

BUSINESS LAW INCLUDING COMPANY LAW

This book presents the subject matter in a lucid and readable style that even a student without any background of law will be able to understand and appreciate the otherwise difficult and complicated provisions of various legislations covered. A number of simple examples have been included to illustrate and reinforce understanding of the relevant legal provisions. Latest case laws, Indian as well as International, have been given in a manner that a business law student ought to learn and present these in the examination.

This edition includes:

An updated treatment of the Companies Act, 2013 along with the Rules made thereunder.

The Revision Highlights of the present Edition include:

- Provisions of the Companies (Amendment) Act, 2019
- Important case law up to 31st July, 2022
- Provisions of the Consumer Protection Act, 2019
- Latest changes in the Payment of Bonus Act
- Latest changes in the Payment of Gratuity Act



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S S GULSHAN
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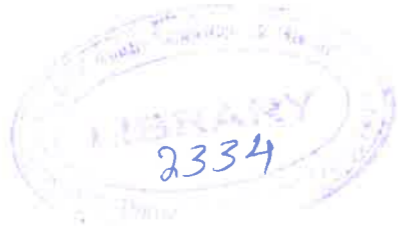
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TWENTY THIRD EDITION

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PREFACE TO THE TWENTY-THIRD EDITION

It gives us immense pleasure in presenting the Twenty-Third Edition of the Book.

Since the publication of the last edition, there have been some major changes in the Companies Act primarily through Rules. This necessitated the revision of the text. We have also incorporated latest relevant case law on the subject.

We hope that this revised edition will serve the needs of the students as well as the teachers of the subject even better than before. However, suggestions for further improvement of the book are most welcome and we shall acknowledge the same with gratitude and shall be too happy to incorporate those in the next edition.

Last but not the least, we shall be failing in our duty, if we do not thank Mr. Saumya Gupta, Managing Director and Mr. Ajay Sharma of New Age International (P) Ltd. in taking active interest in the publication.

With Best Wishes,

S S GULSHAN
G K KAPOOR

PREFACE TO THE FIRST EDITION

Legal environment constitutes an important aspect of business and therefore forms an indispensable part of commerce/management curriculum. The presentation of the subject matter has been kept simple and logical keeping in view the 'no-legal' background of most of the candidates. Besides, previous question papers have been given along with hints to the practical problems. This will not only enable the candidates to have an idea about the nature of the questions being asked but also the answers expected.

It is hoped that the book in its present form will meet the needs of the readers. In case the book is found wanting in any manner, we shall feel grateful in being informed about the same.

**S S GULSHAN
G K KAPOOR**

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1

CHAPTER

LAW OF CONTRACTS

◆ PRACTICAL PROBLEMS

1. P insured his goods against fire. While smoking P falls asleep and goods catch fire. Is P entitled to recover the loss under the policy?
2. A owes B ₹ 10,000. B insures A's life for a like amount. A repays the debt to B. A then dies. Can B claim the amount of the policy?
3. A, B and C are three continuous houses insured against fire. An earthquake caused A to fall and a consequence fire broke out and spread to B where an explosion occurred whereby C was wrecked. Is the insurer liable for the loss caused to C?
4. A insured his house against fire. Later while insure, A killed his wife, severely injured his only son, set fire to the house and died in the fire. The son survived and sued the insurer for the fire loss. Advise the insurer.

CHAPTER 9 : THE CONSUMER PROTECTION ACT, 1986

1. Define the following terms as per the Consumer Protection Act, 1986—
 - (a) Consumer
 - (b) Consumer dispute
 - (c) Defect
 - (d) Deficiency
 - (e) Manufacturer
 - (f) Restrictive trade practice
 - (g) Unfair trade practice
 - (h) Service
 - (i) Trader.
2. Can the following be regarded as consumers?
 - (a) A patient of a government hospital.
 - (b) A person who registers himself for a telephone connection.
 - (c) A person sending a telegram.
3. Will the following constitute deficiency in service?
 - (a) Delay of 1 year in settlement of a life insurance claim.
 - (b) Delay of 6 months in settlement of a fire insurance claim.
 - (c) The failure of MTNL to send bill by registered post in spite of a request by the subscriber in that regard against payment of the registration charges.
4. Examine the rights of a consumer enshrined under the Consumer Protection Act, 1986.
5. Who can file a complaint under the Consumer Protection Act?
6. What sort of complaint may be lodged under the Act?
7. Where and how can a complaint be made? State the jurisdiction of the various redressal agencies in this regard.
8. State the procedure District Forum follows on receipt of a complaint from a consumer.
9. How the grievances of the consumers are sought to be protected under the Consumer Protection Act, 1986?

Examination Questions and Problems

10. Discuss the constitution and role of National Commission under the Consumer Protection Act, 1986.
11. Whether the passengers travelling by trains holding valid tickets, and the subscribers of telephones are consumers? Explain with reasons.
12. Distinguish between 'defect' and 'deficiency'.
13. (a) Explain the term 'Complaint'.
(b) What is the limitation period for filing of a complaint before the District Forum, State Commission and National Commission?
(c) Discuss whether the legal heir of a diseased patient admitted in a government hospital rendering free services is a 'Consumer'?
14. What is meant by 'Consumer dispute'? How does the 'Consumer disputes redressal forum' settle a dispute relating to deficiency in service?
15. Explain the concept of 'service' and 'deficiency in service'.

◆ PRACTICAL PROBLEMS

1. A consumer association filed a complaint with the District Forum on behalf of a consumer in regard to defect in the goods sold. The complaint was opposed on the ground that the consumer association has no locus standi as the said consumer is not a member of the association. Will the complaint succeed?
2. Y, a consumer, had booked his goods with the railways for transportation. The goods reached the place of destination after a delay of 10 days for which the consumer seeks your advice as to whether he can successfully file a complaint against the railways for deficiency of service under the Consumer Protection Act, 1986.
3. (a) Satrang Singh admitted his only infant son in a private nursing home. As a result of strong dose of medicine administered by the nursing attendant, the child has become mentally retarded. Satrang Singh wants to make a complaint to the District Forum under the Consumer Protection Act, 1986 seeking relief by way of compensation on the ground that there was deficiency in service by the nursing home. Does his complaint give rise to a consumer dispute? Who is the consumer in the instant case?
(b) Samrat booked a motor vehicle through one of the dealers. He was informed subsequently that the procedure for purchasing the motor vehicle had changed and was called upon to make further payment to continue the booking before delivery. On being aggrieved, Samrat filed a complaint with the State Commission under the Consumer Protection Act, 1986. Will he succeed?
(c) Brittle and Company, a small scale industry, sought nursing and financing facilities from its bankers by means of grant of further advances and adequate margin money in anticipation of good demand for its products. In failing to obtain this and having become sick, it proceeds against its bankers under the Consumer Protection Act, 1986. Will it succeed?
4. X bought from Beta Engineering Works a machine called 'Brickman' which was used for clay preparation, brick moulding, etc. The machine was found to be defective. Examine whether X can claim relief under the Consumer Protection Act, 1986.
5. A child of tender years was taken to a private hospital in Delhi by his parents as he was running temperature. The doctor-in-charge diagnosed that it was a case of typhoid. The nurse-in-charge gave a written prescription for an injection which was purchased by the father. The nurse, without testing whether there will be any reaction, administered the injection and within minutes the child started collapsing in the lap of his mother. The patient was later on taken to the All India Institute of Medical Sciences which expressed that the child even if survives would lie only in a vegetative state as

irreparable damage had been done to his brain. Can the redressal agencies under the Consumer Protection Act, 1986 grant relief to the patient? Can the parents of the child be considered consumers? [June 1999]

[Hint: See *Spring Meadows Hospital v. Harjit Ahluwalia* (1998) 3 SCALE 456. Yes, the parents of the child are also consumers.]

6. A car dealer issued an advertisement—that a person could enter a contest by booking a particular branded car. On the specified dates, draws would be held and the persons who are successful in the draws would be entitled to two free tickets from Mumbai to New York and back. Hari, who purchased the car and entered the contest was declared a winner of the draw. But the tickets were not delivered to him and, therefore, he filed a complaint under the Consumer Protection Act, 1986. Will he succeed?

[Dec. 1999]

[Hint: Hari will not succeed, as he is not a consumer under S. 2(l)(d). See *Byford v. S.S. Srivastava* (1993) 1CPJ 55 (NCDRC).]

7. A contract was entered between the landlord and the tenant for hiring of a flat on a monthly tenancy basis. Contrary to the contract, the landlord neglected and refused to provide the agreed amenities to the tenant and as a consequence, the tenant and his family members suffered mental agony, ill-health etc. On being aggrieved, the tenant wants to file a complaint before the redressal agency under the Consumer Protection Act, 1986. Can the landlord be held liable under the Act?

[Dec. 1999]

[Hint: The tenant cannot file a complaint under the Consumer Protection Act. See *Smt. Luxmi Singhania v. Smt. Ram Debi Lohia and another* 1992(1) CPJ 293 (NCDRC).]

8. Smartee posted a duly stamped cover, with complete address of the addressee and the address of the sender. On top of the cover the words 'Application for admission to M.A./M.Sc./MCA' were printed in bold letters. The letter was misdelivered back to the sender. Smartee seeks relief under the Consumer Protection Act, 1986 on account of deficiency in service by the postal department. Will he succeed?

[Dec. 1999]

[Hint: Smartee will succeed as there is a deficiency of service. See *Kober Rajendra Prasad v. Union of India* 1991(1) CRP 299 (AP State Commission).]

9. X who was working as a truck driver had taken a general insurance policy to cover the risk of injuries for a period from 1.11.1998 to 30.11.1999. He renewed the policy for a further period of one year on 10.11.1999. On the same day, he met with an accident and suffered multiple injuries including fractures. X submitted the claim along with documents to the insurance company. The insurance company repudiated the claim on the ground that the premium for the renewed policy was received in the office only at 2.30 p.m. on 10.11.1999, while the accident had taken place at 10.00 a.m. on that day and hence there was no policy at the time of accident. Will X succeed if he files a complaint against the insurance company for this claim? [June 2000]

[Hint: X shall succeed. The premium was paid on 10.11.99, and on the policy the date of the commencement of the policy only is mentioned; and not the time, therefore the policy gets renewed on the commencement of the day. [Oriental Insurance Co. Ltd. v. P. Ramaraj.]

10. Jolly, who got admission in a college, paid ₹ 20,000 towards, tuition fee, hostel fee and other charges, subsequently, he got admission in a Government Engineering College, and therefore, demanded the refund of fees from the college. The college partly refunded the hostel fee and tuition fee and retained a major portion of the tuition fee. Jolly wants to file a complaint against the college for total refund of fees? Will he succeed? [June 2000]

[Hint: No; there is no deficiency of service. *Ramdesbaba Engineering College v. Sushant Yubraj Rode & Another*].

11. Avinash booked his goods with Superfast Freight Carriers at Delhi for being carried to Ferozabad. The goods receipt note mentioned that all the disputes would be subject to jurisdiction of the Mumbai Court, Avinash lodged a complaint for certain deficiency in service against the transporter in the District Forum at Delhi. Superfast Carriers contested that District Forum at Delhi had no jurisdiction to entertain the complaint as the head office of the transporter was at Mumbai and the jurisdiction has been clearly stated in the goods receipt note. Is the contention of the transporter tenable? [June 2000]

[Hint: The contention of the transporter is not tenable. The parties cannot confer jurisdiction on a court which has no jurisdiction to try the suit. No cause of action arose at Mumbai, hence the courts at Mumbai had no jurisdiction.]

12. Kamal was on board of X Airlines plane. He was asked to deboard to identify his baggage lying on the ground unidentified. When he stepped out to the ladder, but before he could actually put his entire body weight on the ladder, it was suddenly removed as a result of which he fell down on the ground and sustained bodily injuries. He wants your help to lodge a complaint against the Airlines Company on the ground of deficiency in service, Advise.

[Hint: He is advised to file a complaint under the Consumer Protection Act, 1986. See *Station Manager, Indian Airlines v. Dr. Jiteswar Ahir*, 1994 (NCDRC).]

13. A company maintains a guest house for use of its Directors, including the Managing Director and other executives during their visits to the city. It entered into a contract with a dealer for installation of central air conditioning system. The system supplied did not function properly. The company lodged a complaint against the dealer under the Consumer Protection Act, 1986. In defence, the dealer pleaded that the company maintained the guest house for commercial purposes. Is the contention of dealer tenable?

[Hint: No, the dealer would not succeed in his pleadings. See *J.K. Puri Engineers v. Mohan Breweries & Distilleries Ltd.* 1996 (NCDRC).]

14. Bimla, while travelling by a train, fell through the gap in the inter-connecting passage way between two compartments, and died. Her dependants claimed compensation. However, the Railway authorities, relying on the rules in the Railways Act and the Railway Claims Tribunal Act, refused to pay any compensation. Then petition was filed under the Consumer Protection Act against the Railway authorities. Would the petition succeed?

[Hint: Yes, the petition would succeed under the Consumer Protection Act. The death occurred as a result of deficiency in service. See *Union of India v. Nathmal Hansaria*, 1997 (NCDRC).]

15. With reference to the provisions of the Consumer Protection Act, 1986, decide the following giving reasons in support of your answer.

(i) Sukh Dukh Ltd. dispatched certain consignments of goods by road through Fastrack Roadways Ltd. The goods were unloaded and stored in a godown enroute on the suggestion of consignee. A fire broke out in the neighbouring godown spread to the godown and goods were destroyed. The Fastrack Roadways Ltd. claimed that there was neither negligence nor deficiency in service on their part and goods were being carried at "owner's risk" and since no special premium was paid, they were not responsible for the loss caused by fire. Whether Fastrack Roadways Ltd. is liable to pay damages to consignor?

(ii) Life Insurance Corporation (LIC) formulated a scheme called 'salary saving scheme' under which employees of an organisation could buy an insurance policy. Premium due on each policy was collected by the employer from the salary of the employees nor did it issue any premium notice. When the widow of the deceased employee made a claim to LIC on the death of her husband, the LIC repudiated the claim on the ground that four instalments of premium had not been paid. The widow was approached the consumer forum for redressal. Is the LIC liable for deficiency in service?

- (iii) Raman booked a ticket from Delhi to New York by Lufthansa Airlines. The airport authorities in New Delhi did not find any fault in his visa and other documents. However, at Frankfurt airport authorities instituted proceedings of verification because of which Raman missed his flight to New York. After necessary verification, Raman was able to reach New York by the next flight. The airline authorities tendered apology to Raman for the inconvenience caused to him and also paid as goodwill gesture a sum of ₹ 5,000. Raman intends to institute proceedings under the Consumer Protection Act, 1986 against Lufthansa Airlines for deficiency in services. Will he succeed?

Hints:

- (i) The present problem is based on *Nath Bros. Exim International Ltd. v. Best Roadways Ltd.*, 2000(2) SCALE 517, where the National Commission dismissed the claim. The Supreme Court allowed the appeal and held that the liability of the carrier is that of an insurer and is absolute in terms in the sense that the carrier has to deliver the goods at the destination indicated by the consignor safe, without causing any damage and without any loss to them. So long as the goods were in the custody of the carrier it would be his duty to take care as he would have taken of his own goods. Even if the goods had been carried at owner's risk and the carrier would not be fully absolved of its liability if the loss or damage was occasioned on account of its negligence or that of its agents and servants.

Based on the above stated case, it can be inferred that Fastrack Roadways Ltd. is liable to pay damage to Sukh Dukh Ltd.

- (ii) LIC is liable for deficiency in services. In the instant case the employer had implied authority to collect premium on behalf of the corporation. There is no gainsaying the fact that if the employee had, after deducting the stipulated amount from the employee's salary, failed to remit the premium to the Corporation. It was clearly the fault of the agent of the Corporation. So, LIC has wrongly discharged its liability under the policy.

The present problem is similar to *Delhi Electric Supply Undertaking v. Basanti Devi* 1999(6) SCALE 236 where it was held that since the burden of collecting the premium and remitting it to the corporation was on the employer, it was not the responsibility of the employee to intimate the Corporation about non-remittance of the premium.

- (iii) The present problem is similar to *Ravneet Singh Bagga v. KLM Royal Dutch Airlines*, 1999(7) SCALE 43.

In this case, Lufthansa Airlines could not be held to be guilty of deficiency in service. Although Raman had been subjected to harassment, it is equally true that none of the respondents would be held guilty of deficiency in service. The airline authorities tendered apology to Raman for the inconvenience caused to him and also paid him token of compensation. Deficiency of service could not be alleged without attributing fault, imperfection or shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. So, Raman will not succeed if he institutes proceedings under Consumer Protection Act, 1986.

16. With reference to the provisions of the Consumer Protection Act, 1986, decide the following giving reasons in support of your answer.

- (i) Sohan sent all relevant documents in an envelope regarding consignment of goods to a buyer in the USA through Fast Service Couriers. The documents did not reach the buyer as a consequence of which the buyer could not take delivery of the goods. By the time the duplicate copies of the document had been received by the buyer, the season of the goods was over. He claimed that he had suffered a loss of US \$ 5,000 as a result of the negligence of the courier. The State Commission ordered the payment to be made by the Fast Service Couriers, but the National Commission in appeal reversed the order and ordered payment of US \$ 100 only as per the receipt issued by the Fast Service Courier to the consignor at the time of the despatch of the latter. Advise Sohan.

- (ii) Mahesh purchased a machine from Astute Ltd. to operate it himself for earning his livelihood. He took the assistance of a person to assist him in operating the machine. The machine developed fault during the warranty period. He filed a claim in the consumer forum against the company for deficiency in service. Astute Ltd. alleged that Mahesh did not operate the machine himself but had appointed a person exclusively to operate the machine. Will Mahesh succeed?
- (iii) Pillai purchased a car by taking a loan from Kerala Cooperative Bank Ltd. and gave post-dated cheques to the bank not only in respect of repayment of loan instalments but also of premium of insurance policy for two succeeding years. On the expiry of the policy, Pillai's car met with an accident. Will Pillai succeed in getting a claim against the bank?

Hints:

- (i) The facts given in the problem are similar to the case of *Bharathi Knitting Co. v. DHL Worldwide Express Courier Division of Airfreight Ltd.* [1996(5) SCALE 142 (SC)] wherein the Supreme Court upheld the decision of the National Commission that in view of the terms and conditions of contract between the parties, the National Commission was right in limiting the liability undertaken in the contract and in awarding compensation to the extent stated therein.

Therefore, in the present case Sohan will not succeed and Fast Service Couriers liability will be limited to US \$ 100. As per IATA Regulations, any valuable document sent by courier shall be insured as a precautionary measure. It is the duty of the consignor to declare the value. Otherwise, the courier services will be put to heavy loss for no fault of theirs.

- (ii) The present problem is based on the leading case *Laxmi Engineering Works v. P.S.G. Industrial Institute* [(1995) II LPR 11 (SC)] where the Supreme Court held that if a person purchased a machine to operate himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer. But, if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a 'consumer'. Therefore, in the given case Mahesh will succeed.

Moreover, the complainant will succeed even if he engages somebody to operate the machine exclusively on the ground that the defect took place during the warranty period. This is the case of deficiency of service [See *J.K. Puri v. Mohan Breweries*.]

- (iii) The facts given in the problem are similar to the facts in *Pradeep Kumar Jain v. Citibank* [1999(4) SCALE 662] wherein the Supreme Court held that there is no deficiency in service because the obligation to renew the policy is on the owner of the car alone. Merely passing on cheques towards premium of insurance policy for two succeeding years would not absolve him of his liability to renew the policy. He has certain duties to discharge in the matter of obtaining the policy and cannot merely pass the blame on someone else. Thus, Pillai will not succeed in getting a claim against the Bank.

17. X, a small-scale industry, having a turnover of only about ₹ 10 lakhs, seeks nursing facilities from a bank by means of grant of adequate margin money. On failing to obtain this, it proceeds under the Consumer Protection Act, 1986. Will it succeed?

18. A claim of ₹ 2 lakhs towards compensation for loss of important documents entrusted to M/s Safe Pack Couriers Pvt. Ltd. was lodged by a consumer X before the State Commission. Advise whether it will succeed.

[Hint: See *Airpak Couriers (India) Pvt. Ltd. v. S. Suresh* (1993).]

CHAPTER 10: THE PAYMENT OF BONUS ACT, 1965

1. Write short notes on—
 - (i) Salaries or Wages under the Payment of Bonus Act.
 - (ii) 'Establishment' under the Payment of Bonus Act.
 - (iii) Allocable Surplus.
 - (iv) Accounting year.
 - (v) Award under the Payment of Bonus Act.
 - (vi) Available Surplus.
 - (vii) Establishment in Public Sector.
2. When a employee is eligible for receiving bonus? Are there any circumstances in which an employee shall be disqualified from receiving the same? If so, explain.
 - 2A. What are the days on which an employee shall be deemed to have worked for the purpose of computation of bonus payable to him? State with reasons whether such computation of number of working days on which an employee has worked is required in an establishment paying minimum bonus to its employees where none of the employees earned less than ₹ 2400 in an accounting year.
3. Write a short note on 'Loss of an employee's right to bonus'.
4. Write a short note on—

Special provisions under the Payment of Bonus Act with respect to payment of bonus linked with production or productivity.
5. Explain the provisions relating to deduction of prior charges from gross profits for arriving at the available surplus under the Payment of Bonus Act 1965.
6. Explain the provisions of the Payment of Bonus Act relating to the time limit for payment of bonus and the procedure to recover the bonus due from an employer.
7. Discuss the provisions of the Payment of Bonus Act relating to the appointment, power and functioning of the 'Inspector' appointed under the Act.
8. Explain the various categories of employees to whom the provisions of the Payment of Bonus Act do not apply.
9. Write short notes on—
 - (i) Set-on and Set-off provisions and their applicability to new establishments.
 - (ii) Computation of working days.
- 10.(i) Does the Payment of Bonus Act, 1965 impose any obligation on the employer to pay a minimum bonus? Give the relevant provisions.
 - (ii) What is the Quantum of Maximum bonus?
11. State as to how can bonus be recovered by the employees.
12. Is adjustment of a customary or interim bonus paid permissible against bonus payable under the Payment of Bonus Act, 1965?
13. Can there be any deductions made from the amount of bonus payable?
14. State the penalty clause for contravention of any provisions of the Payment of Bonus Act, 1965, and for non-compliance of a direction or requisition made under the Act.
15. Can an employer deduct any amount due from an employee from the bonus payable to him under the Payment of Bonus? If so, explain the circumstances/limitations governing such deductions.
16. Write a short note on 'Establishment in Private Sector' and 'Establishment in Public Sector' under the Payment of Bonus Act.

17. (a) Distinguish between 'Available Surplus' and 'Allocable Surplus'. (b) What deductions are allowed under the Third Schedule of the Payment of Bonus Act, 1965 in determining the 'Available Surplus' in case of a non-banking company?
18. Write a short note on—

Entitlement of an employee to receive 'Bonus linked with Productivity' under the Payment of Bonus Act.
19. What are the rules relating to 'set-on' and 'set-off' of allocable surplus under the Payment of Bonus Act, 1965?
20. Distinguish between 'wage' under the Payment of Bonus Act and 'Basic wage' under the Employees Provident Fund and Pension Funds Act.
21. Who is eligible to receive bonus? How are the number of working days computed for eligibility of bonus?
22. When does the liability of a new firm to pay bonus arise?
23. Distinguish between 'employee' under the Payment of Bonus Act and 'employee' under the EPF Act.
24. Explain the provisions of the Payment of Bonus Act with regard to the payment of 'Minimum' and 'Maximum' bonus to an employee. What rules exist in the Act relating to time limit for payment of bonus by an employer?
25. Distinguish between 'wages' under the Payment of Bonus Act and 'wages' under the Payment of Gratuity Act.
26. State the categories of employees to which the Payment of Bonus Act does not apply.
27. Explain clearly the meaning of 'Allocable Surplus'. What provisions exist in the Payment of Bonus Act with regard to 'set-on' and 'set-off' of allocable surplus?
28. State the procedure for calculation of working days and proportionate reduction of bonus under the Payment of Bonus Act, 1965.
29. What procedure shall an employee adopt for the recovery from his employer, of the amount of bonus due to him, under the payment of Bonus Act, 1965?
30. Who is liable to pay bonus under the Payment of Bonus Act and to whom? When shall a person be disqualified from getting the bonus?
31. State with reasons whether the following persons are entitled to receive bonus under the Payment of Bonus Act, 1965—
 - (i) A Dismissed Employee.
 - (ii) An Apprentice.
 - (iii) A Retrenched Employee.
32. Can a company rely on its audited balance-sheet and profit and loss account in respect of an industrial dispute relating to bonus payable under the Payment of Bonus Act, 1965? Explain.
33. Examine with reference to the provisions of the payment of Bonus Act the possibility of a non-banking company relying on its Balance Sheet and Profit & Loss Account in the case of a dispute with its employees relating to bonus payable under the Act and the limitations, if any, in this regard.
34. Explain the circumstances under which unit-wise profitability can be the basis for payment of bonus by an establishment under the Payment of Bonus Act, 1965.
35. Examine the entitlement of the following persons to receive bonus under the Payment of Bonus Act, 1965—
 - (i) A probationer.
 - (ii) An employee who committed a fraud.
 - (iii) An employee who is found guilty of misconduct causing financial loss to the employer.

36. How will you determine the direct tax payable by the employer for the purpose of computation of 'available surplus' for an accounting year under the Payment of Bonus Act, 1965?

37. Explain the circumstances under which the provisions of the Payment of Bonus Act, 1965 apply to the 'Establishment in Public Sector'.

38. State provisions relating to minimum and maximum bonus under Payment of Bonus Act. When is an employee disqualified from receiving bonus under the Act?

39. State the special provisions of the Payment of Bonus Act, 1965, with regard to newly set up establishments.

40. State the privileges available to a registered society under the Cooperative Societies Act, 1912, in the matter of recovery of dues from its members.

41. The employer is a banking company. Point out so as to what items are required to be added to the "Net Profit" by the employer for calculating the "Gross Profit" in accordance with the First Schedule of the Payment of Bonus Act, 1965.

[Hints: As per First Schedule to the Payment of Bonus Act, 1965, items to be added back to the net profit for calculating the gross profit of a banking company are:]

1. Provision for bonus to employees.
2. Provision for depreciation.
3. Provision for development rebate reserve.
4. Provision for any other reserves.
5. The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of: (a) the amount, if any, paid to or provided for payment to, an approved gratuity; and (b) the amount actually paid to employees on their retirement or on termination of their employment.
6. Donations in excess of the amount admissible for income tax.
7. Capital expenditure (other than permissible capital expenditure on scientific research) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income tax).
8. Any amount certified by the Reserve Bank of India in terms of Section 34-A(2) of the Banking Regulation Act, 1949. Section 34-A of the Banking Regulation Act deals with production of documents of confidential nature.
9. Losses of, or expenditure relating to, any business situated outside India.
10. Income, profits and gains (if any) credited directly to published or disclosed reserve, other than—
 - (i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income tax).
 - (ii) profits of, and receipts relating to, any business situated outside India.
 - (iii) income of foreign banking companies from investments outside India.

42. Describe the procedure provided under the Payment of Bonus Act, 1965 for computing the number of days for determining the amount of minimum bonus payable to an employee. How is proportionate reduction in bonus made?

◆ PRACTICAL PROBLEMS

1. An employer had been paying to his employees every year at the time of Deepawali one month's basic wages as Deepawali Bonus for the last 10 years, in addition to the bonus payable under the Payment of Bonus Act, 1965. The bonus had been paid even in those years when there were losses. The employer now wants to adjust Deepawali Bonus paid by him for the current accounting year against the bonus payable by him under the Act, for the current accounting year. State with reference to the

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provisions of the payment of Bonus Act, 1965, whether it is possible for the employer to make the above adjustments.

2. In an accounting year, a company to which the payment of Bonus Act, 1965 applies, suffered heavy losses. The Board of Directors of the said company decided not to give bonus to the employees. The employees of the company move the Court for relief. Decide in the light of the provisions of the said Act whether the employees will get relief?

[Hints: See provisions relating to Minimum Bonus.]

CHAPTER 11 : PAYMENT OF GRATUITY ACT, 1972

1. Define the following terms—
 - (a) Appropriate government
 - (b) Continuous service
 - (c) Employee
 - (d) Wages
 - (e) Employer
 - (f) Family.
2. Describe the rules relating to nomination by an employee.
3. Describe the circumstances when gratuity becomes payable to an employee.
4. (a) What is the rate of gratuity payable to an employee?
(b) What is the maximum gratuity payable under the Act?
5. State the rules as to determination and recovery of the amount of gratuity.
6. (a) Who is controlling authority under the Payment of Gratuity Act, 1972?
(b) What are his powers?
(c) Who can apply to him for direction?
(d) When can this application be made?
7. Enumerate the rights and obligations of (a) employers (b) employees under the Act.
8. Can gratuity payable to an employee be attached in execution in any decree of a court.
9. State the situations when an employee forfeits his right to gratuity.
10. Write an explanatory note on compulsory insurance of employer for payment of gratuity.

CHAPTER 12 : MINIMUM WAGES ACT, 1948

1. Describe the objects of the Act.
2. Define the following terms—
 - (a) Cost of living index number
 - (b) Employee
 - (c) Employer
 - (d) Scheduled employments
 - (e) Wages.

3. (a) Explain the procedure for fixing minimum wages.
(b) What is the composition of such minimum rate of wages?
4. State the procedure for revising minimum wages.
5. State the functions of Advisory Board and Central Advisory Board constituted under the Act.
6. What remedy is available to a worker who has been paid less than the minimum rate of wages?
7. Describe the provisions of the Act relating to claims arising out of payment of less than the minimum rates of wages to employees.
8. Describe the provisions of the Act in connection with protection against attachment of assets of employer with Government.
9. Enumerate the registers and records to be maintained under the Act.

CHAPTER 13 : THE INFORMATION TECHNOLOGY ACT, 2000

1. Describe the objectives, extent and application of the I.T. Act.
2. Define the following terms;
(i) Certifying Authority, (ii) Computer Resource; (iii) Digital Signature (iv) Key Pair (v) Private Key, (vi) Public Key (vii) Asymmetric Crypto System; (viii) Data.
3. Who may authenticate an electronic record? How is it effected?
4. Write short notes on:
(i) Legal recognition of electronic records;
(ii) Legal recognition of digital signatures;
(iii) Retention of electronic records.
5. Describe the provisions as regards attribution, acknowledgement and despatch of electronic records.
6. Describe the provisions as regards secure electronic records and secure digital signatures.
7. Describe the provisions as regards appointment of the Controller of Certifying Authorities.
8. Discuss the functions of the controller.
9. Who can grant a licence to issue Digital Signature Certificates? Give the requirements a person must complete for getting the licence.
10. Can the licence to issue Digital Signature Certificates be suspended or revoked?
11. Who is authorised to issue a Digital Signature Certificate?
12. Describe the representations made by the Certifying Authority at the time of issue of a Digital Signature Certificate.
13. Explain the duties of the subscriber.
14. Enumerate the powers of the Adjudicating officer.
15. Give provisions relating to establishment composition and functions of the Cyber Appellate Tribunal.

16. What penalty is provided for damage to computer, computer system or computer network?
17. Write explanatory notes on the following;
(i) Tampering with computer source documents.
(ii) Hacking with computer system.
(iii) Protected system.
(iv) Breach of confidentiality and privacy.