Scanner Appendix

CS Executive Programme Group - I
(Solutions of June - 2024)

Paper - 1 : Jurisprudence, Interpretation and General Laws

Chapter - 1 : Sources of Law

2024 - June [4A] (Or) (i)

Bentham's concept of law can be said to be an imperative one. He believed that nature has placed man under the command of two authorities - pain and pleasure. 'Pleasure' here implies altruistic and obligatory conduct, the 'principle of benevolence', anything promoting pleasure. The function of laws should be to bring about the maximum happiness of each individual for the happiness of each will result in the happiness of all. He opined that laws are to work for the common happiness and hence the power of making laws should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good.

Bentham said that every law may be considered in eight different aspects:

1. **Source:** The source of a law is the will of the sovereign, who may be any person or assemblage according to whose will a whole political community is supposed to be pay obeisance in preference to the will of any other person.
2. **Subjects:** These may be persons or things.
3. **Objects:** The goals or purposes of a given law are its objects.
4. **Extent:** This refers to the coverage of the act.
5. **Aspects:** The four aspects of the sovereign will are command, prohibition, non-prohibition and non-command and the whole range of laws are covered under it.
6. **Force:** The motivation to obey a law is generated by the force behind the law.

7. **Remedial rules:** These are a set of subsidiary laws addressed to the judges through which the judges remove, stop or prevent the wrong targeted by the Act.
8. **Expression:** A law is an expression of a sovereign's will. If a law does not cover a specific situation that it might have wanted to cover while being enacted, it is deemed to be incomplete in design.

Chapter - 2 : Constitution of India

2024 - June [1] (a)

(i) The Rule of Pith and Substance means that where a law in reality and substance falls within an item on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature.

Acting on Entry 6 of List II of the Constitution of India which reads- Public Health and Sanitation, Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the Schedule VII, entry 31 of List I of the Constitution of India deals with "Post and telegraphs, telephones, wireless broadcasting and other like forms of communication, and, therefore, the State Legislature was not competent to pass it. The Supreme Court rejected this argument on the ground that the object of the law was to prohibit unnecessary noise affecting the health of public and not to make a law on broadcasting, etc. Therefore, the pith and substance of the law was -public health and not- broadcasting (G. Chawla v. State of Rajasthan).

(ii) The biggest check over administrative action is the power of judicial review. Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agency within that jurisdiction.

The power of judicial review controls not only the legislative but also the executive or administrative act. The Court scrutinizes the executive act for determining the issue as to whether it is within the scope of authority or power conferred on the authority exercising the

power. Where the act of executive or administration is found ultra-virus the Constitution or the relevant Act, it is declared as such and, therefore, void. The Courts attitude appears to be stiffer in respect of discretionary powers of the executive or administrative authorities. The Court is not against the vesting of discretionary power in the executive, but it expects that there would be proper guidelines for the exercise of power. The Court interferes when the uncontrolled and unguided discretion is vested in the executive or administrative authorities or the repository of the power abuses its discretion.

(iii) A bill is a formal legislative proposal put forward for consideration and debate within a legislative body, such as a parliament or congress. The process of transforming a bill into law involves multiple stages, each designed to ensure thorough examination, discussion, and potential modification of the proposed legislation.

(iv) Bills are classified as -

(i) Government Bills or Private Members' Bills based on whether they are introduced in the House by a Minister or a Private Member.

(ii) Content-wise, Bills are further classified as:

(a) Original bills that include new concepts, ideas, or policies,

(b) Amending bills that seek to alter, amend, or revise existing Acts.

(c) Consolidating Bills, which seek to consolidate current law/enactments on a specific issue.

(d) Expiring Laws (Continuance) Bills aim to extend the duration of Acts that would otherwise lapse on a predetermined date.

(e) Repealing and amending Bills are designed to update and refine the Statute Book.

(f) Validating Acts serve to legitimize specific actions.

(g) Additionally, there are Bills intended to substitute Ordinances, as well as Money and Financial Bills, and Constitution Amendment Bills. These Bills are systematically classified into several categories: Ordinary Bills, Money Bills, Financial Bills, Ordinance Replacing Bills, and Constitution Amendment Bills. Financial Bills are further divided into two categories: Category A and Category B. Category A Bills include

provisions related to matters outlined in sub-clauses (a) to (f) of clause (1) of article 110, along with other relevant issues, while Category B Bills pertain to expenditures from the Consolidated Fund of India. Category A Financial Bills may only be introduced in the Lok Sabha with the President's recommendation. Once passed by the Lok Sabha, they function like Ordinary Bills, and the Rajya Sabha has no limitations regarding their powers over these Bills.

(v) According to the Constitution's definition, "law" encompasses any ordinance, order, byelaw, rule, regulation, notification, custom, or practice that holds legal authority in India. Furthermore, "laws in force" refers to those laws enacted by a legislative body or other authorized entity in India before the Constitution came into effect, which have not been repealed, regardless of whether such laws or portions thereof are currently operational in any specific area.

2024 - June [4A] (Or) (ii)

Hans Kelson was an Austrian philosopher and jurist who gave the 'Pure Theory of Law'. Kelson believed that the contemporary study and theories of law were impure as they drew upon various other fields like religion and morality to explain legal concepts. Kelson was also a positivist, in that he wanted to focus solely on what the law was, not on what it could be, thus removing any moral, ideal or ethical elements from law. He discarded the presupposition of justice as an essential element of law because many laws may still continue as law despite being unjust.

He described law as a "normative science'. He also considered sanction as an essential element of law but he preferred to call it 'norm'. He believed, 'law is a primary norm which stipulates sanction'. According to Kelson, 'norm (sanction) is rules forbidding or prescribing a certain behaviour'. Thus, Kelsen's pure theory of law is based on pyramidal structure of hierarchy of norms which derive their validity from the basic norm. Grundnorm is said to be the basic norm, which determines the content and gives validity to other norms derived from it. This Grundnorm is the result of social, economic, political and other conditions and it is supposed to be valid by itself.

For example, In India a statue or law is valid because it derives its legal authority from being duly passed by the Parliament and receiving the assent of the President, the Parliament and the President deriving their authority from a basic norm i.e., the Constitution. As to the question from where does the Constitution derive its validity there is no answer and, therefore, it is the Grundnorm, according to Kelsen's conception of pure theory of law.

2024 - June [5] (c)

Article 21 of the Constitution guarantees personal liberty. The scope of personal liberty was broadened in the case of R.P. Ltd. v. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd., where the Court emphasized that in a democratic society, citizens possess the right to be informed about governmental activities. Furthermore, knowledge is often equated with power; possessing accurate information empowers individuals and fosters transparency in governance. When administrative processes are transparent, public trust is bolstered, leading to smoother operations overall. This right is widely regarded as integral to Article 21, which subsequently influenced the establishment of the 'Right to Information Act, 2002'. This legislation empowers every citizen to request information from public authorities, which are obligated to respond within a designated timeframe of 30 days.

In the pivotal case of Reliance Petrochemicals Limited v. Indian Express Newspapers, 1989 AIR 90, the Supreme Court interpreted Article 21 to include the right to know, asserting that this right is fundamental to participatory democracy. In the context of globalization, where borders are becoming less significant and international cooperation is on the rise, particularly in the realm of Human Rights, the concept of "liberty" should be understood more expansively. It should not merely signify the absence of physical constraints but should also encompass a wide range of rights, including the right to develop and uphold personal opinions. Access to information is essential for the cultivation and sustenance of such opinions. Article 21 of the Indian Constitution affirms the right to know for every individual, which intrinsically encompasses the right to access information. It is crucial to recognize that the rights to both disseminate and receive information are integral components of the more extensive right to freedom of speech and expression. Article 19(1)(a) guarantees this freedom to all citizens.

Nevertheless, Article 19(2) permits the State to implement laws that impose reasonable limitations on the exercise of the rights conferred by Article 19(1)(a) for the sake of national sovereignty, integrity, state security, amicable relations with foreign nations, public order, decency, morality, contempt of court, defamation, and the prevention of crimes.

Consequently, citizens are entitled to receive information, a right that is fundamentally linked to the freedom of speech and expression as articulated in Article 19(1)(a). The State has a dual obligation to not only uphold the Fundamental Rights of its citizens but also to cultivate an environment conducive to the full and effective exercise of these rights by all individuals. The right to freedom of speech and expression, as enshrined in Article 19(1)(a), includes the capacity to share and communicate one's thoughts and opinions, albeit within the confines of reasonable restrictions as previously mentioned. A critical prerequisite for exercising this right is the availability of knowledge and information. Such information enriches our comprehension and elucidates previously unclear concepts. The Right to Information Act is considered a landmark legislation, representing a significant leap forward in the Right to Information movement in India, thereby promoting transparency, autonomy, and accountability. The Right to Information Act of 2005 empowers all citizens with the right to access information. This legislation creates a functional framework that enables citizens to obtain information from public authorities, thereby enhancing transparency and accountability in their operations.

In the significant case of Anjali Bhardwaj and Others Vs. Union of India and Others, Writ Petition (Civil) No. 436 of 2018, the Hon'ble Supreme Court of India, in its ruling dated February 15, 2019, emphasized in paragraphs 18, 19, and 68 the fundamental relationship between the right to information and effective governance. The RTI Act itself highlights the significance of good governance as one of its core aims. The Act outlines four critical elements essential for achieving good governance:

(i) increased transparency in the functioning of public authorities;
(ii) an informed citizenry that encourages collaboration between citizens and the government in the decision-making process;

(iii) enhanced accountability and performance of governmental institutions; and

(iv) a reduction in corruption within government agencies.

Thus, the right to information transcends being a mere constitutional privilege for citizens; it is also reinforced by the RTI Act, which provides a legal framework for individuals to exercise this fundamental right.

Chapter - 3 : Interpretation of Statutes

2024 - June [4] (a)

Parbhani Transport Co-operative Society Ltd. v Regional Transport Authority:

Expressio Unis Est Exclusio Alterius: The maxim ought not to be applied when its application leads to inconsistency or injustice. Similarly, it cannot be applied when the language of the Statute is plain with clear meaning. Essentially, the rule means that 'express mention of one thing implies the exclusion of another'. Hence, it goes without saying that general words in a statute have to be construed generally, unless the same statute provides for a specific or restricted meaning. However, in doing so, it is not to be assumed that anything not specifically included is for that reason alone excluded from the protection of the statute. Moreover, the maxim should not be applied when its application leads to inconsistency or injustice in the applicability of the statute or if it defeats its purpose. Lastly, it cannot be applied when the language of the Statute is plain, i.e. When the meaning is abundantly clear.

Chapter - 6 : Law relating to Civil Procedure

2024 - June [2] (a)

Damnum sine injuria:

'Injury' here means 'physical injury' and 'damnum' means 'financial loss' or 'loss of property'. Damnum sine injuria implies a legal wrong that causes no actual damage or injury to anyone. For example, a financial wrong caused by one could result in liability to the other, even though no physical harm has been caused to the other.

In the case of Chasemore v. Richards, 1859, the plaintiff experienced a disruption in the water supply to his mill as a result of the defendant's well excavation. This interruption led to the closure of the plaintiff's mill. However, the court ruled that the defendant was not liable for the damages, stating that while the plaintiff suffered financial losses, there was no infringement of a legal right.

Chapter - 7 : Law relating to Crime and its Procedure
2024 - June [2] (b)
Interlocutory Orders:
Authority to Order Interim Sale:
The Court has the power, at the request of any party involved in a lawsuit, to authorize the sale of any movable property that is the subject of the case or has been seized prior to judgment. This sale can be carried out by a designated individual and conducted in a manner and under terms that the Court considers appropriate, especially for items that are likely to deteriorate quickly or for any other valid reason that requires an immediate sale. (Rule 6)
In the case of Dalpat Kumar and Others vs. Prahlad Singh and Others (16.12.1991 - SC): AIR 1993 SC 276, the Court determined that three key criteria must be satisfied to grant a temporary injunction:
1. There must be a prima facie case.
2. The absence of an injunction would cause irreparable harm.
3. The balance of convenience must favor the issuance of the injunction.

The Court highlighted that simply showing a prima facie case is not enough to warrant an injunction. It is also essential for the Court to determine that failing to intervene would result in "irreparable injury" to the party seeking relief, and that there are no alternative remedies available to them other than the injunction, which is necessary to protect against potential harm or dispossession. Furthermore, the third criterion requires that the "balance of convenience" supports the decision to grant the injunction.
Example:
X initiated legal proceedings to reclaim possession of a movable asset from Y. In the course of the hearing, X asserted that Y might sell the property for personal gain. The court has the authority to issue an interlocutory order requiring the property to be placed in secure custody as it sees appropriate.

2024 - June [2] (c)
This is similar to the case of U. Dhar v. State of Jharkhand, where there were two contracts-one entered into by the principal and the contractor and another entered into by the contractor and the sub-contractor. Upon completion of the work, the sub-contractor demanded money for completion of the work. When he was not paid, he filed a criminal complaint against the contractor, saying that although the contractor himself had received the payment from the principal, he had not passed on the same to him. He hence, alleged the contractor of having misappropriated the money.

The magistrate in due course took cognizance of the case. Even the High Court refused to quash the order of the magistrate. When the matter was appealed to the Supreme Court, it held that the matter was not of criminal but of a civil nature. Hence, the criminal complaint was not maintainable and ought to be quashed.

It was added by the Supreme Court that the money paid by the principal to the contractor was not money belonging to the complainant, i.e. the sub-contractor, hence there was no question of misappropriation. Moreover, since anyone who comes across another's movable property and acquires it as his own can be said to have committed the crime of criminal misappropriation [Section 403 of Indian Penal Code, 1860], this was not the case here. B hence, is free of this charge, but he can be sued for non-performance of contract, and the money recovered by C.

Chapter - 8 : Law relating to Evidence
2024 - June [6A] (Or) (iv)
Admissions:
'Admissions' have been defined in Section 17 of the Indian Evidence Act, 1872 as oral or documentary statements, or those in electronic form that imply or lead to any fact that is relevant or to any circumstances that are relevant. Only those statements that fit the description given in Sections 18-20 are included in this definition.

'Admissions' have been defined in Section 17 of the Indian Evidence Act, 1872 as oral or documentary statements, or those in electronic form that imply or lead to any fact that is relevant or to any circumstances that are relevant. Only those statements that fit the description given in Sections 18 to 20 are included in this definition.

'Confessions', on the other hand, are defined under Sections 24 to 30 of the Act. The term 'confession' has been defined by the Judicial Committee in Pakala Narayanaswami vs Emperor, 66 Ind App 66: (A.I.R 1939 P.C. 47): "A confession is a statement made by an accused which must either admit in terms of the offence, or at any rate substantially all the facts which constitute the offence."

Their differences are as follows:

Bases		Admission	Confessions
1.	Scope	It is a large category	A confession is a smaller category than an admission, of which it is a part
2.	Types of cases	Admissions are accepted in both criminal an civil cases.	Confession can only be with reference to criminal cases.
3.	Effect of willingness	Admissions are not bound by this constant	If confessions are to be accepted, they have to be made willingly
4.	Parties allowed	The accused or even his agent or a third party can make admissions	Confessions need to be made by the accused himself, only then they are to be given importance.
5.	Parties bound	Admissions have the capacity to bind both-the party making them as well as co-accused.	Confessions normally bind only the person making them, except in cases covered under Section 30, i.e. when the confession is made before a magistrate in the native state; it binds not only the person confessing but also the co-accused.

Chapter - 9 : Law relating to Specific Relief

2024 - June [3] (a)

The recovery of specific movable property is addressed in Sections 7 and 8. Section 7 stipulates that an individual who has a rightful claim to the possession of specific movable property may reclaim it in accordance with the procedures outlined in the Code of Civil Procedure, 1908.

Explanation 1 clarifies that a trustee is permitted to initiate legal action under this section to recover movable property for the benefit of the individual to whom they owe fiduciary duties.

Explanation 2 indicates that a special or temporary right to immediate possession of movable property is adequate to justify a lawsuit under this provision.

For instance, if "X" pledges his bicycle to "Y" for a loan of 1 lakh rupees, and "Y" unlawfully sells the bicycle to "Z" before the loan period concludes, "X" may pursue legal action against "Z" to reclaim his bicycle, despite not having repaid the loan by the agreed deadline. However, according to Section 7, since "X" has failed to fulfil his repayment obligation, he is not entitled to regain possession of the bicycle.

2024 - June [3] (b)

Injunction:

An injunction, is an order of a Court restraining a person from doing a particular act. It is a mode of securing the specific performance of a negative term of the contract, (i.e., where he is doing something which he promises not to do), the Court may in its discretion issue an order to the defendant restraining him from doing what he promised not to do. Injunction may be prohibitory or mandatory.

In case of prohibitory injunction, the Court restrains the commission of a wrongful act whereas in the case of a mandatory injunction, it restrains continuance of a wrongful commission.

In Lumley v. Wagner (1852) 90 R.R. 125. W agreed to sing at L's theatre and nowhere else. W, in breach of contract with L entered into a contract to sing for Z. Held, although W could not be compelled to sing at L's theatre, yet she could be restrained by injunction from singing for Z.

2024 - June [6] (c)

An agreement to do an act impossible in itself is void:

This is covered under Section 56 of the Indian Contract Act. For example, A and B enter into an agreement that B will run 50 kilometers in 5 minutes. The agreement is void as per Section 56, which says that an agreement to do an act impossible in itself is void.

Impossibility can be of two types:

That existing at the time of entering into the contract, and that which arises subsequently, i.e. supervening impossibility. Both have the same effect, of rendering the contract void.

If only the promisor knows of the impossibility, then he is bound to compensate the promisee for any loss he may suffer through the non -performance of the promise inspite of the agreement being void ab-initio (as per Section 56).

In Satyabrata Ghose Vs. Mugneeram, the Supreme Court interpreted the term 'impossible', and observed that the word has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless, then too it can be said that the promisor found it impossible to do the act agreed to by him.

However, under Section 53(2) the rights of a transferee in good-faith and for consideration are protected. It says nothing shall affect or impair the rights of a transferee in good-faith and for consideration.

In this scenario, A agreed to sell a parcel of land to B; however, prior to any development taking place, war ensued, leading to the temporary requisition of the land by the Government. A proposed to refund the earnest money to B as a means of canceling the contract. B rejected this offer and initiated legal proceedings against A for specific performance. A contended that the contract was discharged due to frustration. The Court determined that Section 56 was not relevant, reasoning that the requisition was temporary and that there was no specified timeframe within which A was required to fulfil the contract. The impossibility presented did not fundamentally undermine the contract. Consequently, it can be concluded that the doctrine of frustration is inapplicable in this instance.

Chapter - 10 : Law relating to Limitation

2024 - June [4] (b)

The performance of a contract is subject to a three-year limitation period, commencing from the date designated for performance, or, in the absence of such a date, from the moment the plaintiff becomes aware that performance has been denied. The Limitation Act of 1963 delineates specific timeframes applicable to various civil and criminal proceedings within the judicial system. This legislation encompasses all forms of legal actions, including suits, petitions, and applications. Its primary objective is to establish a temporal boundary within which remedies are accessible to those aggrieved. Importantly, the Act does not extinguish the right itself; rather, it restricts the availability of legal remedies. The formulation of the Limitation Act, 1963 is grounded in public policy considerations, reflecting the overarching principles of "repose, peace, and justice," as articulated in the Supreme Court ruling of Prashar vs. Vasantsen. This underscores the purpose of the statute of limitations in curtailing the volume of cases presented to the courts, particularly those that have become outdated due to the passage of time beyond the prescribed initiation period. Furthermore, in alignment with fundamental justice principles, the law favors individuals who remain vigilant regarding their rights and act within the stipulated timeframe. Consequently, this statute serves to impose a deadline for aggrieved parties to seek judicial remedies, thereby alleviating the courts from the perpetual obligation to entertain cases filed at any time.

Calculation of Limitation Period:

Section 9 of the Limitation Act, 1963 says that once the calculation or counting of time starts, it shall not be discontinued by any ensuing disability or incapacity that arises can stop the running of time. This condition will hold true only when and if the same conditions persist; when the cause of action has been taken away or a right altered, the very reason for calculation of the limitation period fails. This is known as Continuous Running of Time.

2024 - June [4A] (Or) (iii)

The law relating to limitation is incorporated in the Limitation Act, 1963, which prescribes different periods of limitation for suits, petitions or applications.

In the case of Bombay Dying & Mfg. Co. Ltd. v. State of Bombay, AIR 1958 SC 328 the Supreme Court held that the Law of limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process. Thus if a claim is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal.

Section 3 of the Limitation Act, 1963 provides that any suit, appeal or application if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defence or not, The provisions of Section 3 are mandatory. The Court can suo motu take note of question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint.

Chapter - 11 : Law relating to Arbitration, Mediation and Conciliation

2024 - June [4] (c)

Place of arbitration is important for the determination of rules applicable to substance of dispute, and recourse against the award. Place of arbitration refers to the jurisdiction of the Court of a particular city or State.

Section 11 of the Act relating to "Appointment of Arbitrators" now has the appointment by arbitral institutions instead of directly by the Supreme Court or High Court. Such "arbitral institutions" would be designated by the Supreme Court or High Court.

If even after an appointment procedure agreed upon by the parties:

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, then a party may request the Chief Justice or any person or institution designated by him to take the necessary steps. If, however, the agreement on the appointment procedure provides other means for securing the appointment, that can have precedence.

The Madras High Court, in light of the provisions outlined in the Arbitration and Conciliation Act of 1996, specifically Section 11, holds the power to appoint an arbitrator in cases that fall within its jurisdiction.

2024 - June [6A] (Or) (i)

As per Section 32 (1) of the Arbitration Act, 1996, the arbitral proceedings shall be terminated by:

- the final arbitral award or
- the order of the arbitral tribunal under section 32 (2).

The arbitral tribunal shall issue an order for the termination of the arbitral proceedings in cases where -

- the claim stands withdrawn by the claimant, unless the respondent objects to the order. For this decision to be taken, the tribunal has to decide that a legitimate interest exists, in obtaining a final settlement of the dispute.
- the parties agree on the termination of the proceedings.
- the arbitral tribunal finds that the continuation of the proceedings have become unnecessary or impossible, due to any reason whatsoever.

Section 32(3) decrees that the mandate of the arbitral tribunal comes to an end with the termination of the arbitral proceedings. This is subject to the provisions of Sections 33 and 34(4) of the Act, which may cause it to continue to a future point.

2024 - June [6A] (Or) (iii)

Mediation is when the two parties appoint a mediator or a person who interacts with both parties, clarifying the views of one party to the other and vice versa. The mediator clarifies the matter and brings about an agreement by bringing greater understanding to it.

Types of Mediation:

1. Court-Referred Mediation: Cases currently before the court may be directed to mediation under Section 89 of the Code of Civil Procedure, 1908. Courts have mediation centres that assess cases and assign them to certified mediators.
2. Court Annexed Mediation: This type integrates mediation services within the judicial system, where the court both refers cases and provides mediation services.

3. Statutory/Mandatory Mediation: Certain disputes, especially in labour and family law, are legally required to undergo mediation, emphasizing the importance of mediation efforts.
4. Private Mediation: Qualified mediators offer their services for a fee to various entities, facilitating dispute resolution for both court-pending and pre-litigation disputes.
5. Online Mediation: This method allows mediation to occur at any stage, using electronic means, provided all parties consent.

The differentiation between arbitration and mediation can be articulated as follows:

1. Mediation is a process that involves a neutral facilitator, often referred to as a mediator, whose primary role is to assist the disputing parties in reaching a consensus or mutually agreeable solution. The mediator does not impose a decision but rather encourages open communication, understanding, and collaboration between the parties. This process is inherently cooperative, as it seeks to empower the parties to work together to find common ground and resolve their differences amicably.

   In contrast, arbitration resembles a judicial process that takes place outside of the traditional court system. It involves one or more arbitrators who act as decision-makers, much like a judge, and the outcome of the arbitration is a binding decision that is enforceable in a manner similar to a court order. This means that the parties involved in arbitration relinquish some control over the outcome, as the final decision is made by the arbitrator based on the evidence and arguments presented during the proceedings.
2. Furthermore, the environment fostered by mediation is collaborative and supportive, encouraging dialogue and negotiation. This contrasts sharply with the more adversarial nature of arbitration, where the parties often present opposing positions and seek to persuade the arbitrator to rule in their favour.
3. The dynamics of these two processes reflect their underlying philosophies: mediation promotes partnership and problem-solving, while arbitration is more about contest and resolution through a third-party authority.

4. The structure of mediation is typically informal, allowing for flexibility in how discussions are conducted and how solutions are explored. This informality can lead to creative and tailored resolutions that may not be possible in more rigid frameworks. On the other hand, arbitration adheres to a more formalized procedure, often governed by specific rules and regulations that dictate how the process unfolds, including the presentation of evidence, witness testimonies, and legal arguments.
5. In mediation, the resolution is ultimately determined by the parties involved, who have the autonomy to agree on terms that best suit their needs and interests. This empowers them to take ownership of the outcome and fosters a sense of satisfaction with the resolution. Conversely, in arbitration, the decision rests solely with the arbitrator, who evaluates the case and issues a ruling that the parties must accept, regardless of their personal preferences or desires.
6. Lastly, it is important to note that mediation may or may not lead to a resolution of the conflict. The process is inherently open-ended, and if the parties are unable to reach an agreement, they may leave the mediation without a solution. In contrast, arbitration guarantees a definitive outcome, as the arbitrator is required to render a decision.

Chapter - 12 : Indian Stamp Law

2024 - June [6A] (Or) (ii)

Section 4 of Indian Stamp Act, 1899 provides that, where in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction -

(i) Only the principal amount shall be chargeable with the duty prescribed for the conveyance, mortgage or settlement

(ii) Each of the other instrument shall be chargeable with a duty of one rupee (instead of the duty if any prescribed for the other instruments).

Illustrations:

(i) A executed a conveyance of immovable property. On the same deed his nephew (undivided in status) endorsed his consent to the sale, as such consent was considered to be necessary. It was held that the conveyance was the principal instrument. The consent was chargeable with only one rupee (ILR 13 Bom 281).

(ii) Subsequent to a sale of immovable property, two declarations were executed reciting that the sale was subject to an equitable mortgage created by the vendor. These declarations were held to be chargeable, together with the sale deed, as having completed the conveyance (Somaiya Organics Ltd. v. Chief Controlling Revenue Authority, AIR 1972 All 252).

Chapter - 13 : Law relating to Registration of Documents

2024 - June [3] (c)

Ordinarily, as per the Registration Act, 1908, an unregistered document which comes within Section 17 cannot be used in any legal proceeding to create directly or indirectly the effect which it would have if registered.

However, as provided in the proviso to Section 49, an unregistered document affecting immovable property and required to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract as per Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction.

So, the effect of this proviso to Section 49 is that in a suit for specific performance an unregistered document affecting immovable property may be given in evidence. The purpose is that the document which has not conveyed or passed title may still be used as evidence of the terms.

In K. Narasimha Rao Vs. Sai Vishnu, it has been held that although it is a settled legal principle that an unstamped instrument is not at all admissible in evidence even for collateral purpose, still an unregistered instrument originally unstamped, if duly stamped subsequently can be admitted in evidence. This remains true even though it continues to be unregistered for collateral purpose but actual terms of transaction cannot be looked into.

Section 49 of the Registration Act stipulates that any document mandated by Section 17 or any provision of the Transfer of Property Act, 1882 to be registered shall not: (a) impact any immovable property included within it; or (b) grant any authority to adopt; or (c) be admissible as evidence of any transaction concerning such property or granting such authority, unless it has been duly registered. This section is imperative, indicating that a document requiring registration cannot be accepted as evidence in relation to immovable property. An unregistered document falling under Section 17

is inadmissible in any legal proceedings to indirectly demonstrate the effects it would have if it were registered.

For instance, if A purchases land for Rs. 2.50 Crore from B in Delhi, and although A and B execute the sale deed, they fail to register it with the Sub-Registrar. Subsequently, A discovers that a dispute regarding the land is ongoing. In this scenario, A is unable to seek judicial recourse due to the non-registration of the sale deed, as it is governed by Section 17, which mandates registration. Furthermore, A cannot claim ignorance of the law as a defence, since lack of knowledge of legal requirements is not a valid excuse. Nevertheless, upon payment of the requisite duty, A may be permitted to proceed, contingent upon adherence to the necessary legal provisions.

2024 - June [6] (a)

The rule of Lis Pendens: The Doctrine of 'Lis Pendens' asserts that while a suit is pending, a property, which is the subject matter of the suit, cannot be transferred. If it is transferred, then the transferee would acquire the property subject to the decision of the suit (Section 52 of the Transfer of Property Act, 1882).

The important points to be kept in mind in this regard are:

- Only suits in Indian courts would operate as Lis Pendens, not those filed or ongoing in foreign courts.
- It must not be a vexatious suit.
- It should relate to the immovable property in question.
- The subsequent transfer must be with regard to rights that might be affected by the outcome of the pending suit.

Effect :

If the parties to the litigation, are completely prevented from transferring the property in litigation, it would cause unnecessary delay and hardship, as they would have to wait till the final disposal of the case. So, Section 53 creates a limitation over the transfer by making it subject to the result of the litigation. The effect of this doctrine is not to invalidate or avoid the transfer, or to prevent the vesting of title in the transfer, but to make it subject to the decision of the case, and the rule would operate even if the transferee pendente lite had no notice of the pending suit or proceeding at the time of the transfer.

In the present scenario, A and B are engaged in legal proceedings concerning property X, and while the case is ongoing, A conveys property X to C. Ultimately, the court rules in favor of B. Consequently, C, who acquired the property during the litigation, is unable to assert any claim to it. C is obligated to adhere to the court's decree, which has awarded the property to B. Section 52 articulates the Indian doctrine of Lis pendens, reflecting the legal principle that "nothing new should be introduced during litigation."

Chapter - 15 : Law Relating to Information Technology

2024 - June [5] (b)

Digital Signature:

'Digital Signature' is defined in Section 2(1)(p). This definition provides for Electronic means of validating of electronic records by the procedure prescribed under the Information Technology Act, 2000.

Electronic Signature:

It is a means of authenticating electronic records by a subscriber by means of affixing digital signature. It is as per the Second Schedule to the Act.

[Section 2(1)(ta)]:

Electronic Signature Certificate:

It means an Electronic Signature Certificate issued under Section 35. It is inclusive of a Digital Signature Certificate.[Section 2(1)(tb)].

Procedure for obtaining an Electronic Signature Certificate:

It means an Electronic Signature Certificate issued under Section 35. It is inclusive of a Digital Signature Certificate.[Section 2(1)(tb)]. These are dealt with in Sections 35-39 of the Act. Section 35 of the Act authorises the Certifying authority to issue electronic signature certificates.

The procedure for the same is as follows:

1. **Application:** Whoever requies a DSC or electronic signature may apply in the prescribed form, along with the requisite fees, to the Certifying Authority. The form and fees for such is prescribed by the Central Government.
2. The application shall also have attached to it a certification practice statement or a statement containing such particulars as are specified by regulations.

3. On the receipt of such an application and after due enquiries, the Certifying Authority may grant or reject the electronic signature Certificate. In the case of the latter, the reasons have to be recorded in writing. However, no application shall be summarily rejected, without adequate reasons for the same.

Chapter - 16 : Contract Law

2024 - June [1] (b)

(i) **Liability of State or Government in Contract:**

Under Article 299 (2) of the Constitution, neither the President nor the Governor shall be personally liable in respect of such contracts made or executed for the purposes of the Government of India.

The Supreme Court has made it clear that the provisions of Article 299 (1) are mandatory and therefore any contract in contravention is void and hence cannot be ratified.

The Constitution of India permits both central and state governments to engage in contracts as outlined in Article 299. For a contract with either the Union or state government to be considered valid and enforceable, it must adhere to the following stipulations:

1. The contract must be executed in the name of the President or the Governor, depending on the context.
2. It must be formally executed on behalf of the President or the Governor, indicating that a written document is necessary for validity.
3. The contract must be signed by an individual who has been duly authorized by the President or the Governor, as applicable.

Article 299 (2) clarifies that neither the President nor the Governor can be held personally liable for any contracts or assurances made in accordance with the Constitution or any legislation pertaining to the Government of India. Additionally, the general principles of contract law apply to government contracts, subject to the conditions outlined in Article 299 (1).

(ii) **Effect of a valid contract with Government:**

A valid contract with the government under the Indian Contract Act provides the remedy for its breach too - a suit for damages. With the

case of Gujarat State Financial Corporation v. Lotus Hotels, the Supreme Court took a new stand that the writ of mandamus can be issued against the Government or its instrumentality also, for the enforcement of contractual obligations. [Also, Shrilekha Vidyarathi v. State of U.P.].

(iii) **Quasi-Contractual Liability:**
According to Section 70 of the Indian Contracts Act, 1872, where a person lawfully does anything for another person or delivers anything of value to him, and such other person enjoys the benefit thereof, the latter is bound to compensate the former in respect of or to restore, the thing so done or delivered. This includes even the Government, which will be liable to pay compensation for the work actually done or services rendered to the State. This is a liability that arises on equitable grounds even though there exists no express agreement or contract.

(iv) **Suit against State in Torts:**
A tort is a civil wrong that arises out of a breach of a civil duty or of a non-contractual obligation, the only remedy for which is damages. When one is responsible for the act of another, it is called vicarious liability. For example, when the servant of a person harms another by his act, the servant as well as his master are both held accountable for the act done by the servant. Similarly, sometimes the state is held vicariously liable for the torts committed by its servants in the exercise of their duty. The State would of course not be liable if the acts done were justified by a necessity for protection of life or property. Acts such as judicial or quasi-judicial decisions done in good faith would also be exempt.

Chapter - 17 Law relating to Sale of Goods

2024 - June [6] (d)

As per Sec. 16 of the Sale of Goods Act, the buyer is supposed to satisfy himself about the quality of goods he purchased and is also charged with the responsibility of seeing that the goods suit the purpose for which they were purchased by him. Later on if the goods does not turn out to be as per his purpose, the seller cannot be asked to compensate him. This is based on the

famous doctrine of CAVEAT EMPTOR which means 'let the buyer beware'. However, there are some exceptions to this which are as under:

- Where the buyer, expressly or by implication, makes it known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably be fit for such purpose. However, in the case of a contract for the sale of a specified article under its patent or other trade name, there are no implied conditions as to its fitness for any particular purpose.
- Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. However, if the buyer has examined the goods, there shall be no implied conditions as regards defects which such examination ought to have revealed.

In order to apply the implied condition as to merchantability the following **requirements must be satisfied ;**

- the seller should be dealer in goods of that description;
- the buyer must have not opportunity to examine the goods or there must be some latent defect in the goods which would not be apparent on reasonable examination of the same.

In this scenario, A has independently made the choice without relying on the expertise and assessment of the seller. This means that A did not seek or consider the seller's advice, recommendations, or insights regarding the product or service in question. Instead, A took it upon themselves to make a decision based solely on their own judgment, preferences, or research. Therefore, even if the outcome is not favourable or if A later regrets their choice, they are still held accountable for fulfilling their contractual obligations. This reinforces the idea that individuals must exercise due diligence and make informed decisions when entering into contracts, as they cannot later absolve themselves of responsibility simply because they did not seek or heed the advice of the other party involved.

Chapter - 18 Law relating to Negotiable Instruments

2024 - June [5] (a)

Distinction between a Cheque and a Bill of Exchange

Basis	Cheque	Bill of Exchange
On whom the instrument must be drawn	It must be drawn only on a banker.	It can be drawn on any person including a banker.
Acceptance	Acceptance is not needed.	A bill payable after sight must be accepted.
Payable on	The amount is always payable on demand.	The amount may be payable on demand or after a specific period.
Crossing	A cheque may be crossed.	Crossing of a bill of exchange is not possible.
Days of grace	Cheque are not entitled to days of grace.	Notice of dishonour is needed to hold the parties liable thereon.
Nohing or Protesting	In case of dishonour no nothing or protesting is to be done.	To establish dishonour a bill is to be noted or protested.

2024 - June [6] (b)

Forged Endorsement:

The issue of a forged endorsement merits particular attention. When an instrument is fully endorsed, it can only be negotiated through an endorsement executed by the individual to whom the instrument is payable or their designated order, as the endorsee acquires ownership solely via their endorsement. Consequently, if an instrument is transferred through a forged endorsement, the endorsee does not obtain any title, even if they are a bona fide purchaser for value, since the endorsement is rendered void. Forgery does not confer any title. However, in cases where the instrument is a bearer instrument or has been endorsed in blank, it may be negotiated simply

through delivery, allowing the holder to establish their title independently of the forged endorsement and to seek payment from any party associated with the instrument.

Liability of the Acceptor of a Forged Endorsement (Section 41 of the Negotiable Instruments Act, 1881).

An acceptor of a bill of exchange that has already been endorsed remains liable even if the endorsement is forged, provided they were aware or had reasonable grounds to suspect the endorsement's authenticity at the time of acceptance. In the current scenario, D, as the holder, does not obtain their title through B's forged endorsement but rather through A's legitimate endorsement, enabling them to claim payment from any party to the instrument despite the presence of the intervening forged endorsement.

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