Ans:

(i) **Export promotion council**

Export promotion council are the councils which are set up to promote and develop the export of the country. These councils are mainly responsible for particular group of products, perfects and services.

Functions of Export Promotion Councils:

1. To provide useful information and assistance to members in developing exports.
2. To organise trade, fairs, exhibitions.
3. To provide advice in the various areas such as technology upgradation, quality and design improvement, standards and specification, innovation to its members.
4. To maintain proper records of export and import.
5. To promote interactions between the exporting community and the Government both at Central and state levels.

(ii) **Combinations.**

Combinations includes acquisition of control, shares noting rights, assets, merger or amalgamation.

The acquisition or amalgamation of enterprise will be combination if -

(a) any acquisition where -

   (i) the parties to the acquisition, being the acquirer and the enterprise whole control, or shares are acquired jointly have
     — assets of more than one thousand crore (in India)
     — turnover of more than three thousand crore
     — assets of more than five hundred million US dollar.
     (in India and abroad) (Same applies to the group also)

(b) acquiring of control when such person has already direct or indirect control once another enterprise if -

   (i) the enterprise over which control has been acquired with the enterprise over which the acquired already has direct or indirect control jointly have,
     — assets of more than one thousand crore (in India).
     — turnover of more than three thousand crore
     — assets of more than five hundred million US dollar (in India and abroad) (Same applies to group).

(c) any merger or amalgamation in which the enterprise remaining after merger, have.
— assets of more than one thousand crore. (in India)
— turnover of more than three, thousand crore.
— assets of more than five hundred US dollar (in India and abroad)

(Same applies to group)

(iii) **Advance authorisation scheme.**
An advance authorisation is issued to allow duty free import of inputs, which are physically incorporated in the export product (making normal allowance for wastage). In addition to the inputs, fuel, oil, energy, Catalysts etc which are consumed in the course of their use to option the export may also be allowed under the scheme.

- Duty free import of mandatory spares upto 10% of the CIF value of the Authorisation which are required to be exported with the resultant product may also be allowed under Advance authorization.
- These types of authorization are issued only on the basis of import and export items given under SION.
- Advance authorisation can be issued for import of inputs required in the manufacture of goods –
  (1) for physical exports (including export to SEZ).
  (2) for intermediate supplies.
  (3) to the main contractor for supply of goods to the specified categories under deemed export categories.

Supply of stores on board of the foreign going vessel/ aircraft subject to the condition that there is specific SION in respect of the items supplied.
- The items which are imported through authorization scheme are exempted from payment of basic custom duty, education cess, antidumping scheme duty and safeguard duty.

(iv) **Calibration**
Calibration means all those operation which are necessary for:
- determining the value of errors of weights and measure.
- to determine the other mythological properties of such weights & measure.
- includes actual fixing of the position of the gauge marks or scale marks of a weight and measure.

(v) **Environmental audit -**
*Please refer to Question 2005 - Dec [1] [C] (v) of Chapter “Pollution Control and Environment Protection” on page S-105.*

(vi) **Trade Effluent**
*Please refer to Question 2005 - Dec [1] [C] (vii) of Chapter “Pollution Control and Environment Protection on page S-105.*
(vii) **Commercial purpose** – The term commercial purpose does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self employment. A purchaser of good can be said to be for a ‘commercial purpose’ only if the goods have been purchased for being used in some profit making activity on a large scale and there is close and direct nexus between the purchase of goods and profit making activity.

**2009 - Dec [2] (i)**  
*Ans: False*, a person cannot export or import without an Importer-Exporter Code (IEC) number if that importer or exporter comes under exempted categories.

The foreign trade policy prohibits the export or import by any person without an Importer-Exporter Code (IEC) number unless specifically exempted.

The following categories of persons are specifically exempted from taking IEC number:

(i) Importers covered by Clause 3(1) Except sub clauses (e) and (i) and exporter covered by clause 3(2) (except sub clauses (i) and (k) of the Foreign Trade (Exemption from application of Rules in Certain cases) Order, 1993.

(ii) Ministries of central or State Government.

(iii) Persons importing or exporting for personal use.

(iv) Persons importing/exporting goods from Nepal provided the CIF value of a single consignment does not exceed Rs. 25,000.

(v) Persons Importing/Exporting good from to Myanmar through Indo-Myanmar border areas provided, the CIF value of a single consignment does not exceed Rs. 25,000.

*Ans: True*, Section 21 of Standards of Weights & Measure Act prohibits use of non-standard weight or measure. It says that no weight, measure or numeral other than the standard weight, measure or numeral shall be used as a standard. Weight, measure or numeral.

Thus the Act prohibits the use non-standard weights and measure.

**2009 - Dec [2] (iii)**  
*Ans: True*, before confiscation of an essential commodity under the Essential Commodities Act 1955, an reasonable opportunity of being heard must be afforded to a person whose goods are about to be confiscated. Before confiscation a notice is required to be served in writing informing him of the grounds on which it is proposed to confiscate the goods. And also to provide him a reasonable opportunity of making a representation in writing within a reasonable time and give him a reasonable opportunity of being heard.

Ans: True, According to the definition given under section 2 (V) of Restrictive Trade Practices Act, trade practice means any practice relating to the carrying on of any trade and includes –

1. anything done by any person which controls or affects the price charged by or the method of trading of any trader or any class of trader.
2. a single or isolated action of any trader.

Thus we can conclude that trade practice includes a single or isolated action of any person in relation action of any person in relation to any trade.

2009 - Dec [2] (v)
Ans: True, section 4 of the Competition Act 2002, expressly prohibits any enterprise or group from abusing its dominant position, meaning thereby a position of strength enjoyed by an enterprise.

Thus the Act does not prohibit the dominance position, it only prohibit the misuse of such dominant position by an enterprise.

2009 - Dec [2] (vi)
Ans: False, A trade mark distinguished the goods of one manufacturer or trader from similar goods of other manufacturer or trader.

According to definition a trade mark has been defined as to mean a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colour.

2009 - Dec [3] (a) (i)

Collective trade mark - A collective trademark means a trademark distinguishing the goods or service of members of an association of persons, which is the proprietor of the mark, from those of others. The application for registration of collective mark should be accompanied with Regulations for use of the Collective mark, specifying persons authorised to use mark, conditions of membership, conditions for use of mark including sanction against misuse and other prescribed matters.

2009 - Dec [3] (a) (ii)
Ans: Duty Free Replenishment Certificate (DFRC) -

- It is issue to an exporter for the import of inputs used in the manufacture of goods without payment of basic custom duty. But additional custom duty equal to excise duty will be levied at the time of import. This certificate is issued on minimum value addition of 25% except for items of Jems and Jewellery for which prescribe value additions is required.
- DFRC is issued only in respect of product covered under Standard Input output norms (SION) as notified by DGFT.
- The DFRC is issued for import of inputs as per SION as indicated in the
shipping bills.
— The authorisation shall be valid for 24 month.
— DFRC and the materials imported against it is freely transferable.

**Duty entitlement passbook scheme**
— This scheme is introduced to neutralise the incidence of custom duty on the import content of export product.
— It is provided by way of grant of duty credit against the export product.
— The credit may also be utilized for payment of custom duty on any item which is freely importable.
— The holder of DEPB has an option to pay in cash the additional custom duty.
— The DPEB is valid for a period of 24 months from the date of issue.

2009 - Dec [3] (a) (iii) 
**Ans:** While making an application for the grant of patent, an applicant first of all has to file a provisional specification of the work for which patent is filed. After filing the provisional specification an applicant has to file a complete specification within 12 months of filing the provisional specification. But where an application for a patent is accompanied by a specification purporting to be a complete specification, the controller may, if the applicant so request at any time within twelve months from the date of filing of application, direct that such specification shall be treated as provisional specification.
— Both provisional and complete specification should describe the invention and describing the matter for which invention relates.

2009 - Dec [3] (b) 
(i) The consumer dispute Redressal Forum shall not admit a complaint unless it is filed within, **2 years,** Years from the date on which the cause of action has arisen.
(ii) Indian parties are prohibited from making investment in a foreign entity engaged in **real estate and banking business.**
(iii) The Company which has exported goods is required to realise the full value of goods within **365 days.**
(iv) For - setting up on EOU, three copies of the application in the prescribed form may be submitted to the Development Commissioner.
(v) The state commission under the Consumer Protection Act, 1986, Can entertain complaints where the value of goods and services and the compensation if any, claimed exceeds Rs. **twenty lakhs** but does not exceed one crore.

2009 - Dec [4] (a) 
**Ans:**
(i) Naresh will be required to take prior consent of Reserve Bank of India
since Rule 5 of Foreign Exchange Management (Current Account transactions) Rules 2000 provide for prior approval of RBI in case amount of gift exceeds $ 5000 per donor per annum.

Ans:
(ii) Prior approval of Reserve Bank shall be required since the person resident outside India wants to contribute the amount as capital in software business.

Ans:
(iii) There exist no restriction on opening a foreign currency account in India as well as outside India.

Ans:
(iv) Following conditions needs to be complied with, in case a company incorporated outside India intends to establish unit in SEZ:-
(a) Compliance with provisions enumerated in the Companies Act 1956 for foreign companies.
(b) These unit should function on stand alone basis.
(c) Only where 100% foreign direct investment is permitted, can be their areas of functioning.

Ans:
(v) Dinesh who is an Indian citizen can use his international debit card for withdrawal of Cash during his visit abroad, subject to limit as prescribed to limit as prescribed by virtue of Rule 7 of Foreign Exchange Management (Current Account Transaction) Rules 2000.

2009 - Dec [4] (b)
Ans: Please refer to 2005 - Dec [5] (b) under the head Descriptive Question of Chapter- Environment Protection Act.

2009 - Dec [4] (c)
Ans:
(i) According to Section 52 of the Copyright Act, 1957 making or publishing of a painting, drawing, engraving or photograph of a work of architecture does not constitute any sort of infringement of copyright.

Ans:
(ii) As per the provisions of Copyright Act 1957 reproduction of any type of literary dramatic, musical or artistic work in form of cinematographic film is considered as infringement of copyright.

Ans:
(iii) According to Section 52 of the Copyright Act,1957 reconstruction of a building or structure in accordance with the architectural drawing or plans by reference to which the building was originally constructed does not fall within the purview of infringement.

Ans:
(iv) As per the provisions enlisted under Section 52 of the Copyright Act, 1957 there is no infringement in case sound recording or visual recording is used for private purpose or in course of bonafide teaching or research.

Ans:

(v) Yes, making translation of any form of literary work will fall within the ambit of infringement of copyright under the Copyright Act, 1957.

2009 - Dec [5] (a)

Ans: It was held in Pradeep Kumar Jain v/s Citi Bank, the appellant purchased a car by taking a loan from the respondent bank and gave post dated cheques to the bank for loan installment and insurance premium. On expiry of policy the bank failed to get the policy renewed. In the meantime car met with an accident. The Supreme Court held that there is no deficiency in service because the obligation to renew the policy was on appellant alone. But merely passing on two cheques to the bank for being paid to insurance company the appellant would not absolve himself of his liability to renew the policy. The appellant also have certain duties to discharge in the matter of obtaining the policy and Cannot merely pass the blame to someone else. Hence Raman will not succeed in the above case.

2009 - Dec [5] (b)

Ans: Objective of KYC Guidelines.

The KYC guidelines are introduced to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. It enable banks to know their customer and their financial dealing which helps them to manage their risk prudently.

When does KYC applies.

KYC guidelines applies at following stages:

— opening a new account.
— opening a subsequent account where documents as per current KYC standards not been submitted while opening the initial account.
— opening a locker facility where these documents are not available with the banks for all the locker facility holders.

KYC also applies to non account holders who approaches bank for high value transactions.

2009 - Dec [5] (c) Under section 6A, the collector can confiscate the seized commodity.

Section 6A provides that where any essential commodity is seized, a report of such seizure shall be made, without unreasonable delay, to the collector of the district. The collector may pass order for confiscation of

(a) the essential commodity so seized
(b) any package, covering or receptacle in which such essential commodity is found.
(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.
→ Foodgrains or edible oilseeds Cannot be confiscated.
→ A proper notice before confiscation of essential commodity must be given
→ A reasonable opportunity of heard must be given before confiscation.

Sale of confiscated commodity.
→ If the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do he may.
   (1) order the same to be sold at Controlled price or
   (2) by public auction or
   (3) Through fair price shops.
→ Appeal against the confiscation order can be made to state government.

PART - B

2009 - Dec [6] (i)
Ans:-
• Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years.
• A person is in continuous service if the employee has worked for :-
   → 190 days → establishment which works for less than 6 days in a week.
   → 240 days → in any other case.
• In case of seasonal establishment, if he has worked for not less than 75% of the number of days on which the establishment was in operation during such period.


2009 - Dec [6] (iv)
Ans: ‘Hazardous Process’ has been defined under the Factories Act, 1948. It means any process or activity which
• causes material impairment to the health of the persons who are engaged in that process or activity.
• result in the pollution of the general environment.
Special provisions relating to Hazardous process are being there in the Factories Act, 1948 such as :-
• Constitution of site appraisal committees.
• Compulsory disclosure of information by the occupier
• Provisions relating to the responsibility of the occupier.

2009 - Dec [6] (v)
Ans: Section 46 of the Employees State Insurance Act, 1948 provides for the following benefits:

(a) periodical payments in case of sickness certified by medical practitioner.
(b) periodical payments in case of disablement on account of employment injury.
(c) periodical payment to dependants.
(d) medical treatment related payment.
(e) In case of death of insured, payment at rate of Rs. 1500 in relation to funeral expenses.

2009 - Dec [6] (vi)
Ans: Section 10A of the Industrial Employment (Standing orders) Act, 1946 provides for the payment of Subsistence allowance.

An amount equal to 50% of his last drawn salary for first 90 days of suspension and 75% of wages for the remaining period.

Dispute relating to subsistence allowance may be referred to the Labour Court formed under Industrial Disputes Act, 1947.

Also Refer 2006 - June [7] (C) (a) of Industrial Employment (Standing orders) Act, 1946 under the Read ‘Descriptive Questions.

2009 - Dec [7] (a)
Ans:

(i) Gratuity forfeited on account of such act, omission or negligence which causes loss damage or destruction is termed as partial forfeiture of gratuity since the same can be carried out only to the extent of loss, damage or destruction so caused.

As against this, in case the services of an employee get terminated due to violence or riotous act or committing an offence involving moral turpitude in relation to his employment, the same can lead to forfeiture of the whole or part of the gratuity.

[For more details — Refer 2001 - June [4] (vi)]


(iii) The term ‘arising out of employment’ indicates that there exists some causal connection between the accidental injury and the employment. The causal connection as referred above should be proximate and not remote.

On the other hand, the term ‘arising in the course of employment’ reflects the fact that at the time of accident, the workman was employed in the performance of his duties and accident took place at or about the place where he was rendering his services.

2009 - Dec [7] (b)
Ans:
(i) Bonus must be paid to employees within a period of eight months from the close of the accounting year.

(ii) **Retrenchment** means termination of the services of a workman by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.

(iii) A minimum of **ten years** contributory service is required for entitlement to pension under the Employees Provident Funds and Miscellaneous Provisions Act, 1952

(iv) The employer is not liable for compensation when injury to the workman does not result in disenablement for a period exceeding **three** days.

(v) The employer is required to send a report to the commissioner for workmen’s compensation within **seven** days of the death or serious injury of the workman.

**2009 - Dec [7] (c)**

**Ans:**

(i) (d) 500 or more workers are employed

(ii) (a) Finished goods and packing thereof.

(iii) (b) Within 6 months

(iv) (c) 20 or more

(v) (b) Rs.3,50,000

**2009 - Dec [8]**

**Ans:**

(i) *Refer to 2006 - Dec [7] [C] (b) under the head ‘Practical Questions of the Chapter - Payment of Gratuity Act, 1972.*

(ii) The contention of the inspector is legally tenable.

As per Section 21f of the Employees Provident Funds Act, 1952 the term ‘employee’ includes a part time employee. Thus Raju who has been employed by fancy Bazar as part time sweeper shall be covered within the ambit of employee by virtue of Section 2(f) of the Act.

(iii) Yes, the company will be liable to extend the benefits to the gardeners as applicable to other factory workers since all persons employed in the factory whether or not employed as workers are allowed benefits of the Factories Act, 1948.

(iv) As sympathetic strikes also falls within the category of unjustified strike whereby by absenting themselves from work, interruption is caused into the day to day affairs. Hence, the same constitutes a valid ground for disciplinary action of management.

(v) *Please refer to 2004 - June [7] [C] (b)(iii) under the head Practical Questions of Chapter - Industrial Disputes Act, 1947.*

(vi) Yes, the employee will be liable to pay compensation to Jugal under the Workmen’s Compensation Act, 1923 since death of the workman
arose out of and in the course of employment. As per the provisions of 
Workmen Compensation Act, 1923 an employer is liable to pay any 
workman in case injury is caused to a workman by an accident arising 
out of and in the course of employment. Since the death of Jugal who 
was as railway employee occurred in course of employment the same 
acts as a valid ground for claiming compensation.

(vii) Please refer to 2007- Dec [7] (C) (b) (i), under the head ‘Practical 
Questions of Chapter - Payment of Bonus Act, 1965.