or number and bears prescribed declarations and particulars.

Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in prescribed form and in prescribed manner.

Penalty for selling of non-standard packages [Section 36]: Whoever manufactures, packs, imports, sells, distributes, delivers any pre-packaged commodity which does contain the required declarations on the package then he shall be punished as follows:

- For the first offence with fine up to **Rs. 25,000**
- For the second offence up to **Rs. 50,000**
- For the subsequent offence above **Rs. 50,000** to **Rs. 1,00,000** or with imprisonment for a term which may extend to 1 year or with both.

Whoever manufactures or packs or imports with error in net quantity as may be prescribed shall be punished

- For the first offence with fine above **Rs. 10,000** but up to **Rs. 50,000** and
- For the second and subsequent offence, with fine up to **Rs. 1,00,000** or with imprisonment for a term which may extend to 1 year or with both.

Question 18] Write a short note on: Import of weight or measure

Ans.: Registration for importer of weight or measure: No person shall import any weight or measure unless he is registered with the Director in such manner and on payment of such fees, as may be prescribed.

Non-standard weights and measures not to be imported: No weight or measure shall be imported unless it conforms to the standards of weight or measure established under this Act.

Question 19] Write a short note on: Approval of Model

Ans.: Approval of Model [Section 22]: Every person manufacturing or importing any weight or measure shall seek the approval of model of weight or measure in prescribed manner, on payment of prescribed fee and from prescribed authority.

However, approval of model may not be required in respect of any cast iron, brass, bullion, or carat weight or any beam scale, length measures which are ordinarily used in retail trade for measuring textiles or timber, capacity measures, not exceeding 20 litre in capacity, which are ordinarily used in retail trade for measuring kerosene, milk or potable liquors.

Prescribed authority may approve model without any test if satisfied that any model of weight or measure has been approved outside India and which conforms to the standards established under this Act.

Question 20] Write a short note on: Prohibition on manufacture, repair or sale of weight or measure without licence

Ans.: Prohibition on manufacture, repair or sale of weight or measure without licence [Section 24]: No person shall manufacture, repair or sell any weight or measure unless he holds a licence issued by the Controller.

However, no licence to repair shall be required by a manufacturer for repair of his own weight or measure in a State other than the State of manufacture of the same.

The Controller shall issue a licence in prescribed form on fulfilment of prescribed conditions, for prescribed period and on payment of prescribed fee.

Question 21] Write a short note on: Verification and stamping of weight or measure

Ans.: Verification and stamping of weight or measure [Section 24]: Every person having possession, custody or control of any weight or measure shall get it verified as specified by Controller on payment of prescribed fees.

The Central Government may prescribe the kinds of weights and measures for which the verification is to be done through the Government approved Test Centre.

The Government approved Test Centre shall be notified by the Central or State Government.

The Government approved Test Centre shall appoint or engage persons having prescribed qualifications and experience and collect prescribed fee for the verification of weights and measures.

Solved Paper

CS Executive - JUNE 2017

PART A

Q1.

- a. Explain the procedure relating to establishment of Appellate Tribunal under Foreign Exchange Management Act, 1999. (5 Marks)

Ans. Please refer paragraph No. 24 of Chapter No. 1 – Foreign Exchange Management Act, 1999.

- b. Discuss the mission and the ways through which WIPO promotes the development and use of international intellectual property system. (5 Marks)

Ans. The World Intellectual Property Organization promotes the development and use of the international Intellectual Property system through:

- ◆ Services - run systems, which make it easier to obtain protection internationally for patents, trademarks, designs and appellations of origin; and to resolve IP disputes.
- ◆ Law - develop the international legal IP framework in line with society's evolving needs.
- ◆ Infrastructure - build collaborative networks and technical platforms to share knowledge and simplify IP transactions, including free databases and tools for exchanging information.
- ◆ Development - build capacity in the use of IP to support economic development.

- c. State the obligation of banks on KYC policy as per guidelines issued by Reserve Bank of India. (5 Marks)

Ans. Please refer paragraph No. 4 of Chapter No. 15 – Prevention of Money Laundering Act, 2002.

- d. What is meant by contracts “uberrimae fidei”? Which contracts are in general may be treated as contracts “uberrimae fidei”? (5 Marks)

Ans. There are contracts in which the law imposes a special duty to act with the utmost good faith *i.e.*, to disclose all material information. Failure to disclose such information will render the contract voidable at the option of the other party. Thus, contracts *uberrimae fidei* means contracts of utmost good faith. Following contracts are treated as contracts *uberrimae fidei*:

- ◆ **Contract of insurance:** The assured must disclose to the insurer all material facts and whatever he states must be correct and truthful.
- ◆ **Prospectus:** When a company invites the public to subscribe for its shares, it is under statutory obligation to disclose truthfully the various matters set out in the Companies Act. Any person responsible for non-disclosure of any of these matters is liable to damages. In addition, the contract to buy shares is voidable where there is a material false statement or non-disclosure in the prospectus.

- ◆ **Contract for the sale of land:** The vendor is under a duty to the purchaser to show good title to the land he has contracted to sell.
- ◆ **Family arrangements:** When the members of a family make agreements or arrangements for the settlement of family property, each member of the family must make full disclosure of every material fact within his knowledge.

e. Describe the privileges of Export and Trading House Status Holders in pursuance to the foreign trade policy. (5 Marks)

Ans. Please refer paragraph No. 5 of Chapter No. 3 – Foreign Trade Policy 2015-20 (FTP).

Q2.

a. Samir, on a holiday with his family, hired a taxi service. The taxi was in a poor condition and the driver had not adequate rest and drove rashly. Eventually, it went burst in the middle of the way. As a result, Samir and his family could not reach the airport in time to catch their flight. Decide whether Samir may be treated as a Consumer under Consumer Protection Act, 1986? (3 Marks)

Ans. Any person who avails or agrees to avail or hire services of any kind is consumer. Accordingly, Mr. Samir is consumer under Consumer Protection Act, 1986.

b. Discuss the functions of Special Economic Zone Authority under Special Economic Zones Act, 2005. (3 Marks)

Ans. Please refer paragraph No. 4 of Chapter No. 4 - SEZ Act, 2005.

c. Differentiate between vested and contingent interest under Transfer of Property Act, 1882. (3 Marks)

Ans. Please refer paragraph No. 2 of Chapter No. 12 - Transfer of Property Act, 1882.

d. A invites B to stay with him during winter vacation at his residence. B accepts the invitation and informs A accordingly. When B reaches A's house, he finds it locked and he has to stay in a hotel. Can B claim damages from A? (3 Marks)

Ans. No. B cannot claim any damage from A. Invitation to stay with Mr. A is offer leads to social contract. Social or domestic contract is not enforceable.

e. Explain the term "Abuse of Dominance" under Competition Act, 2002. (3 Marks)

Ans. Please refer paragraph No. 4 of Chapter No. 5 – Competition Act, 2002.

OR

Q2A.

i. Are securities dealt in depository liable to stamp duty under the provisions of Indian Stamp Act, 1899? (5 Marks)

Ans. If the company issues securities to one or more depositories, it will have to pay stamp duty on total amount of security issued by it and such securities need not be stamped. If an investor opts out of depository scheme, the securities surrendered to Depository will be issued to him in form of a certificate. Such share certificate should be stamped as if a 'duplicate certificate' has been issued. If securities are purchased or sold under depository scheme, no stamp duty is payable.

ii. How the attachment of property is executed under Prevention of Money Laundering Act, 2002? (5 Marks)

Ans. Please refer paragraph No. 7 of Chapter No. 15 - Prevention of Money Laundering Act, 2002.

iii. Does the Alternate Dispute Resolution (ADR) process provide procedural flexibility of a conventional trial? Explain. (5 Marks)

Ans. The ADR processes provide procedural flexibility, save valuable time and money and avoid the stress of a conventional trial. Please refer paragraph No. 2 of Chapter No. 11 of Arbitration and Conciliation Act, 1996.

Q3.

a. Anil bequeaths his all properties to B desiring him to divide the bulk of the property among Sunil's children. State, whether the trust has been created with sufficient certainty? State also the certainties which are required to create a valid trust under Indian Trusts Act, 1882. (5 marks)

Ans. This does not create a trust, for the trust property is not indicated with sufficient certainty. Please refer paragraph No. 4 of Chapter No. 18 of Indian Trusts Act, 1882 to understand certainties required for creating trust.

- b. State the composition and jurisdiction of National Commission under Consumer Protection Act, 1986. (5 marks)**

Ans. Please refer paragraph No. 9 of Chapter No. 6 of Consumer Protection Act, 1986.

- c. Aman hired a room in a hotel and paid a week's rent in advance. After registering, he went up to occupy the room. Aman found a notice on the wall that "The proprietor will not be responsible for articles lost or stolen, unless handed over to the manager of the hotel for safe custody." Owing to the negligence of the hotel staff, a thief gained access to the room and stole some goods of Aman. State whether the proprietor of the hotel is liable for the loss caused to Aman? State also which type of contract it is? (5 marks)**

Ans. The proprietor of hotel was liable to pay loss since the terms of offer were communicated after the acceptance. Hence, the terms were not a part of the contract and Aman was not bound by them. It is oral contract based on performance.

Q4.

- a. State the composition, duties, powers and functions of Competition Commission of India under Competition Act, 2002. (8 marks)**

Ans. Please refer paragraph No. 7 of Chapter No. 5 – Competition Act, 2002.

- b. Discuss the provisions regarding the appointment of arbitrators under the Arbitration and Conciliation Act, 1996. (7 marks)**

Ans. Please refer paragraph No. 7 of Chapter No. 11 – Arbitration and Conciliation Act, 1996.

PART B

Q5.

- a. What is meant by 'Substantial Expansion'? When the nature of expansion would not amount to substantial expansion under Industries (Development and Regulation) Act, 1951? (3 marks)**

Ans. Please refer paragraph No. 4 of Chapter No. 19 – Industries (Development & Regulation) Act, 1951.

- b. Under what circumstances a Sub-Registrar can refuse to register a document under the Registration Act, 1908? (3 marks)**

Ans. Please refer paragraph No. 7 of Chapter No. 25 – Registration Act, 1908.

- c. Discuss the procedure for award of relief under the Public Liability Insurance Act, 1991. (3 marks)**

Ans. Please refer paragraph No. 3 of Chapter No. 23 – Public Liability Insurance Act, 1991.

- d. What is "Environmental Audit"? Explain. (3 marks)**

Ans. Please refer paragraph No. 7 of Chapter No. 20 – Environment (Protection) Act, 1986.

- e. Describe the powers of trustees under the Indian Trusts Act, 1882. (3 marks)**

Ans. Please refer paragraph No. 5 of Chapter No. 18 – Indian Trusts Act, 1882.

Q6.

- a. Discuss the criteria of classification of the enterprises engaged in the manufacture of goods or in rendering services in micro, small and medium enterprises. (5 marks)**

Ans. Please refer paragraph No. 8 of Chapter No. 19 – Industries (Development & Regulation) Act, 1951.

- b. Explain the heads under which compensation or relief for damages may be claimed under the National Green Tribunal Act, 2010. (5 marks)**

Ans. Please refer paragraph No. 2 of Chapter No. 24 – National Green Tribunal Act, 2010.

- c. Comment on the presumption of culpable mental state. Who can avoid such presumption of culpable mental state as states under the Essential Commodities Act, 1955? (5 marks)**

Ans. Please refer paragraph No. 5 of Chapter No. 16 – Essential Commodities Act, 1955.

OR**Q6A.**

- (i) **State the functions of the Central Pollution Board constituted under Air (Prevention and Control of Pollution) Act, 1981.** (5 marks)

Ans. Please refer paragraph No. 4 of Chapter No. 21 – Air (Prevention and Control of Pollution) Act, 1981.

- (ii) **What steps should be taken to dissolve a society constituted under the provision of Societies Registration Act, 1860?** (5 marks)

Ans. Please refer paragraph No. 6 of Chapter No. 17 – Law Relating to Societies (Societies Registration Act, 1860).

- (iii) **Discuss the powers of Legal Metrology Officer regarding inspection and seizure under Legal Metrology Act, 2009.** (5 marks)

Ans. Please refer paragraph No. 5 of Chapter No. 16A – Legal Metrology Act, 2009.