

## Industrial Law –Past papers

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October-2018.

*Question 02.*

Colombo Kesal foods Ltd provides delivery service of its foods to the customer in Colombo. The company engages twenty persons to deliver the foods from the commencement of its business in 2013. The company provides uniform to the delivery persons to wear during their working hours. The agreement between the company and the delivery persons has a clause which states: “Your agreement with the company will not construe employer- employee relationship. However, you cannot engage in any other work during the existence of your contract with the company”. The company does not pay wages to the delivery persons, but it pays only a commission on the basis of 15% of the total value of the food items delivered during the month.

Discuss whether the delivery persons are workman or independent contractors of the company.

Agreement has been signed between the two parties and they have accepted that they will not be treated as workers. But the nature of the employment is workman (contract of service), since the agreement did not have bargaining power at the moment of signing the contract.

1<sup>st</sup> paragraph- Even though the agreement says that they are not workers, still labour tribunal and labour courts have the power to consider the facts. Labour tribunal and labour courts/ labour commissioner do not bound by contracts signed between parties.

2<sup>nd</sup> paragraph- Courts can go through the tests, which use to identify contract of service. Include case laws to the answer.

Ex-

- ✓ control test – **Yewens vs. Noakes**  
**Ready Mixed Concrete vs. Minister of Pensions.**
- ✓ Integration Test – **Perera vs. Marikar Bawa.**

3<sup>rd</sup> paragraph - Apply the tests to the facts.

- ❖ Control test- Employees wear a uniform, cannot engage in any other work during the existence of the contract.
- ❖ Integration test- Without delivering the food the business cannot be done.
- ❖ Economic Reality Test- Delivery persons do not face for a risk of loss.

4<sup>th</sup> paragraph- Conclusion is delivery persons are not individual contractors but workers for the company.

Structure for an answer of a problem question.

- *Issue*
- *Principles*
- *Application*
- *Conclusion.*

### Past paper Questions on **Contract of Employment and Tests.**

- **2019 October – 02<sup>nd</sup> QUESTION**
- **2018 October -02<sup>nd</sup>QUESTION**
- **2018 April - 02<sup>nd</sup> QUESTION**
- **2017 October-02<sup>nd</sup> QUESTION**
- **2017 April-02<sup>nd</sup> QUESTION**

### **APRIL 2019**

### **02<sup>ND</sup> QUESTION**

Hudson Hospital employs Ram as a cleaner with effect from 01-01-2012. The Management of the Hospital has given the designation as casual workman to Ram. The Hospital has not given any appointment letter to Ram. He attends for

work six days in a week according to the work- schedule prepared by the Registrar of the Hospital. His daily wages are Rs.900/= for a day, and the wages are paid once in two weeks according to the number of days he works during the two weeks. Ram wishes to know whether he is a casual workman or a permanent workman. Advise him. (16 marks)

1<sup>st</sup> paragraph - The issue in this given scenario is whether the person is a casual or permanent workman. Even though the company has given the designation of casual workman, labour courts and commissioner can look into the facts while disregarding the designation. (Letter of appointment is not mandatory.)

02<sup>nd</sup> paragraph- The following should be considered to decide whether the person is a permanent workman or casual workman.

- Nature of the employment
- Period of employment
- Regular or irregular employment
- Mode of payment.

3<sup>rd</sup> paragraph- Apply the above factors to the given scenario.

- Nature of the employment- permanent as cleaner is always required.
- Period of employment- 6 years
- Regular/irregular – regular
- Mode of payment – Received wages every 2 weeks.

4<sup>th</sup> paragraph- Case law and the conclusion.

Case law;

- **All Ceylon commercial and industrial workers union vs Peiris.**
- **Superintendent of Pussella Planation vs. Sri Lanka Nidahas Sewaka Sangamaya.**

Conclusion; Ram is a permanent workman

Past paper questions on Types of employment.

2018 April - Question 09 (a).

2017 October - Question 03, 09 (a).

2017 April – Question 4

*Minimum of two case laws should be mentioned in a problem question.*

- *Summary of the case*
- *Essence of the principle*
- *Judgment.*

❖ THE ABOVE ANSWERS ARE NOT COMPLETED ANSWERS BUT A GUIDELINE FOR THE ANSWER.