



VEDANT College of Engineering & Technology
Village: Tulsi, Post- Jakhmund, Dist. Bundi-323021 (Raj.)

Department of Mechanical Engineering
I MID TERM TEST

SEM 8th

SUBJECT: LAW FOR ENGINEERS

Code: 8ME2A

TIME: 1Hr

Max.Marks=20

Note: (i) Answer Two Questions.
(ii) Figures to the right indicate maximum marks.

Q.1 Define Basic principles of law of contract. (10)

OR

Q.1 Explain the Industrial Disputes Act 1947. (10)

Q.2 Explain payment of wages act 1936. (10)

OR

Q.2 Explain the procedure of collective bargaining. (10)

Solution

Answer1.

CONTRACTS: BASIC PRINCIPLES 430x

- **Contract:** An agreement between *two* or more *parties* to perform or to refrain from some act now or in the *future*. A legally enforceable agreement. [4301]
- **Requisites for Contract Formation (Elements) 4305**
 - **Agreement:** One party must offer to enter into an agreement, and the other party must accept the terms of the offer
 - **Consideration:** Something of value received or promised, to convince a party to agree to the deal;
 - **Contractual Capacity/ competent parties:** Both parties must be competent to enter into the agreement;
 - **Legality:** The contract's purpose must be to accomplish some goal that is legal and not against public policy;
 - **Genuineness of Assent (Arguably part of agreement):** The apparent consent of both parties must be genuine; and
 - **Form:** The agreement must be in whatever form (e.g., written, under seal, etc.) the law requires.

UNILATERAL AND BILATERAL CONTRACTS [4302]

- **Every contract involves at least two parties** -- the offeror/promisor, who makes the *offer/promise* to perform, and the **offeree/promisee**, to *whom the offer/promise is made*. [4303]
- **Unilateral Contract:** A unilateral contract arises when an offer can be accepted only by the offeree's performance (e.g., X offers Y \$15 to mow X's yard). 4302.08
- **Bilateral Contract:** A bilateral contract arises when a promise is given in exchange for a promise in return (e.g., X promises to deliver a car to Y, and Y promises to pay X an agreed price). 4302.09
- **Express Contract:** A contract in which the terms of the agreement are fully and explicitly stated orally or in writing.[4302.01]
- **Implied-in-Fact Contract:** A contract formed in whole or in part by the conduct (as opposed to the words) of the parties. In order to establish an implied-in-fact contract, [4302.02]
 - (1) The plaintiff *must have furnished some service or property* to the defendant,
 - (2) The plaintiff must have *reasonably expected to be paid and the defendant knew or should have known that a reasonable person in the plaintiff's shoes would have expected to be paid for the service or property rendered by the plaintiff*, and
 - (3) The defendant must have *had the opportunity to reject the services or property and failed to do so*.
- **Quasi or Implied-in-Law Contract:** A fictional contract imposed on parties by a court in the interests of fairness and justice, typically to prevent the unjust enrichment of one party at the expense of the other.[4302.03]

FORMAL AND INFORMAL CONTRACTS [4302.04/5]

- **Formal Contract:** A contract that requires a special form or method of formation (creation) in order to be enforceable.
 - **Contract Under Seal:** A formalized writing with a special seal attached.
 - **Recognizance:** An acknowledgment in court by a person that he or she will perform some specified obligation or pay a certain sum if he or she fails to perform (e.g., personal recognizance bond).
 - **Negotiable Instrument:** A check, note, draft, or certificate of deposit -- each of which requires certain formalities (to be discussed later).
 - **Letter of Credit:** An agreement to pay that is contingent upon the receipt of documents (e.g., invoices and bills of lading) evidencing receipt of and title to goods shipped.
- **Informal Contract:** A contract that does not require a specified form or method of formation in order to be valid.
 - **The vast majority of contracts are informal (without a seal).**

EXECUTION AND VALIDITY OF CONTRACTS

- **Executed Contract [4302.11]:** A contract that has been completely performed by both (or all) parties. By contrast,
 - **An executory contract [4302.10]** is a contract that has not yet been fully performed by one or more parties.
- **Valid Contract [4302.13]:** A contract satisfying all of the requisites discussed earlier -- agreement, consideration, capacity, legal purpose, assent, and form. By contrast,
 - A **void** contract [4302.14] is a contract having no legal force or binding effect (e.g., a contract entered into for an illegal purpose);
 - A **voidable** contract [4302.15] is an otherwise valid contract that may be legally avoided, cancelled, or annulled at the option of one of the parties (e.g., a contract entered into under duress or under false pretenses); and,
 - An **unenforceable** contract is an otherwise valid contract rendered unenforceable by some statute or law (e.g., an oral contract that, due to the passage of time, must be in writing to be enforceable).

CONTRACT INTERPRETATION

- The key to contract interpretation is to give *effect to the intent* of the parties as expressed in their agreement.
- **Intent** is generally to be ascertained objectively -- by looking at
 - (1) the words used by the parties in the agreement,
 - (2) the actions of the parties pursuant to the agreement, and
 - (3) the circumstances surrounding the agreement
 as they would be interpreted by a reasonable person -- rather than the parties' *subjective* intentions (usually expressed after the fact).
- **The Plain Meaning Rule:** When a contract is clear and unequivocal, a court will enforce it according to its *plain* terms, set forth on the face of the instrument, and there is no need for the court either to consider extrinsic evidence or to interpret the language of the contract.

RULES OF INTERPRETATION - [4321]

Know these, they show up all the time...

- **Rules of Interpretation:**

When a contract contains ambiguous or unclear terms, a court will resort to one or more of the following rules in order to determine and give effect to the parties' intent.

 - Insofar as possible, the contract's terms will be given a reasonable, lawful, and effective meaning.
- The contract will be interpreted as a whole various and its various provisions will be "harmonized" to yield consistent expression of intent.
- Negotiated terms will be given greater consideration than standard-form, or "boiler-plate," terms.
- A non-technical term will be given its ordinary, commonly-accepted meaning, and a technical term will be given its technical meaning, unless the parties clearly intended something else.
- Specific terms will prevail over general terms.
- Handwritten terms prevail over typewritten terms, which, in turn, prevail over printed terms.
- When the language used in a contract has more than one meaning, any ambiguity is construed against the drafting party.
- An ambiguous contract should be interpreted in light of pertinent usages of trade in the locale and/or industry, the course of prior dealing between the parties, and the parties' course of prior performance of the contract.

- Express terms are given preference over course of prior performance, which is given preference over course of dealing, which is given preference over usage of trade.
- Words are given preference over numbers or symbols.

OR

Answer1. Industrial dispute Act

According to Section 2A: Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Industrial Disputes have adverse effects on industrial production, efficiency, costs, quality, human satisfaction, discipline, technological and economic progress and finally on the welfare of the society. A discontent labour force, nursing in its heart mute grievances and resentments, cannot be efficient and will not possess a high degree of industrial morale. Hence, the Industrial Dispute Act of 1947, was passed as a preventive and curative measure.

SCOPE AND OBJECT

The Industrial Dispute Act of 1947, came into force on the first day of April, 1947. Its aim is to protect the workmen against victimization by the employers and to ensure social justice to both employers and employees. The unique object of the Act is to promote collective bargaining and to maintain a peaceful atmosphere in industries by avoiding illegal strikes and lock outs. The Act also provides for regulation of lay off and retrenchment. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

DEFINITIONS

Appropriate Government [Sec. 2(a)]: Appropriate Government means the Central Government in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, any industry carried on by a Railway Company, any controlled industry specified by the Central Government, The Unit Trust of India. Corporations under the Central Statutes, Banking company, Insurance company. Mines. Oil field, Cantonment board, Major ports, etc. In relation to any other industrial dispute, the appropriate Government is the State Government.

Award [Sec 2 (b)] means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

Industry [Sec. 2(j)]: Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

Industrial Dispute [Sec. 2(k)]: means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

Object of the Act

Provisions for investigation and settlement of industrial disputes and for certain other purposes.

Important Clarifications

Industry – has attained wider meaning than defined except for domestic employment, covers from barber shops to big steel companies. **Sec.2(I)**

Works Committee–Joint Committee with equal number of employers and employees' representatives for discussion of certain common problems. **Sec.3**

Conciliation–is an attempt by a third party in helping to settle the disputes **Sec.4**

Adjudication – Labour Court, Industrial Tribunal or National Tribunal to hear and decide the dispute. **Secs.7,7A & 7B**

Power of Labour Court to give Appropriate Relief

Labour Court/Industrial Tribunal can Modify the punishment of dismissal or discharge of workmen and give appropriate relief including reinstatement. **Sec.11A**

Right of a Workman during Pendency of Proceedings in High Court

Employer to pay last drawn wages to reinstated workman when proceedings challenging the award of his reinstatement are pending in the higher Courts. **Sec.17B**

Persons Bound by Settlement

- When in the course of conciliation proceedings etc., all persons working or joining subsequently.
- Otherwise than in course of settlement upon the parties to the settlement. **Sec.18**

Period of Operation of Settlements and Awards

- A settlement for a period as agreed by the parties, or
- Period of six months on signing of settlement.
- An award for one year after its enforcement. **Sec.19**

Lay off & Payment of Compensation – Conditions for Laying off

Failure, refusal or inability of an employer to provide work due to

- Shortage of coal, power or raw material.
- Accumulation of stocks.
- Breakdown of machinery.
- Natural calamity. **Sec.25-C**

Notice of Change

21 days by an employer to workmen about changing the conditions of service as provided in IV th Schedule. **Sec.9A**

Prior Permission for Lay off

When there are more than 100 workmen during preceding 12 months. **Sec.25-M**

Lay off Compensation

Payment of wages except for intervening weekly holiday compensation 50% of total or basic wages and DA for a period of lay off upto maximum 45 days in a year. **Sec.25-C**

Prohibition of Strikes & Lock Outs

- Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking.
- Within fourteen days of giving such notice.
- Before the expiry of the date of strike specified in any such notice as aforesaid.
- During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings.
- During the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months, after the conclusion of such proceedings.
- During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under Sub-Section(3A) of section 10A
- During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. **Secs.22&23**

Prior Permission by the Government for Retrenchment

- When there are more than 100 (in UP 300 or more) workmen during preceding 12 months.
- Three months' notice or wages thereto.
- Form QA
- Compensation @ 15 days' wages. **Sec. 25-N**

Conditions of service etc. to remain unchanged under certain circumstances during pendency of proceedings

- Not to alter to the prejudice of workmen concerned the condition of service.
- To seek Express permission of the concerned authority by paying one month's wages on dismissal, discharge or punish a protected workman connected with the dispute.
- To seek approval of the authority by paying one month's wages before altering condition of service, dismissing or discharging or punishing a workman. **Sec.33**

Prohibition of unfair labour practice either by employer or workman or a trade union as stipulated in fifth schedule

Both the employer and the Union can be punished. **Sec.25-T**

Retrenchment of Workmen Compensation & Conditions

- Workman must have worked for 240 days.
- Retrenchment compensation @ 15 days' wages for every completed year to be calculated at last drawn wages
- One month's notice or wages in lieu thereof.
- Reasons for retrenchment
- Complying with principle of 'last come first go'.
- Sending Form P to Labour Authorities.

Closure of an Undertaking

60 days' notice to the labour authorities for intended closure in Form QA. **Sec.25FFA**
Prior permission atleast 90 days before in Form O by the Government when there are 100 ore more workmen during preceding 12 months (in UP 300 or more workmen) **Sec.25-0**

Conditions of service etc. to remain unchanged under certain circumstances during pendency of proceedings

- Not to alter to the prejudice of workmen concerned the condition of service.
- To seek Express permission of the concerned authority by paying one month's wages on dismissal, discharge or punish a protected workman connected with the dispute.
- To seek approval of the authority by paying one month's wages before altering condition of service, dismissing or discharging or punishing a workman. **Sec.33**

PENALTIES

Sec.25-U

26

27

28

29

30

31A

31

Offence

Committing unfair labour practices

Illegal strike and lock-outs

Instigation etc. for illegal strike or lock-outs.

Giving financial aid to illegal strikes and lock-outs.

Breach of settlement or award

Disclosing confidential information pertaining to Sec.21

Closure without 60 days' notice under Sec.25 FFA

Contravention of Sec.33 pertaining to change of conditions of

Service during pendency of dispute etc.

When no penalty is provided for contravention

<Punishment

Imprisonment of upto 6 months or with fine upto Rs.3,000.

Imprisonment upto one month or with fine upto Rs.50(Rs.1000 for lock-out) or with both.

Imprisonment upto 6 months or with fine upto Rs.1,000

Imprisonment for 6 months or with fine upto Rs.1,000

Imprisonment upto 6 months or with fine.On continuity of offence fine uptoRs.200 per day

Imprisonment upto 6 months or with fine upto Rs.1,000

Imprisonment upto 6 months or with fine upto Rs.5,000

Imprisonment upto 6 months or fine upto Rs.1,000. Fine upto Rs.100

Answer2

Object and scope of the Act

The main objects of the payment of wages Act are:

- o To make sure, regular and timely payment of wages to the employees,
- o To check unlawful deductions being made from wages and illogical fines being imposed on the employed persons.

The scope of the Act extends to the whole of India.

Application of the Act

The act applies to the payment of wages to persons employed in any factory, to persons employed (otherwisetha n a factory) upon any railway by railway administration, or to persons employed in an industrial or otherestablis hment specified under Section 2 of the Act. The State Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of this Act or any of them to thepayment of wages to any class of persons employed in any establishment or class of establishments specified by the CentralGovernment or a State Government under section2(ii) (h) provided that in relation to any such establishment ownedby the Central Governmentno such notification shall be issued exc ept with the concurrence of that government.The Actshall be applicable if the wages for the wage period to a n employed person do not exceed Rs. 6000 or such higher sumwhich the central government may stipulate.

Important Definitions

Section 2 : *Employed person*

Employed person includes the legal representative of a deceased employed person.- Section 2(i)

Employer

Employer includes the legal representative of a deceased employer. The liability of the employer's legalrepresentative for the payment of wages due to the employed persons is limited to the extent of the value of theproperty inherited by him. Section 2(ia)

Factory

Factory means a factory as defined in section 2(m) of the Factories Act, 1948 and includes any place to which theprovisions of that Act have been applied.

Industrial and other establishments

Industrial or other establishment means any—

- (a) Tramway service , or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- (b) Air transport service other than such service belonging to, or exclusively employed in the military, naval or airforces of the Union or the Civil Aviation Department of the Government of India;
- (c) Dock, wharf or jetty;
- (d) Inland vessel, mechanically propelled;
- (e) Mine, quarry or oil-field;
- (f) Plantation;
- (g) Workshop or other establishment in which articles are produced, adapted or manufactured, with a vi ewto their use, transport or sale;
- (h) Establishment in which any work relating to the construction, development or maintenance of buildin gs,roads, bridges or canals, or relating to operations connected with navigation, irrigation, or to the sup

ply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. (i) any other establishment or class of establishments which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette.

Wages

Wages means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

- (a) Any remuneration payable under any award or settlement between the parties or order of a court;
- (b) Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) Any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) Any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

Wages does not include—

- (1) Any *bonus* (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- (2) The value of any *house-accommodation*, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (3) Any *contribution* paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (4) Any *travelling allowance* or the value of any travelling concession;
- (5) Any sum paid to the employed person to defray *special expenses* entailed on him by the nature of his employment; or
- (6) Any *gratuity* payable on the termination of employment in cases other than those specified in sub-clause (d).

Section 3 : Responsibility for payment of wages

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act.

The following persons shall also be responsible for the payment of wages:

- (a) In factories, if a person has been named as the manager of the factory of the Factories Act, 1948.
- (b) In industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments; and
- (c) Upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned.

Section 4 : Fixation of wage-periods

It is required under that:

- (1) Every person responsible for the payment of wages under section 3 shall fix periods in respect of which such wages shall be payable.
- (2) No wage-period shall exceed one month. Payment of wages can be made on daily, weekly, fortnightly or monthly basis.

Section 5 : Time of payment of wages

Specifies that the wages of every person employed upon or in:

- (a) Any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,
- (b) Any other railway, factory or industrial or other establishment, shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.

Provided that in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion. Section 5(2) *where the employment of any person is terminated* by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated. Where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated. Section 5(3) The State Government may, by general or special order, *exempt*, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) or to persons employed as daily-rated workers in the Public Works Department of the Central Government or the State Government from the operation of this section in respect of wages of any such persons or class of such persons. But in the case of persons employed as daily-rated workers as above stated, no such order shall be made except in consultation with the Central Government.

Section 5(4) All payments of wages shall be made on a *working day*.

Section 6 : Wages to be paid in current coin or currency notes

All wages shall be paid in current coin or currency notes or in both.

The employer may, after obtaining the written authorisation of the employed person, pay him the wages either by *cheque* or by crediting the wages in his bank account.

Section 7 : Deductions which may be made from wages

The wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act. Every payment made by the employer to the employer or his agent shall, for the purposes of this Act, be deemed to be a *deduction from wages*.

Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:-

- (i) the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);
- (ii) the reduction to a lower post or time scale or to a lower stage in a time scale; or
- (iii) suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be speci-

fied in this behalf by the State Government by notification in the Official Gazette. *Section 7(2)* Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and any other deduction is unauthorized. The Authorized deductions may be of the following kinds only, namely:

- (a) Fines;
- (b) Deductions for absence from duty;
- (c) Deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) Deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette.
- (e) Deductions for such amenities and services supplied by the employer as the State Government or any officer specified by it in this behalf may, by general or special order, authorise. The word "services" here does not include the supply of tools and raw materials required for the purposes of employment;
- (f) Deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages;
 - Deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;
 - Deductions for recovery of loans granted for house-building or other purposes approved by the State Government and the interest due in respect thereof;
- (g) Deductions of income-tax payable by the employed person;
- (h) Deductions required to be made by order of a court or other authority competent to make such order;
- (i) Deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925, applies or any recognised provident fund as defined in section 58A of the Indian Income Tax Act, 1922, or any provident fund approved in this behalf by the State Government, during the continuance of such approval;
- (j) Deductions for payments to co-operative societies approved by the State Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office,
- (k) deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation Act of India established under the Life Insurance Corporation Act, 1956, or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such government.
- (kk) deductions, made with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act, 1926, for the welfare of the employed persons or the members of their families, or both, and approved by the State Government or any officer specified by it in this behalf, during the continuance of such approval;

Deductions, made with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926.

- (l) Deductions, for payment of insurance premia on Fidelity Guarantee Bonds;
- (m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- (n) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;
- (o) Deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;
- (p) Deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;
- (q) Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees. The list of deductions given by section 7(2) is exhaustive. If an employer makes any deduction, the burden to prove that the deduction does fall under the several clauses of Section 7(2), lies upon the employer. *Section 7(3)* Notwithstanding anything contained in this Act, the *total amount of deductions* which may be made under sub-section (2) in any wage-period from the wages of any employed person shall not exceed-

- (i) in cases where such deductions are wholly or partly made for payments to co-operative societies under section 7(2)(j), seventy-five per cent of such wages, and
- (ii) in any other case, fifty per cent of such wages.

Provided that where the total deductions authorised under sub-section (2) exceed seventy five per cent or, as the case may be, fifty per cent of the wages, the excess may be recovered in such manner as may be prescribed. *Section 7(4)* Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force other than the Indian Railways Act, 1890.

Section 8 : Fines

- (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the State Government or of the prescribed authority, may have specified by notice under sub-section (2).
- (2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.
- (3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- (4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.
- (5) No fine shall be imposed on any employed person who is under the age of fifteen years.
- (6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority. When the persons employed upon or in any railway, factory or industrial or other establishment are part of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Section 9 : Deductions for absence from duty

(1) Deductions may be made under section 7(2)(b) only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work. Provided that, subject to any rules made in this behalf by the State Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

Section 10 : Deductions for damage or loss

(1) A deduction under clause (c) or clause (o) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person.

(1A) A deduction shall not be made under clause (c) or clause (m) or clause (n) or clause (o) of sub-section (2) of section 7 until the employed person has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deduction.

(2) All such deduction and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

Section 11 : Deductions for services rendered

A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and, in the case of deduction under the said clause (e), shall be subject to such conditions as the State Government may impose.

Section 12 : Deductions for recovery of advances

Deductions under clause (f) of subsection (2) of section 7 shall be subject to the following conditions, namely:

- (a) Recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling-expenses;
- (b) Recovery of an advance of money given after employment began shall be subject to such conditions as the State Government may impose;
- (c) Recovery of advances of wages not already earned shall be subject to any rules made by the State Government regulating the extent to which such advances may be given and the installments by which they may be recovered.

Section 12-A : Deductions for recovery of loans

Deductions for recovery of loans granted under clause (fff) of subsection (2) of section 7 shall be subject to any rules made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.

Section 13 : Deductions for payments to co-operative societies and insurance schemes

Deductions under clause (j) [and clause (k)] of sub-section (2) of section 7 shall be subject to such conditions as the State Government may impose.

Section 13-A : Maintenance of registers and records

- (1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.
- (2) Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.

OR

Answer 2

The Act requires officials elected to head a union to meet with the employer to negotiate conditions. Specific rules in support of collective bargaining include:

- There is a limit of one representative for each unit of employees
- All representatives must promote the practice, and follow all procedures, of collective bargaining
- Employers must bargain with the employees' representatives
- Employees and their representatives have the right to discuss wage issues

Unfair Labor Practices

- Interfering with, coercing, or restraining employees' right to form, join, or assist in the formation of labor organizations
- Dominating or interfering with the formation of any labor union organization
- Discrimination in hiring or tenure of employees in order to discourage participation in union organization
- Discriminating against any employee who files charges or testifies against the employer
- Refusing to bargain with the employee's representative

Good Faith Bargaining

Both employees and employers are required to partake in *good faith bargaining*. While this term may involve many issues, it typically includes

- (1) Refusal of either party to meet and attempt to bargain with the other party,

(2) Engaging in sham or misleading negotiations, and

(3) Making changes to the terms of an existing CBA without consulting the other party. This helps to ensure all employers and employee representatives adhere to these conditions as, when principles of good faith bargaining are not adhered to, the negotiation process between employer and employees may be more difficult.

Mandatory Bargaining Issues

Employers do not have to engage in good faith bargaining over every issue that arises as some may be considered trivial and are not covered under the labor laws. There are some issues, however, that are considered mandatory bargaining issues for which employers must participate in collective bargaining, including wages, layoff procedures, and hours. When an employee group desires changes to be made in an issue subject to collective bargaining, it must give advanced notice to the employer. If the employer refuses to meet in collective bargaining over the issue, it may be charged with unfair labor practices, and the NLRB may step in. This often results in an investigation by the NLRB, and potentially in a labor strike

Collective Bargaining Process

The collective bargaining process involves five core steps:

1. **Preparation** – Choosing a negotiation team and representatives of both the union and employer. Both parties should be skilled in negotiation and labor laws, and both examine available information to determine whether they have a strong standing for negotiation.
2. **Discussion** – Both parties meet to set ground rules for the collective bargaining negotiation process.
3. **Proposal** – Both representatives make opening statements, outlining options and possible solutions to the issue at hand.
4. **Bargaining** – Following proposals, the parties discuss potential compromises, bargaining to create an agreement that is acceptable to both parties. This becomes a “draft” agreement, which is not legally binding, but a stepping stone to coming to a final collective bargaining agreement.
5. **Final Agreement** – Once an agreement is made between the parties, it must be put in writing, signed by the parties, and put into effect.

Continuous Bargaining

Continuous bargaining is a method of collective bargaining in which ongoing negotiations between the employer and the union representative take place. This may occur when the employer and union representative have a good working relationship that enables them to continually make small changes to ensure positive employment policies.

Concession Bargaining

Concession bargaining is a method of collective bargaining that sometimes takes place when the employer is in distress. In this situation, the union may give the employer back a previous agreement in exchange for job security for the largest number of employees. For example, a union may give up paid time off in exchange for protection for layoffs.

Benefits of Collective Bargaining

According to studies, employees covered by collective bargaining often have better working conditions, higher wages, and better benefit packages than employees who are not members of a labor union. For example, union workers are more than 18 percent more likely to have affordable health insurance, and 22 percent more likely to have pension coverage. Wage advantages offered by collective bargaining mostly benefit earners of middle and lower wages, reducing wage gaps. Membership in labor unions and collective bargaining also benefits employees by decreasing the wage gap that exists between male and female employees.

Collective Bargaining in Education

Collective bargaining in education consists of a process in which faculty and the board of trustees at a school interact and negotiate terms of employment. The collective bargaining process in education, similar to other forms of collective bargaining, results in legally binding agreements that cannot be changed by only one side. If changes are needed, both parties must participate in negotiations to reach a new agreement.

Some reasons educational employees are encouraged to engage in the collective bargaining process include:

1. It creates a feeling of shared control over employment issues and the decision making process.
2. Clearly defined employment policies reduce uncertainty.
3. A fair and effective grievance procedure increases faculty confidence that problem issues will be handled in a fair and timely manner.
4. A negotiated agreement that addresses faculty concerns provides a sense of security.
5. The policy of collective bargaining puts pressure on both sides to act in good faith in regard to employment practices.

Employer Duty to Supply Information

While the employer has an obligation to supply pertinent information to the union during the collective bargaining process, only certain information is required to be supplied. For example, if an employer claims it cannot grant a wage increase request due to financial problems, the union has the right to request documents supporting the employer's claims. The employer must also provide the employees' current salary rates and benefit information upon request.

Union Duty of Fair Representation

When an employee is a member of a union, the union has a duty to provide fair representation to the employee. While the union is not required to act on every request that an employee makes, it must treat each and every request fairly regardless of the employee's race, age, sex, or education. If an employee feels that the union has breached its duty of fair representation, he may follow certain procedures to file a grievance. If there are no grievance procedures available, the employee may hire an attorney to help ensure his rights are protected. Because employment law can be complex, an attorney experienced with employment issues is best suited in this situation.

Related Legal Terms and Issues

- **Coercing** – persuading or forcing a person to do something through the use of manipulation or threats.
- **Dues** – the cost of membership when a person joins a union or club. Dues may be required weekly, or annually.
- **Grievance** – a formal complaint filed by an employee or agent. Some employers or agencies have specific procedures that must be followed.
- **Independent Contractor** – a person who agrees to do work for someone else using his own methods.
- **Layoff** – a permanent or temporary discharge of employees.
- **Strike** – the act of employees organizing and protesting employment practices in an attempt to induce changes.
- **Union** – an organized group of employees that is formed to protect workers from unfair labor practices.